

DECISION

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

FILE: B-131836

DATE: APR 12 1976

MATTER OF: Family Separation Allowance, Type II

60742

99080

- DIGEST: 1. Following the decision 52 Comp. Gen. 912 (1973) if a ship moves from its home port to another port within 50 miles (or 1-1/2 hours travel time as provided in para. 30313, DODPM) of the home port, those members attached to the ship whose dependents do not reside in the area of the home port do not become entitled to family separation allowance, Type II.
2. Family separation allowance, Type II, if otherwise allowable may not be paid to naval personnel assigned to ships merely because the ship has moved from its home port but eligibility depends upon where the dependents actually reside. If they reside within 50 miles (or 1-1/2 hours travel time) of the ship while at some other port, FSA may not be paid.

This action is in response to a request for decision from the Acting Secretary of the Navy, dated May 2, 1974. The request has been approved by the Department of Defense Military Pay and Allowance Committee and assigned Control Number SS-N-1220.

The Acting Secretary states that in view of our decision B-131836 of June 5, 1973 (52 Comp. Gen. 912), which was applicable to certain Navy members in the Norfolk, Virginia area, it is requested that this Office provide a rule of entitlement to family separation allowance (FSA), Type II, which would apply in all situations when a ship is away from its home port, and which includes consideration of travel time and distance to the residence of the dependents.

In our decision of June 5, 1973, we held that Navy members assigned in excess of 30 days to ship overhaul at the Norfolk Shipyard, Portsmouth, Virginia, located 3 miles from the home port, Norfolk, Virginia, who had had the option to move their families at Government expense to the Norfolk area but chose not to do so, were

PUBLISHED DECISION
55 Comp. Gen.

B-131 836

not entitled to the payment of the family separation allowance provided by 37 United States Code, 427(b)(2) (1970). We stated in that decision (p. 916):

"* * * [T]he allowances authorized in all three clauses under subsection 427(b) are predicated on a separation of the member from his dependents by reason of his military assignment. When the vessels involved were moved from Norfolk to Portsmouth there was not such a separation of the members and their dependents residing at Norfolk as would entitle them to the allowance. Likewise, no such separation resulted in the case of dependents who reside away from the home port."

With regard to payments of FSA, Type II, when the actual residence of the dependents is for consideration, paragraph 30313 of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) provides that dependents reside "at or near" a duty station if they live within a reasonable commuting distance. A reasonable commuting distance is defined as a distance of 50 miles, unless a member actually commutes a greater distance. However, if actual travel time exceeds 1-1/2 hours by the commonly used route and method of transportation, the dependents shall not be considered as residing near the member's duty station, even though the distance is less than 50 miles, if the member does not actually commute.

In accordance with the rationale of 52 Comp. Gen. 912, and in view of the provisions of paragraph 30313, DODPM, it would appear that the following rule would establish a reasonable test for non-entitlement to FSA, Type II, when a ship moves from its home port to another port:

If a ship moves from its home port to another port within 50 miles (or 1-1/2 hours travel time as prescribed in para. 30313, DODPM) of the home port, those members attached to the ship whose dependents do not reside at or near such home port under the criteria of para. 30313, DODPM, do not become entitled to FSA, Type II.

Generally, we view the regulations as providing that where a member's dependents reside at or near the home port (within 50 miles or 1-1/2 hours travel time) and the ship moves from the home port to another port, the member may become eligible for FSA, Type II, if he does not commute to the ship, provided the distance from his dependents' residence to the current location of the ship is not within 50 miles (or 1-1/2 hours travel time). Further, a member whose dependents do not reside at or near the home port (more than 50 miles or 1-1/2 hours travel time of the home port) but who commutes, may be considered as being in the area of the home port for FSA, Type II, entitlement purposes. Such a member may become entitled to FSA, Type II, if the ship moves from the home port provided the dependents' residence is more than 50 miles (or 1-1/2 hours travel time) from the new location of the ship and he does not then commute.

The four situations set forth by the Acting Secretary are considered as presented:

"Situation 1 - A member of eligible grade, upon reassignment to a ship, moves his family to a location any great distance from the home port of the ship, the movement of the ship from the home port not resulting in the member residing any closer to his dependents."

In regard to situation 1, if the movement of the ship is less than 50 miles (or 1-1/2 hours travel time) from the home port FSA, Type II, would not be payable to those members whose dependents do not live at or near the home port. However, if the ship moves more than 50 miles (or 1-1/2 hours travel time) from the home port FSA, Type II, would be payable if other requirements are met:

"Situation 2 - A member of eligible grade, upon reassignment to a ship, moves his family to a location outside the current 50 mile/1-1/2 hour limit of the home port of the ship. Subsequently, the ship moves from the home port and on the 29th day docks at a port inside the 50 mile/1-1/2 hour limit for 5 days. The ship then remains deployed for an additional 60 days, after which time it returns to the home port."

B-131836

For situation 2, the docking of the ship within the 50-mile limit would, for purposes of the member here in question, have the same consequence as if the ship had returned to its home port since the member's dependents do not reside at or near the home port and since the ship did not move to a location more than 50 miles (or 1-1/2 hours travel time) from the home port.

"Situation 3 - A member of eligible grade, upon assignment to a ship, moves his family to a location outside the current 50 mile/1-1/2 hour limit of the home port of the ship, but actually commutes, the movement of the ship from the home port resulting in the member being unable to commute."

As stated above, the member's dependents would be considered as being in the area of the home port inasmuch as he commuted while the ship was in the home port. Therefore, in situation 3, since after movement of the ship to the new location the member is unable to commute, he would meet this requirement for FSA, Type II, if his dependents resided 50 miles (or 1-1/2 hours travel time) from the new location.

"Situation 4 - A member of eligible grade, upon assignment to a ship, moves his family to a location within the 50 mile/1-1/2 hour limit, the movement of the ship resulting in the residence being located outside the 50 mile/1-1/2 hour limit for some of the members, but not all."

As to situation 4, those members whose dependents reside more than 50 miles (1-1/2 hours travel time) from the new location of the ship and who do not commute, would fulfill the requirement for entitlement to FSA, Type II. Those members whose dependents reside within 50 miles (1-1/2 hours travel time) of the new location of the ship would not become entitled to FSA, Type II, by virtue of the movement of the ship.

The questions are answered accordingly.

R.F.KELLER

Deputy, Comptroller General
of the United States