

DECISION

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

FILE: B-208762

DATE: April 14, 1983

MATTER OF: Colonel W. J. Soper, USAF

DIGEST: A member of the uniformed services may not occupy temporary lodging facilities, built and maintained with appropriated funds, in excess of 30 days at his permanent duty station incident to a permanent change of station, without a loss of basic allowance for quarters and variable housing allowance since applicable regulations prohibit it. However, the services may amend the regulations to authorize payment for periods in excess of 30 days in certain deserving cases.

Background

This action is in response to a letter dated June 28, 1982, from the Chief of the Accounting and Finance Branch, Offutt Air Force Base, Nebraska. He submitted a request for an advance decision as to whether he could make payment on a military pay order for continued payment of basic allowance for quarters and variable housing allowance for Colonel W. J. Soper for the period of June 29 to July 31, 1982.

At the time the request was made, the facts upon which the claim depended had not yet occurred, although by memorandum dated June 24, 1982, Colonel Soper had requested that his quarters allowances be continued beyond June 28, 1982. On November 5, 1982, we were informally advised that those facts had not occurred and that Colonel Soper had not filed any claim for the quarters allowances for the period of June 29 to July 31, 1982.

The current Chief, Accounting and Finance Branch, who succeeded the officer (now retired) who submitted the request, recognizes that the Comptroller General need not render a decision since no claim has been filed. However, since the problem presented here has occurred frequently, he requests a decision be rendered.

The issue is whether a military member living in temporary lodging facilities incident to a permanent

change of station, whose assigned Government quarters have not yet become available, may continue to receive basic allowance for quarters and variable housing allowance for any period in excess of 30 days that he and his dependents remain in the temporary lodging facilities.

We hold that since the applicable regulations and directives clearly do not allow payment of these quarters allowances in excess of 30 days, payment may not be made.

Facts

Colonel Soper was transferred to Offutt Air Force Base in Nebraska. Due to his position as a Wing Commander, it was considered "mission essential" that he be available at all times. For this reason, Colonel Soper was required to live on the base.

On May 30, 1982, Colonel Soper and his dependents were assigned to a three-bedroom facility in the Visiting Officers' Quarters until the permanent Government quarters to which they had been assigned, became available. The Government quarters were to become available on August 1, 1982. During the period from May 30 through June 28, 1982, Colonel Soper and his family remained at the visiting quarters and he received quarters allowances. The service charge for the rooms was \$21 per day.

The accounting officer's letter stated that the Visiting Officers' Quarters, a temporary lodging facility, was built with appropriated funds and the utility and maintenance are paid for with appropriated funds. Since the fee charged is limited by regulations and cost recovery is in all likelihood never effected, the fee will not qualify as "rent" as required for continued quarters allowance entitlement under 56 Comp. Gen. 850.

The request for decision concerns Colonel Soper's entitlement to the quarters allowances for the period from June 29 through July 31, 1982. This period is in excess of the 30 days for which the allowances may be paid under the applicable regulations.

Law and Discussion

The statutory authority for basic allowance for quarters and variable housing allowance is found in

37 U.S.C. § 403 (Supp. IV, 1980). Subsection (b) of section 403 disallows entitlement to basic allowance for quarters to a member who has been provided with Government quarters, as follows:

"(b) 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. * * *"

Also, if Colonel Soper is not entitled to basic allowance for quarters because of assignment to Government quarters, he is not entitled to a variable housing allowance since in this case entitlement to the latter is contingent upon entitlement to the former. 37 U.S.C. § 403(a)(2)(A).

Subsection (e) describes the situations in which a member may receive BAQ while living in housing facilities under the jurisdiction of the United States:

"(e) Notwithstanding any other law (including those restricting the occupancy of housing facilities under the jurisdiction of a department or agency of the United States by members, and their dependents, of the armed forces above specified grades * * *), a member of a uniformed service, and his dependents, may be accepted as tenants in, and may occupy on a rental basis, any of those housing facilities, other than public quarters constructed or designated for assignment to and occupancy without charge by such a member, and his dependents, if any. Such a member may not, because of his occupancy under this subsection, be deprived of any money allowance to which he is otherwise entitled for the rental of quarters."

Subsection (j)(1) states that the President may prescribe regulations for the administration of this statute. Under this authority, the President issued Executive Order 11157, June 30, 1964, as amended (37 U.S.C. 301, note), providing implementing regulations.

Section 403 of the Executive order disallows basic allowance for quarters to members who occupy any quarters or housing facilities under the jurisdiction of any of the uniformed services without payment of rental charges unless the occupancy occurs while such member is in a duty or leave status incident to a permanent change of station, and is of a temporary nature under the standards prescribed by regulations issued by the Secretary of Defense in the case of members of the Army, Navy, Air Force, Marine Corps, or by the appropriate Secretary in the case of members of other uniformed services.

The Secretary of Defense, in Department of Defense Directive 4165.55, December 1, 1972, defines temporary lodging facilities (TLF) as:

"* * * specifically identified interim housing facilities operated by the military services to provide short term temporary housing accommodations for occupancy by military members, their dependents, families, and guests for which a cash charge is levied without direct charge against the quarters allowances of the occupants. TLF's include guest houses except transient visiting officer quarters occupied by official visitors to the installation. TLF's do not include facilities used primarily for rest and recreation purposes, or bachelor officer and enlisted quarters."

Part IV, Section B, Rule 3, of the Directive states that occupancy of a temporary lodging facility does not preclude basic allowance for quarters payment to a member otherwise eligible, provided the occupancy occurs while the member is in a duty or leave status incident to a permanent change of station and does not exceed 30 days.


In addition, Rule 6, Table 3-2-5, of the Department of Defense Military Pay and Allowances Entitlements Manual, allows payment of basic allowance for quarters to a member in duty, travel, or leave status incident to a permanent change of station while the member and his dependents occupy transient Government quarters for not more than 30 days at any location where transient quarters are occupied. See also 45 Comp. Gen. 347 (1965); 48 Comp. Gen. 40 (1968); and 56 Comp. Gen. 850 (1977).

In 56 Comp. Gen. 850, we held that a member of a uniformed service may occupy temporary lodging facilities in excess of 30 days without loss of quarters allowance if a substantial rent is paid and if the quarters are acquired and operated with non-appropriated funds.

Since the facilities in question in the present case were built with and are maintained from appropriated funds the matter presented here does not meet the requirements for the exception set out in the decision. Thus, under current regulations implementing the statutory authority, a claim of this kind must be denied.

However, as noted above, the 30-day rule is established by regulation. In the same Directive (4165.55), Part IV, Section B, Rule 2, states that while the normal maximum period of occupancy of a temporary lodging facility is 30 days for personnel affected by permanent change of station orders, in cases of personal hardship, the local commander may grant an extension beyond 30 days on a case-by-case basis.

We would not object if, within the exercise of its administrative discretion, the Department of Defense changed its regulations to allow payment of basic allowance for quarters for periods in excess of 30 days when the extension is granted for such reason.

for 
Comptroller General
of the United States