



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chief Warrant Officer 2 Timothy J. Landgreen

File: B-245318

Date: September 30, 1992

DIGEST

A member who was ordered to make a local move from private, leased quarters to government housing was required to pay his landlord for the remaining 27 days under the lease. He and his dependents occupied government quarters during that period. Basic allowance for quarters and overseas housing allowance are payable for the 27 days, since the member was ordered to move into government quarters but still incurred rental expenses thereafter.

DECISION

This action is in response to a claim from Chief Warrant Officer 2 (CWO2) Timothy Landgreen for payment of Overseas Housing Allowance (OHA) and Basic Allowance for Quarters (BAQ). As explained below, it is our view that payment of BAQ/OHA may be allowed under these circumstances.

CWO2 Landgreen was issued a permanent change of station to Wiesbaden, West Germany, with the Army V Corps. Upon his arrival, he was notified that government quarters for his rank and family size were not available. He rented private housing on the local economy and was paid BAQ and OHA as provided under 37 U.S.C. §§ 403 and 405.

In June 1989 he was notified that government quarters would be available in early July. He was told that he should sign up immediately for the government quarters and make the necessary arrangements for the movement of his household goods. He informed the housing official that his lease agreement had a 30-day notice termination clause and that his lease could not be terminated until July 31, 1989.

The Housing Official informed CWO2 Landgreen that he would be reimbursed for the rent he had to pay for the remainder of the month if the landlord did not refund the rent up to his OHA limit. However, 1 week before the scheduled move,

the Housing Official informed CW02 Landgreen that due to a conflict between finance and housing officials there was some question whether he would be reimbursed for the remainder of the lease.¹

Ultimately, the decision was made that CW02 Landgreen should be paid the allowances for the remainder of his lease period. The move was authorized by the Housing Officer and effected with the understanding that expenses would be paid by the government. However, CW02 Landgreen was reimbursed for only 5 of the 27 days that he had been required to pay rent for his private housing. It appears that this payment was based upon a discussion and agreement between the housing office and the finance office regarding the V Corps policy.² The finance office has declined further payment and CW02 Landgreen has submitted a claim to this office for the allowances for 22 days.

On September 8, 1987, the V Corps Commanding General, concerned that these moves were causing members to bear the expense of two sets of quarters during an overlapping period issued a memorandum stating that no soldier shall be assigned to nor terminated from government-controlled quarters in any manner which would require him or her to involuntarily bear the expense of maintaining two sets of quarters.

On November 14, 1988, the Director of Engineering and Housing issued a memorandum implementing this policy which stated that a soldier who vacates Private Rental Housing for reasons beyond his control and for the need of the service and is required to continue payment on the housing is entitled to OHA for the entire period he continues to pay such rental.

¹Apparently, the housing officials had requested that CW02 Landgreen continue to receive BAQ during the 27 days of the remainder of the lease, while he and his dependents were residing in government housing. The finance office refused payment citing Department of Defense Pay and Allowance Manual (DODPM) Paragraph 30222c and 37 U.S.C. § 403(b) as authority.

²In August of 1989, the representatives of the Directorate of Engineering and Housing (DEH), the Staff Judge Advocate (SJA) and the 5th Finance Group met regarding the V Corps housing policy. The record shows that DEH explained the cost savings resulting from the procedure then in use and under which CW02 Landgreen was moved. The conclusion reached was that the average anticipated overlap of occupancy of government quarters and temporary lodging allowance eligibility status would be 5 days.

This system of transferring members to government quarters was found to be beneficial to the government based on a study of housing which found that moving members into government quarters immediately as it becomes available is more economical than holding the government quarters vacant until a lease expires.

Generally, 37 U.S.C. § 403 authorizes BAQ for members of the uniformed services. Subsection (b) provides in pertinent part:

"Except as otherwise provided by law, a member of a uniformed service who is assigned to quarters of the United States or a housing facility . . . appropriate to his grade, rank or rating and adequate for himself and his dependents, is not entitled to a basic allowance for quarters."

OHA is generally payable under the same circumstances as BAQ.

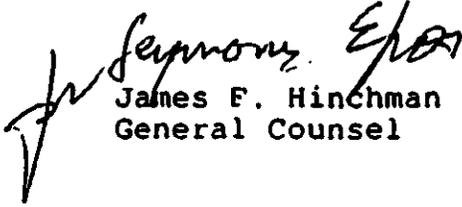
Department of Army regulations recognize the difficulty of members with lease arrangements moving to government quarters. A member should not be involuntarily assigned to government quarters during a period in which the member must bear the expense for a private lease. Paragraph 3-17, AR 210-50. Paragraph 3-17(e) states that if such members are moved, they must be given enough time to comply with the provisions of their lease.

Also, we have recognized that the assignment of quarters for members is primarily an administrative matter and it is the duty of the responsible officers to accomplish the maximum practicable occupancy of government quarters. It is the responsibility of the installation commander to maintain maximum occupancy of all government quarters for members reporting to his installation and that judgment be used as to whether assignment of government quarters to specific classes of members and families may be more costly to the government than the payment of basic allowance for quarters. 52 Comp. Gen. 64 (1972).

Various decisions of this Office have recognized that occupancy of government quarters for short periods does not necessarily preclude entitlement to BAQ. See 37 Comp. Gen. 47 (1957) and 37 Comp. Gen. 517 (1958). A member receiving BAQ who with his dependents occupies visiting officers quarters while awaiting suitable on-base housing incident to a permanent change of station continues to receive BAQ during the waiting period. 45 Comp. Gen. 589 (1966).

The purpose of prohibiting the payment of BAQ while residing in government quarters is to avoid the reimbursement of expenses that have not been incurred. To allow members to occupy government quarters and at the same time allow them to receive BAQ would result in a gratuity. B-159745, Aug. 23, 1966.

As discussed, that is not the situation here. Accordingly, we find the claim should be paid.


James F. Hinchman
General Counsel