



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Variable Housing Allowances -- Reserve Members
File: B-219192
Date: May 14, 1987

DIGEST

Service members are generally authorized payment of a variable housing allowance (VHA) when assigned to duty in a "high-housing-cost area." The applicable statute restricts the eligibility of reservists for VHA to those called to active duty for a period of not less than 20 weeks. This restriction was imposed because reservists are eligible for per diem allowances to provide reimbursement of their lodging expenses when they are called away from their homes to perform duty for a period of up to 20 weeks at another locality, and an anomaly would result if their lodging costs were paid through per diem but they simultaneously received VHA for that locality. Hence, a regulation implementing the VHA statute properly restricts payment to reservists assigned to duty for 20 weeks or more "at one location," even though the statute does not use that phrase in express terms, since this regulation furthers the purpose of the statute and operates to prevent simultaneous payments of per diem and VHA for one locality.

DECISION

This action is in response to a request for a decision on the question of whether a provision currently contained in Volume 1 of the Joint Federal Travel Regulations properly limits payment of the variable housing allowance to Reserve members of the uniformed services who are ordered to active duty for 20 weeks or more "at one location."^{1/} We conclude that this limitation is proper.

BACKGROUND

Under 37 U.S.C. § 403a, a service member entitled to a basic allowance for quarters is also entitled to a variable housing

^{1/} The request was made by the Chairman of the Per Diem, Travel and Transportation Allowance Committee.

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allowance when "assigned to duty in an area of the United States which is a high-housing-cost area with respect to that member." The purpose of the variable housing allowance is to offset the additional cost of housing incurred by service members assigned to a permanent duty station in a high-cost area. While originally the allowance was payable to any active duty service member, including reservists called or ordered to active duty for any period of time, the Department of Defense Authorization Act, 1984, amended the variable housing allowance law to restrict the eligibility of reservists for the allowance to those on active duty for a period of not less than "140 days," or 20 weeks.^{2/} Thus, for example, reservists called to active duty for training for the usual annual 2 weeks of duty are no longer eligible for the variable housing allowance. The congressional reports concerning the amendment provide this statement of reasons in support of its enactment:

"The Variable Housing Allowance (VHA) was first authorized by Public Law 96-343 to partially reimburse military personnel for the excessive housing costs experienced in high cost-of-living areas. The VHA is provided to personnel who are entitled to the basic allowance for quarters (BAQ) when they are assigned to areas in which the average cost of housing exceeds 115 percent of BAQ. The amount of VHA is the difference between the average monthly housing costs for a pay grade and 115 percent of the BAQ for that pay grade.

"Under current law, any member entitled to BAQ is also entitled to VHA whenever assigned to an area where VHA is authorized. Therefore, members of Reserve components called to active duty for short periods of time, such as two-week annual training duty, receive basic pay and allowances, including BAQ, and VHA. Yet, in most cases, these Reservists do not experience higher permanent housing costs during these short tours of active duty. Their permanent housing costs remain based on their civilian needs. Additionally, many of these individuals are able to remain at home during annual active duty training and others are often furnished housing by the Services. Moreover,

^{2/} Pub. Law No. 98-94, § 907(a)(2), September 24, 1983, 97 Stat. 614, 637, now codified at 37 U.S.C. § 403a(b)(3).

individuals serving school or special training tours are often entitled to a per diem allowance in addition to basic pay and allowances.

"Therefore, the Department of Defense has recommended, and the Committee agrees, that Reservists serving short tours of active duty of less than 140 days should be excluded from entitlement to VHA."^{3/}

ISSUE

The provision of the regulation currently in effect that implements this amendment of the variable housing allowance law is found in paragraph U8008, Volume 1, of the Joint Federal Travel Regulations.^{4/} It provides that:

"Members of the Reserve components called (or ordered) to active duty for 20 weeks or more (at one location) are entitled to a variable housing allowance * * *."

The Chairman of the Per Diem, Travel and Transportation Allowance Committee notes that the regulation provides the allowance only for reservists who remain in one location during a period of active duty of 20 weeks or longer. It does not authorize the allowance for reservists called to active duty for training for more than 20 weeks at more than one location, "for example, a reservist * * * ordered from home to 18 weeks of duty at location A, 16 weeks of duty at location B and then home." A question has arisen concerning the possible need to change the regulation to provide for a variable housing allowance for Reserve members ordered to active duty for at least 20 weeks, but who serve at more than one duty station and remain at each duty station for a period of less than 20 weeks. Although 37 U.S.C. § 403a(b)(3) does not expressly limit VHA to reservists called to active duty for at least 140 days "at one location," if a reservist is called to active duty at more than one location and spends less than 20 weeks at each location, "it is not clear that each of the locations can be considered the member's permanent station" for purposes of VHA entitlement.

^{3/} S. Rep. No. 174, 98th Cong., 1st Sess. 197, reprinted in 1983 U.S. Code Cong. & Ad. News 1081, 1097. To similar effect see H.R. Rep. No. 107, 98th Cong., 1st Sess. 211 (1983).

^{4/} The original implementing regulation was published in the now superseded Volume 1, Joint Travel Regulations, para. M4558.

ANALYSIS AND CONCLUSION

In 1967 the Congress enacted legislation authorizing payment of per diem to members of the Reserve components of the uniformed services when called away from their homes to perform military duty.^{5/} The wording of that legislation, codified at 37 U.S.C. § 404(a)(4), places no express time limitations on the periods for which a per diem allowance may be paid to a reservist when called to active duty. The legislation was intended, however, to provide reservists with the same per diem entitlements as those previously given by regulation to service personnel on extended active duty when ordered to another installation to attend a course of instruction.^{6/} Those regulations, long in effect, had specified that a school assignment of less than 20 weeks in duration at one location is to be regarded as temporary duty for which per diem is payable, and that an assignment of 20 weeks or more at one location is to be regarded as permanent duty for which no per diem is payable.^{7/} Hence, after the legislation extending the authorization for per diem to reservists was enacted in 1967, we expressed the view that regulations adopted to implement the legislation should provide a consistent rule. We therefore held that even though the wording of the statute contained no express limitations, the implementing regulation should limit reservists' eligibility for per diem to situations in which they are assigned to duty at a locality for a period of less than 20 weeks, and should preclude payment of per diem when they are given an assignment of a permanent nature of 20 weeks or more at one location.^{8/} Such regulations were then adopted and have remained in effect continuously to the present time.^{9/}

It is apparent from the congressional reports, quoted above, relating to the enactment of the 1983 legislation limiting

^{5/} Pub. Law No. 90-168, § 3, December 1, 1967, 81 Stat. 521, 525-526.

^{6/} See Captain Daniel S. Brown, USAR, B-222370, February 17, 1987, 66 Comp. Gen. ____.

^{7/} Those regulations currently appear at Volume 1 of the Joint Federal Travel Regulations, Appendix A (Definition of "Permanent (Duty) Station").

^{8/} See 48 Comp. Gen. 301, 303-304 (1968); 48 Comp. Gen. 517 (1968); and 49 Comp. Gen. 320 (1969).

^{9/} Those regulations currently appear at subparagraph U7150-A.3, Volume 1, of the Joint Federal Travel Regulations.

reservists' eligibility for VHA to situations in which they are called to active duty for periods of at least 140 days or 20 weeks, that the Congress was aware of the regulations authorizing per diem to reservists called to duty at a locality for a period of less than 140 days or 20 weeks. Those reports indicate the Congress had concluded that an anomalous situation had arisen in that reservists were being paid VHA based on a short assignment to a "high-housing-cost area," but they were not experiencing higher permanent housing costs as a result of those assignments. That is, their permanent housing costs remained based on their ordinary civilian needs. If the nature of their temporary military assignment required them to travel away from their usual civilian residence to another locality for a period of less than 20 weeks, they were eligible for reimbursement of their lodging expenses at that locality through the payment of a per diem allowance, but they were also eligible for VHA if the locality were designated as a "high-housing-cost area" for VHA purposes. The 1983 legislation removed this anomaly.^{10/}

In the hypothetical example presented, therefore, involving "a reservist * * * ordered from home to 18 weeks of duty at location A, 16 weeks of duty at location B and then home," the reservist, if not furnished with cost-free government quarters, would be paid a per diem allowance to provide reimbursement of lodging expenses incurred at both location "A" and location "B," since the assignment at each location is for a period of less than 140 days or 20 weeks.^{11/} Under the regulations in question that have been adopted to implement the VHA statute, the reservist would not be eligible for VHA, even if locations "A" and "B" were each designated as a "high-housing-cost area," since the period of assignment at each locality is for a period of less than 20 weeks. If the regulations were changed to authorize VHA in that situation on the basis that the VHA statute does not expressly require a reservist to be called to duty for 140 days "at one location" in order to be eligible for VHA, then the anomaly would again arise of a reservist being eligible for VHA based on a military assignment to a "high-housing-cost area," and simultaneously being eligible for a per diem allowance to provide reimbursement of lodging expenses incurred while assigned to

^{10/} Compare Captain Daniel S. Brown, USAR, 66 Comp. Gen. _____, supra.

^{11/} Subparagraph U7150-A.3, Volume 1, of the Joint Federal Travel Regulations; Captain Daniel S. Brown, USAR, 66 Comp. Gen. _____, supra; 49 Comp. Gen. 320, supra.

that same area. We do not find that the terms of the VHA statute require that the regulations be amended to produce that anomalous result, and we instead find that such an amendment would be contrary to the purpose of the legislation enacted in 1983 to limit reservists' VHA entitlements. Hence, we conclude that the regulations need not and should not be so amended.

The question presented is answered accordingly.

A handwritten signature in black ink, reading "Milton J. Aster". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States