



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Lieutenant Colonel Joseph T. Ponder, USAF
(Retired) - Claim for Basic Allowance for
Quarters

File: B-254646

Date: March 4, 1994

DIGEST

An Air Force officer occupied quarters with his wife, who was also an Air Force officer, and their dependent daughter. Neither received a Basic Allowance for Quarters (BAQ). His claim for BAQ is denied because a member occupying government quarters without payment of rent is not entitled to BAQ.

DECISION

This is in response to an appeal of a Claims Group settlement denying the claim of Lieutenant Colonel Joseph T. Ponder, USAF (Retired), for a Basic Allowance for Quarters (BAQ) during the time he occupied government quarters while still on active duty at Grand Forks Air Force Base (AFB), North Dakota. We affirm the settlement.

Under 37 U.S.C. § 403(a), a member who is entitled to basic pay is entitled to a BAQ. However, 37 U.S.C. § 403(b) provides that a member who is assigned to government quarters without payment of rent is not entitled to a BAQ. Colonel Ponder is married to Major Judy L. Ponder, USAF (Retired). From August 1985 until November 1988 they resided in government quarters at Grand Forks AFB with a dependent child. Neither he nor his spouse was paid BAQ.

In arguing that it is wrong that neither member in his situation is paid a BAQ, Col. Ponder maintains that while the provision of rent-free government quarters may affect one spouse's entitlement to a BAQ, the other spouse has an entitlement in his or her own right. In support, Colonel Ponder cites our Office's statement at 56 Comp. Gen. 46, 48 (1976), that "An entitlement to BAQ accrues to every member regardless of sex or grade by virtue of his or her status as a member of the uniformed services if quarters are not provided by the Government." Colonel Ponder argues that he therefore should have received a BAQ because the quarters at Grand Forks were assigned to his wife.

Colonel Ponder also cites in support of his claim Frontiero v. Richardson, 411 U.S. 677 (1973), where the Supreme Court held that male and female members must be treated equally with regard to the dependency of their spouses.

Finally, Colonel Ponder points out that not only do members married to each other not residing in government quarters receive a BAQ under section 403(a), but under 37 U.S.C. § 1009, which authorizes the adjustment of compensation (including BAQ), some members living in government housing in fact do receive at least a partial BAQ.

We are not persuaded by Colonel Ponder's arguments.

The statutory rule is longstanding and clear: a member assigned government quarters appropriate to his rank and adequate for his family is not entitled to a BAQ. 37 U.S.C. § 403(b). The current codification of the rule is based on section 302(b) of the Career Compensation Act of 1949, 63 Stat. 812-813, although it was reenacted from an earlier statute. The same limitation is clearly stated in the Act's legislative history. See S. Rep. 733, 81st Cong., 1st Sess. 20-21; H. Rep. 779, 81st Cong., 1st Sess. 32. Moreover, Executive Order 11,157, 29 Fed. Reg. 7973 (1964), specifies that government quarters occupied by a member and his dependents without payment of rent "shall be deemed to have been assigned to such member as appropriate and adequate quarters, and no BAQ shall accrue to such member" except in very limited situations not relevant here.¹

Colonel Ponder's position is that each married member is entitled to an independent appropriate/adequate determination, and the fact that government quarters are occupied by a married couple therefore should not be an element in both of them. The purpose of BAQ, however, is to reimburse a member for the expenses incurred in procuring housing when government quarters are not provided. When a member occupying government quarters does not incur such expenses - which was Colonel Ponder's case - there are none for a BAQ to defer; we think it clear that such member is not entitled to a BAQ on the basis Colonel Ponder proffers. See Special Agent Michael W. Zigmund, OSI, USAF, B-199728, May 8, 1981.

The assigned quarters in this case were deemed adequate by the Air Force. Colonel Ponder does not allege that the quarters were inadequate by military standards, but rather that the quarters were inadequate by his standard of non-

¹Determinations of adequacy are made by the member's base commander. See Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) paragraph 30222a.

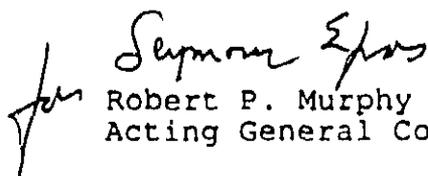
government housing he could secure if he and his wife were entitled to BAQ. This has no bearing on entitlement to BAQ under the law and regulations.

Our statement at 56 Comp. Gen. 48 does not support Colonel Ponder. Our point that every member is entitled to a BAQ was, as indicated in the statement itself, directed at situations where "quarters are not provided by the Government."² That statement is entirely consistent with 37 U.S.C § 403(a) and with the application of section 403(b) to the Ponders.

Frontiero v. Richardson also does not support the Colonel. That decision addressed the disparate treatment accorded male and female service members regarding the dependency status of civilian spouses. Before Frontiero, civilian female spouses were presumed to be dependents, while the financial dependence of civilian male spouses had to be proven. In Frontiero, the court held that male and female members must be treated equally with regard to the dependency of their spouses. In the present situation, both members of dual-service couples are treated the same. Neither spouse may claim the other as a dependent under 37 U.S.C. § 421, and both lose entitlement to BAQ when they occupy family-type government quarters.

Colonel Ponder is correct that members who occupy government quarters may receive partial BAQ, pursuant to the adjustment authority of 37 U.S.C. § 1009. Such payment, however, is limited to certain members without dependents who live in single-type government quarters. See DODPM para. 30214. We specifically pointed out in 57 Comp. Gen. 194, 198 (1977), in considering section 1009, that a member occupying family-type government quarters is not entitled to partial BAQ under that authority.

The Claims Group's settlement is affirmed.


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²We were contrasting that situation with entitlement to a dislocation allowance, which does not similarly accrue automatically, but instead is triggered by a specific event (moving and relocating a family).