

Mr. Schneider

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DECISION



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

FILE: B-200946

DATE: December 15, 1980

MATTER OF: Master Sergeant Renny J. Weiss

[Entitlement to Basic Allowance For Quarters]

DIGEST: Under 37 U.S.C. § 403(d) uniformed services members are entitled to basic allowance for quarters (BAQ) if their dependents are prevented from sharing their Government quarters "because of orders of competent authority." This provision is limited to cases involving orders of military authority. An order issued by a State court placing a member's dependent child in the custody of the member's former wife does not constitute competent authority for this purpose. Enactment of 42 U.S.C. §§ 659-662 (Supp. II, 1977), which makes support obligations of Federal employees and service members collectible from their pay under applicable State and local processes, does not make a State court custody order an order of competent authority within the meaning of 37 U.S.C. § 403(d).

This decision is in response to a request from the Accounting and Finance Officer, Headquarters 14th Flying Training Wing (ATC), Columbus Air Force Base, Mississippi, for an advance decision concerning the propriety of payment of a Military Pay Order in favor of Master Sergeant Renny J. Weiss, USAF. The question presented is whether Sergeant Weiss is entitled to basic allowance for quarters on behalf of a dependent child residing with his former spouse to whom he is paying child support.

The request was forwarded here through the Department of Defense Military Pay and Allowances Committee where it was assigned submission number DC-AF-1353.

Sergeant Weiss was divorced from his former wife in 1976. The divorce decree awarded custody of their daughter to the mother and required him to pay child support. Sergeant Weiss has remarried and currently resides in family type Government quarters at Columbus Air Force Base, Mississippi.

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It is provided in 37 U.S.C. § 403(b) that, 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 under the jurisdiction of a uniformed service, appropriate to his grade, rank, or rating and adequate for himself, and his dependents, if with dependents, is not entitled to a basic allowance for quarters. However, subsection (d) provides that a member assigned Government quarters may not be denied the basic allowances for quarters if, because of "orders of competent authority," his dependents are prevented from occupying those quarters.

Our decisions have held that a divorce decree of the court having jurisdiction of the children does not constitute "orders of competent authority" within the meaning of the law. 48 Comp. Gen. 28 (1968). However, Sergeant Weiss now argues that enactment of section 101 of Public Law 93-647, 88 Stat. 2351, et seq., amounted to a Congressional recognition of the State courts as competent authorities in deciding matters involving military dependents. The provisions added by section 101, as amended, provide, among other things, the mechanism by which Federal wages could be garnished according to court procedures for recovery of alimony and child support. See 42 U.S.C. §§ 659-662 (Supp. I, 1977). The issue raised in this case is whether these new statutory provisions supersede our prior decisions and compel the inclusion of divorce decrees as "orders of competent authority" within the ambit of 37 U.S.C. § 403(d). They do not, and therefore the claim may not be allowed.

The cases have clearly established that in order for a member of the military services to be entitled to the allowance under the cited provision, the member's dependent must have been precluded from living in Government quarters by a military authority. We stated in 48 Comp. Gen. 28, at 30:

" * * * [I]t has been the policy of the uniformed services to preserve family units to the extent that exigencies of the service

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will allow. Thus, within certain limitations, the law authorizes transportation of an officer's dependents to his station to reside with him. Also, the law permits payment of basic allowance for quarters where, because of the member's military assignment, adequate quarters are not available or he is not permitted to have his dependents at his permanent post of duty, even though he is assigned quarters for himself."

On that basis, it was held that the competent authority contemplated by 37 U.S.C. § 403(d) must be either the nature of the member's military assignment or an order issued by competent military authority.

The principle was affirmed in 50 Comp. Gen. 174, 176 (1970), where we stated:

" * * * It is our view that the foregoing provisions of law and regulations apply to situations in which dependents, who are not residing in Government quarters, are denied permission by virtue of military orders from moving to and living with the member at his duty station for reasons deemed adequate by the order issuing authority."

We do not believe the provisions of 42 U.S.C. §§ 659-662 have any effect upon the application of 37 U.S.C. § 403(d). The underlying purpose of the latter provision is merely to compensate members whose separation from their dependents is caused by the fact of service in the armed forces. In the case of a custody order, the separation of the non-custodial parent and his or her child is caused by an authority unrelated to the parent's military service. In other words, the custody order and obligation of child support are binding upon Sergeant Weiss regardless of his military career. The fact that the Federal law

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has been changed to provide additional methods of enforcing child support obligations of Federal civilian employees and military members by making their Federal remuneration subject to State and local collection processes does not change this rationale.

Accordingly, Sergeant Weiss is not entitled to basic allowance for quarters in the described circumstances.

Wilton J. Fowler

For The Comptroller General
of the United States