

P.L.T

DECISION



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

9629

FILE: B-191819

DATE: March 23, 1979

MATTER OF: Gordon V. Andruch } *Denial of* Separate Maintenance Allowance }

DIGEST: AID employee was denied separate maintenance allowance (SMA) for wife during part of tour of duty in Vietnam because of "breach in domestic relations." He was entitled to SMA until there was definitive evidence of a breach of domestic relations within the meaning of section 262.31c of the Standardized Regulations (Government Civilians, Foreign Areas). Therefore, payment of SMA was proper only until the date his wife filed for a divorce, even though her petition for divorce was placed on the inactive court calendar for several months of the intervening year before a final divorce decree was granted.

This action is in response to the request of Mr. Gordon V. Andruch, an employee of the Agency for International Development (AID), for reconsideration of the settlement of our Claims Division on December 5, 1977, which denied in part his claim for a separate maintenance allowance (SMA) while he was stationed in Vietnam during the period from March 18, 1967, through January 7, 1969. The settlement sustained the payment during the period from March 18, 1967, until January 8, 1968.

The issues originally considered by our Claims Division related to Mr. Andruch's right to receive SMA for both his first and second wives and minor children associated with each marriage while in Vietnam, and his right to be reimbursed for Family Visitation Travel expenses. Of the issues raised in the original submission, the only one that is still being contested by Mr. Andruch is whether or not his first wife may be included in computing his SMA for the period from January 8, 1968, the date that the first Mrs. Andruch filed a divorce action, until January 7, 1969, when Mr. Andruch's overseas tour of duty ended.

At the time of Mr. Andruch's service in Vietnam, the applicable statutory regulation, Standardized Regulations (Government Civilian, Foreign Areas) § 262.31c, simply stated that SMA could not be paid when there was a "breach in domestic relations." That section was revised by TL:SR-239, October 28, 1973, so that it now provides, in pertinent part, that:

~~604777~~

"262.31 Separate Maintenance for Reasons not Contemplated in Basic Law

"A separate maintenance allowance shall not be granted where 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:

* * * * *

"c. a voluntary legal separation between an employee and spouse; or a separation occurring through a divorce decree, whether limited interlocutory or final. (A voluntary legal separation is deemed to exist at such time as either the employee or spouse shall have initiated legal action affecting the status of the marriage such as a separate maintenance action or separation from bed and board between the parties short of application for divorce. A separate maintenance action is an action against a spouse and for permanent support and maintenance for the moving spouse and for support, maintenance and education of minor children.)"

The explanation contained in the accompanying Transmittal Letter stated that:

"Section 262.31(c) is revised to provide a more complete description of marital breach either by voluntary separation or by divorce in connection with non-eligibility for separate maintenance allowance."

The new language in Standardized Regulations (Government Civilians, Foreign Areas) § 262.31c, is not a revision of the regulations, but is a clarification of the definition of "breach in domestic relations." As a clarification rather than a revision, the changed language of the regulations may be applied retroactively. B-178490, July 2, 1975, and May 6, 1974.

B-191819


In applying the clarified language of the regulations to the record in Mr. Andruch's case, our Claims Division found that his first wife's filing of a divorce action on January 8, 1968, notwithstanding that she contemporaneously placed her cause of action on the "inactive" court calendar, was sufficient to constitute a "voluntary legal separation." Therefore, Mr. Andruch was found ineligible to receive SMA for his first wife following her initiation of the divorce action on January 8, 1968.

In requesting reconsideration, Mr. Andruch makes essentially two arguments: first, that he has not had a fair opportunity to refute or explain the circumstances surrounding the alleged breach, and therefore he has been denied "due process;" and secondly, that the record does not support a finding that a breach in the marriage occurred.

The controlling fact from which the disallowance of Mr. Andruch's claim for SMA must result is that divorce proceedings were filed by the then Mrs. Andruch on January 8, 1968. This fact, when viewed in light of the regulations set forth above, requires a finding that a voluntary legal separation occurred. Mr. Andruch has characterized his wife's action as a "highly equivocal, transient gesture" which was "promptly remedied by her subsequent steps to stop the proceedings. At best, the 'breach' was ephemeral and transient." We must disagree. The record shows that Mrs. Andruch did not dismiss her petition for divorce, but merely caused it to be placed on the "inactive" court calendar. A final divorce decree was in fact granted on the basis of that petition on January 13, 1969. Mr. Andruch does not contest these facts and since our decision is based only upon these facts, no useful purpose could be served by further consideration of the circumstances surrounding his divorce. Where there has been no action in the nature of an action for separate maintenance, the relevant date for application of the standard of "voluntary legal separation" set forth in the Standardized Regulations, cited above, is the date of filing for divorce. This is an objective standard, clearly definable in point of time, which eliminates the subjective standards once applied in determining whether there had been a breach in domestic relations. See B-178490, supra.

B-191819

For the foregoing reasons, the Claims Division's settlement of December 5, 1977, holding Mr. Andruch indebted to the United States for SMA payments made to him between January 8, 1968, and January 7, 1969, is affirmed.


Deputy Comptroller General
of the United States