

**DECISION**

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

Maguire  
PLM-F

**FILE:** B-219259

**DATE:** February 11, 1986

**MATTER OF:** Major General Scott B. Smith

**DIGEST:**

A member of the uniformed services who was authorized to move to local economy housing in Heidelberg, Germany, may be authorized "rent plus" housing allowance retroactively under the circumstances presented. Due to an error by the service, a ceiling allowance for the member had not been established, and the member was not authorized the allowance until after he had occupied the local quarters for several months. Since the failure to establish the ceiling was an administrative error, the regulation may be retroactively corrected to allow payment.

This action is in response to a request for an advance decision regarding the station housing allowance of Major General Scott B. Smith, USA.<sup>1/</sup> The question presented is whether authority exists to retroactively authorize a "Rent Plus" housing allowance for General Smith. It is our view that the allowance may be retroactively authorized in this case.

**BACKGROUND**

General Smith and his family arrived in Heidelberg, Germany, and were assigned to Government housing, but upon occupying the housing members of the family began to experience unexplained nausea, headaches and illness. Officials suspected that the illnesses might be caused by chemicals or sprays found within the Government quarters. In an attempt to resolve the problem the Commander of the United States Military Community in Heidelberg authorized housing on the German economy.

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<sup>1/</sup> The request was made by the Honorable Chase Untermeyer, Assistant Secretary of the Navy (Manpower and Reserve Affairs), in his capacity as Chairman of the Per Diem, Travel and Transportation Allowance Committee.

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The Smith family moved in early September 1984 and all symptoms of illness disappeared. At the time of the move, there apparently were no other members in pay grade 0-8 living in non-Government housing in the Heidelberg area, so no 0-8 rent-plus ceiling had been established. The service was uncertain of whether or not the move would be permanent and therefore failed to immediately request establishment of a ceiling for station allowances. However, since the symptoms of illness did disappear, the decision was made by the Command that the Smiths should remain in German housing and the service requested that "Rent Plus" allowance be authorized effective September 1984.

In December 1984 the Per Diem, Travel and Transportation Allowance Committee established a ceiling and authorized the allowance as of December 1984. The Committee now asks whether it may authorize the allowance from September since it appears that the member would have otherwise been eligible for the allowance from September.

#### DISCUSSION AND CONCLUSION

Station housing allowances are authorized under 37 U.S.C. § 405 (1982) for members on duty outside of the United States or in Hawaii or Alaska. These allowances were designed to defray the high cost of living experienced by certain members of the uniformed services while on permanent duty in high cost areas overseas. Implementing regulations are found in Volume 1 of the Joint Travel Regulations (1 JTR). At the time of this move, 1 JTR paragraph M4301(3) provided authority for "Rent Plus Housing Allowance."<sup>2/</sup> The "Rent Plus" allowance is based on the difference between the member's basic allowance for quarters and the actual rent the member paid for overseas housing within a maximum ceiling by pay grade for the local area. Revised regulations are periodically issued to reflect the changes in housing costs. The revisions are based upon reports on

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<sup>2/</sup> Current regulations, effective November 1, 1985, provide for an Overseas Housing Allowance. See 1 JTR para. M4301 (3), Ch. 393.

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housing costs submitted by the services. Subparagraph M4301(c) provides for the establishment of the maximum ceiling by the Per Diem, Travel and Transportation Allowance Committee.

The central issue here is whether the regulations in existence at the time of the move which established the applicable ceilings may be retroactively modified to provide a ceiling for an O-8 officer and allow payment of the allowance. Apparently, at the time the Smiths moved into German economy housing, a ceiling rate had been established for members up to officer level O-6, but had not been established for officer level O-8. Due to the uncertainty about the permanency of the move, the service failed to request the establishment of the ceiling at the O-8 level until December 1984. The record also reflects that the service believed that the O-6 level ceiling might be found to be sufficient for purposes of the O-8 allowance and later found that it was not.

We have held that when regulations are properly issued, rights thereunder become fixed and although such regulations may be amended prospectively to increase or decrease rights thereby, they may not be amended retroactively except to correct obvious errors. 56 Comp. Gen. 1015 (1977). For example, when rents of service members in British sponsored housing were increased in May 1981 retroactively to April 1981 by the British Government, we found that because the station allowance rates were originally properly calculated based on reports by the service on the average cost of housing, no error occurred and retroactive amendment was not proper. B-205237, March 15, 1982.

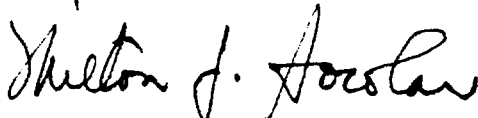
However, if it can be shown that a determination made was based on erroneous information or observation, a retroactive application or amendment may be allowed. For example, in a case where the housing allowance at a particular station had been deleted because of erroneous information that no military personnel were stationed there, we found that since no rate had been established due to administrative error, retroactive reinstatement of the allowance was proper. Bruce O. Fagerland, B-192040, August 7, 1978.

In the present case, the Smiths did not occupy Government housing after September 1984 and thus became

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eligible for the "Rent Plus" allowance at that time. The ceiling rate for a member at his level had not been established at that time apparently due to the confusion about the permanency of the move and a belief that the ceiling at an 0-6 level might be appropriate. Since it appears that the failure to establish the proper ceiling rate was based upon administrative error, it is our view that retroactive amendment to the regulations is proper in this case and the allowance may be authorized retroactively.

*for*   
Comptroller General  
of the United States