

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215096

DATE: November 21, 1984

MATTER OF: Major Richard C. Hulit, USMC (Retired)

DIGEST: A Marine Corps officer moved his dependents and relocated his household to non-Government quarters in the vicinity of the Marine Corps Base, Camp Pendleton, California, in connection with his permanent change of station assignment to Okinawa, Japan, because he was not authorized to have his dependents accompany him. He received a dislocation allowance at the with-dependents rate incident to that relocation of his dependents. When he completed this assignment he was assigned on a permanent change of station to Camp Pendleton, and he joined his dependents in the residence they occupied when he transferred to Okinawa. In connection with his transfer from Okinawa to Camp Pendleton, where he was not assigned to Government quarters, he is entitled to a dislocation allowance as a member without dependents.

This action responds to a request for an advance decision as to the entitlement of a military officer to a dislocation allowance at the without-dependent rate in connection with his permanent change of station from a restricted area to a duty station in the vicinity of his family residence in the United States.^{1/} In the circumstances the officer is entitled to the claimed allowance.^{2/}

^{1/} The request for advance decision was submitted by Lieutenant Colonel M. K. Chetkovich, Disbursing Officer, U.S. Marine Corps, Camp Pendleton, California. The request was approved by the Per Diem, Travel and Transportation Allowance Committee and assigned control number 84-9.

^{2/} The accompanying voucher is being returned for payment as authorized.

Background

By permanent change of station orders, effective August 1979, Major Richard C. Hulit, USMC, was ordered to perform an unaccompanied tour of duty in Okinawa, Japan. Incident to that permanent change of station, he moved his dependents to a residence in Fallbrook, California, which is in the vicinity of Camp Pendleton, California, where they resided while he served his tour in Okinawa. He was paid a dislocation allowance at the with-dependents rate for that move.

In August 1980 at the end of his unaccompanied tour, Major Hulit was transferred to the Marine Corps Base, Camp Pendleton, California. He was not assigned to Government quarters there, but assumed residence with his dependents at the Fallbrook, California, residence to which he had moved them in connection with his unaccompanied tour. On the basis of his transfer in 1980 from Okinawa to Camp Pendleton, he claims a dislocation allowance at the without-dependents rate.

Because Major Hulit received a dislocation allowance when he moved his dependents to the Fallbrook residence in 1979, the disbursing officer questions whether he is again entitled to a dislocation allowance as a result of his assuming residence there in 1980.

Analysis

Payment of a dislocation allowance to members of the uniformed services is generally authorized when a permanent change of station requires the disruption or disestablishment of a household in one place and the reestablishment of the household in another place. 37 U.S.C. § 407, implemented by Joint Travel Regulations (JTR), Volume 1, chapter 9; 56 Comp. Gen. 46 (1976). The purpose of the dislocation allowance is to provide the member partial reimbursement for incidental expenses normally incurred in connection with the relocation of his or her household upon a permanent change of station. † JTR, paragraph M9000; Captain Thomas D. Slagle, USAF, 63 Comp. Gen. 55 (1983).

When a member without dependents is transferred to a permanent duty station where he is not assigned to

Government quarters, he is entitled to a dislocation allowance in an amount equal to 1 month's basic allowance for quarters for a member without dependents. When a member with dependents, who are entitled to transportation in connection with the member's permanent change of station, relocates his dependents, the member is entitled to a dislocation allowance in an amount equal to 1 month's basic allowance for quarters for a member with dependents.

For purposes of entitlement to a dislocation allowance, a member who, under 1 JTR, paragraph M7000, is not entitled to transportation of dependents in connection with a permanent change of station is considered a member without dependents. 1 JTR, paragraph M9001-2.2. If a member has dependents who do not relocate, although they are entitled to transportation in connection with the member's permanent change of station, that member is also considered to be without dependents for the purpose of entitlement to a dislocation allowance and may be paid the allowance as a member without dependents if he is not assigned to Government quarters. 1 JTR, paragraph M9001-2.3.

Paragraph M9001-2.3 of the Joint Travel Regulations was added to amend the dislocation allowance regulations following our decision in Dislocation Allowances, 59 Comp. Gen. 376 (1980). In that decision, we reconsidered the previously established rule that if a member's dependents were authorized to relocate incident to the member's change of station, but for some personal reason they did not relocate, the member may not be paid a dislocation allowance. Because this rule, which reflected a strict construction based on the language of 37 U.S.C. § 407, was considered to result in an inequity, an amendment to the Joint Travel Regulations was proposed to include in the definition of "members without dependents" members whose dependents are entitled to transportation but do not relocate with the member. In Dislocation Allowances, 59 Comp. Gen. 376, supra, we approved the proposed amendment based on our conclusion that:

* * * Congress did not intend to
preclude payment of any [dislocation]

allowance when a member whose dependents, although authorized to do so, do not relocate incident to his change in permanent station. In such cases the member would usually incur the same types of expenses as members without dependents who relocate and are entitled to a dislocation allowance. * * * " Dislocation Allowances, 59 Comp. Gen. at 378.

That decision further stated that "Decisions to the contrary, such as 48 Comp. Gen. 782, will no longer be followed."

Since the rule that was abandoned in Dislocation Allowances, 59 Comp. Gen. 376 was enunciated as the basis of our decision in 48 Comp. Gen. 782 (1969), in which the facts are very similar to those of the case now under consideration, we have been asked whether Major Hult is entitled to a dislocation allowance at the without-dependents rate based on the applicable law and regulations.

In 48 Comp. Gen. 782, supra, we considered the claim of a military officer whose dependents resided at a residence in Fairfax, Virginia (located in the vicinity of Washington, D.C.), while he served an unaccompanied tour of duty in Vietnam, a restricted area. Upon completion of his tour of duty in Vietnam, the officer was issued permanent change of station orders reassigning him to the Washington, D.C., area. He was not assigned Government quarters, but resumed residence with his dependents at their Fairfax, Virginia, residence. In connection with his transfer from Vietnam to the Washington, D.C., area, he claimed a dislocation allowance as a member without dependents. That decision held that the officer could not be paid a dislocation allowance as a member without dependents because under 1 JTR, chapter 7, he was entitled to dependent transportation in connection with his permanent change of station.

However, in Dislocation Allowances, 59 Comp. Gen. at 378, we concluded on the basis of the legislative history of the authorizing statute that 37 U.S.C. § 407(a)(3) was intended to ensure that military personnel receive a dislocation allowance regardless of

whether they have dependents. Thus, the rule in 48 Comp. Gen. 782, as well as in other similar decisions, was determined to be inconsistent with the intent of the statute in that it denied payment of any dislocation allowance to members authorized to move their dependents at Government expense, if the dependents did not actually move in connection with the members' permanent change of station. Under Dislocation Allowances, 59 Comp. Gen. 376, supra, members in this situation may be paid a dislocation allowance at the without-dependents rate. See also Colonel Joseph W. O'Neill, USAF, B-197545, September 4, 1980.

Thus, Major Hulit is entitled to a dislocation allowance as a member without dependents. His entitlement is based on the fact that he had a permanent change of station to a location where he was not assigned to Government quarters. 37 U.S.C. § 407. While we recognize that he received a with-dependents dislocation allowance when he moved his family to Fallbrook, California, in connection with his unaccompanied tour of duty in Okinawa, that does not negate his present entitlement. The dislocation allowance is paid in a fixed amount incident to a permanent change of station in prescribed circumstances and is not a reimbursement of actual expenses incurred. In some cases the member's expenses may exceed the prescribed allowance, and in others they may be less than the allowance. The amount of actual expenses incurred does not determine the entitlement.

Accordingly, payment to Major Hulit of a dislocation allowance at the without dependents rate is authorized, if otherwise correct.

for Milton J. Forster
Comptroller General
of the United States