DECISION

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

61157

FILE: B-186153

DATE: JUL 19 1976

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MATTER OF: Department of Defense - Separate Maintenance Allowance

DIGEST:

Employee of Department of Defense may have daughter attending college counted as member of family in computing separate maintenance allowance. Section 262.31a of Standardized Regulations does not exclude daughter as conditions of section 262.1 are met, and section 261.2 indicates dependents attending college are to be included in computation of allowance.

By letter dated March 15, 1976, an authorized certifying officer of the Department of Defense (DOD) requested an advance decision on the claim of a DOD employee for an increase in the amount of his separate maintenance allowance under the provisions of paragraph 260 of the Standardized Regulations (Government Civilians, Foreign Areas).

The record shows that the employee's family was evacuated from his overseas duty post for their personal safety. Prior to the evacuation, the employee's daughter had been issued travel orders to return to the United States to begin college under the provisions of section 280 of the Standardized Regulations. However, her departure for college did not occur until after the family had been evacuated to a safe haven and she had been there approximately six weeks. Subsequently, the employee's duty post was reclassified to an unaccompanied tour duty station and the remainder of his family returned to the United States.

The question for which an advance decision is requested is whether the daughter should be included as a member of the employee's family for purposes of computing the separate maintenance allowance, since she would have returned to the United States in any case. The certifying officer states that section 262.31a of the Standardized Regulations appears to exclude the employee's daughter in the computation of the amount of the allowance. That section reads as follows:

> "A separate maintenance allowance shall not be granted where the conditions in section 262.1 are not met, including (but not limited to) situations where the separation is for the following or other personal reasons:
> "a. educational purposes."

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We conclude that section 262.31a does not exclude the employee's daughter from being counted as a dependent in computing the employee's allowance. The section prohibits the authorization of an allowance if the separation is solely for educational purposes. However, the fact that the daughter planned to return to the United States to attend college does not change her status as a dependent once the employee's eligibility for the allowance is established. In this regard we note that section 261.2 states in part that:

> "* * * The rates are based on the number and composition of the dependents maintained away from the post of assignment, including children otherwise eligible who reside away from the residence of the separated household attending school, college, or university, * * *"

The separation in this case was made long before the daughter had to leave the overseas area to return to the United States. The only reason for the separation at this time was because of the dangerous living conditions at the employees post of assignment in the foreign area. In our decision B-178490, May 6, 1974, it was held that a child attending boarding school could be counted as a dependent, although he did not live with his mother at the separated residence since the Standardized Regulations permit a separate maintenance allowance under such circumstances when the employee is assigned to a duty station where his family is not permitted to live with him.

Accordingly, the employee's daughter may be included as a dependent for purposes of computing his separate maintenance allowance.

R.F.KELLER

Deputy Comptroller General
of the United States