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DECISION



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

FILE: B-209342

DATE: June 1, 1983

MATTER OF: Captain John A. Davis, USA

DIGEST:

An Army officer who had no dependents is not entitled to a quarters allowance for the period (which exceeded 3 months) he was assigned to temporary duty in the Sinai with the Multinational Force and Observers monitoring the implementation of the Egyptian-Israeli peace treaty. During such duty he apparently was furnished quarters by the Government and his household goods were stored at Government expense. Since duty with the Multinational Force is determined to be "field duty," he may not receive a quarters allowance because 37 U.S.C. § 403(c) precludes payment of the allowance to a member on field duty in these circumstances.

This action is in response to a request from the Finance and Accounting Officer, Headquarters 101st Airborne Division, Fort Campbell, Kentucky, for an advance decision. The Finance Officer asks whether Captain John A. Davis, USA, is entitled to be paid basic allowance for quarters for the period he served with the Multinational Force and Observers in the Sinai Peninsula of Egypt. We assume that the period of the duty was in excess of 3 months and we have concluded that the duty performed was field duty. Therefore, Captain Davis as a member without dependents is precluded from being paid basic allowance for quarters for this period under 37 U.S.C. § 403(c).

The request for decision was assigned control number DO-A-1407 by the Department of Defense Military Pay and Allowance Committee and was forwarded to us by letter from the Office of the Comptroller of the Army.

Facts

While the record we were furnished is sparse, it appears that Captain Davis, while serving with the 1st Battalion, 502d Infantry Regiment, 101st Airborne Division, with a permanent duty station at Fort Campbell,

Kentucky, was assigned to temporary duty with the Multinational Force and Observers in the Sinai in 1982 for a period in excess of 3 months. Apparently Captain Davis was part of the United States military contingent of the Multinational Force the purpose of which is to assist in monitoring the implementation of the 1979 peace treaty between Egypt and Israel. The United States' contribution includes an infantry battalion and a logistical support unit deployed at several observation posts and camps in the Sinai.

As we understand it, the military force is armed and equipped for combat except that it does not have heavy weapons such as artillery and tanks. It is to perform a peacekeeping operation by manning checkpoints and observation posts and by performing reconnaissance patrols in the Sinai between Egyptian and Israeli forces.

Apparently Captain Davis was authorized to live off base at his permanent duty station, Fort Campbell, in private quarters and receive basic allowance for quarters at the rate for a member who has no dependents. When he was assigned to the Multinational Force he apparently either terminated the lease on his private quarters, subleased the quarters, or if he owned his quarters, rented them to someone else. He placed his household goods in storage at Government expense as authorized by Volume 1 of the Joint Travel Regulations (1 JTR), paragraph M8102. Apparently, quarters and subsistence were furnished by the Government to members serving with the Multinational Force; and, there is nothing in the submission to indicate that Captain Davis was not furnished quarters during his assignment in the Sinai.

The Finance Officer questions whether Captain Davis should receive the quarters allowance for the period of his service in the Sinai since he incurred no expense for quarters and his household goods were stored at Government expense.

Discussion and Conclusion

Paragraph M8102, 1 JTR (change 350, effective January 14, 1982), under which Captain Davis's household goods

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were stored, was promulgated pursuant to authority in 37 U.S.C. § 406(b)(1).¹ Paragraph M8102 provided in part:

"Members ordered to temporary duty or deployment with the Sinai Multinational Peacekeeping Force or as observers for a period in excess of 90 days or for an indefinite period are entitled to storage of household goods (not in connection with a permanent change-of-station shipment) when such special storage is authorized or approved by the member's Commanding Officer, order-issuing authority, or such other officer as the Service may designate. * * *"

Entitlement to basic allowance for quarters is provided under 37 U.S.C. § 403. Under that provision, generally, a member not assigned to Government quarters adequate for himself and his dependents, if with dependents, is entitled to a quarters allowance. With certain exceptions, a member without dependents who is not assigned to Government quarters at his permanent station is entitled to continue receiving the quarters allowance while he is away from that station on temporary duty and his permanent station remains unchanged. Department of Defense Military Pay and Allowances Entitlements Manual, Table 3-2-3, Rule 14.

However, 37 U.S.C. § 403(c) makes special provisions for members, without dependents, on field duty or sea duty. As it relates to field duty, section 403(c) provides:

"(c)(1) A member of a uniformed service without dependents is not entitled to a basic allowance for quarters while he is on field duty unless his commanding officer certifies that the member was necessarily required to procure quarters at his expense.

* * * * *

¹Public Law 97-60, § 121(b), Oct. 14, 1981, 95 Stat. 1000, amended 37 U.S.C. 406(b) to add authority to provide temporary storage of members' household goods for periods in excess of 180 days.

"(3) For the purposes of this subsection, duty for a period of less than three months is not considered to be field duty or sea duty."

Thus, under the presumption that Captain Davis's duty with the Multinational Force exceeded 3 months and since no certification that he was required to procure quarters at his expense in the Sinai has been presented, he is precluded by section 403(c) from receiving a quarters allowance for the period if that duty is characterized as "field duty."

As to the meaning of the term "field duty," 37 U.S.C. § 403(j)(1) provides that the President may prescribe regulations for the administration of section 403, including definition of the term "field duty." In Executive Order No. 11157, June 22, 1964, as amended (37 U.S.C. § 301, note), the President defined field duty for the purposes of 37 U.S.C. § 403 as:

"* * * service by a member under orders with troops operating against an enemy, actual or potential, or service with troops on maneuvers, war games, field exercises, or similar types of operations."

While the military contingents of the Multinational Force are armed and combat ready, it is not clear that they would be considered as "operating against an enemy, actual or potential," since they are performing a peacekeeping rather than a combat function. However, we note that these terms have not been limited to mean combat operations, but include protective or policing operations. See Stewart v. United States, 70 Ct. Cl. 540 (1930), and 26 Comp. Gen. 439, 441 (1946) (service with occupation troops after hostilities have ceased); 8 Comp. Gen. 302 (1928), and 7 Comp. Gen. 205 (1927); (marines sent to China and Nicaragua to protect American lives and property during periods of internal strife).

In any event, the operations performed by the troops assigned to the Multinational Force appear to be "similar types of operations" to maneuvers, war games or field exercises. Therefore, it is our view that such service is field duty within the meaning of 37 U.S.C. § 403(c), and

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Captain Davis is not entitled to a quarters allowance for the period he performed duty with the Multinational Force and Observers.

for Milton J. Forster
Comptroller General
of the United States