J. Maguire

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Staff Sergeant Willie E. Brower - Family Separation Allowance Entitlements

File: B-221521

Date: May 22, 1987

DIGEST

A member of the Air Force (husband) assigned to an overseas unaccompanied tour is married to another member (wife) who is also assigned to an unaccompanied tour at a separate duty station. The wife has a child from a previous marriage and they have a child from their marriage to each other. The two children had been living with the members as part of one household and continue to share the same household with the husband's mother in the United States while their parents are assigned overseas. The husband may not receive family-separation allowances on account of the child of their marriage if his wife is currently receiving family separation allowances on account of her child of a previous marriage, since the children are members of the same class of dependents. The additional expenses intended to be covered by the family separation allowances have been reimbursed to the wife under her family separation allowances. If the husband were to also receive the allowance, the family unit would, in effect, be paid twice for the same expenses.

DECISION

This action is in response to a request for an advance decision from the U.S. Air Force regarding payment of family separation allowances.1/ The issue presented is whether Staff Sergeant Willie E. Brower, USAF, whose wife is also a service member, may receive family separation allowances based on a child of their marriage when his wife receives a

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1/ The request was made by Captain R. E. Knox, USAF, Accounting and Finance Officer, Headquarters 51st Tactical Fighter Wing (PACAF), APO San Francisco, California, and was given Department of Defense Military Pay and Allowance Committee Number DO-AF-1467.

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family separation allowance based on her own child from a previous marriage, and both children reside in the same household. Sergeant Brower has another child, who resides separately with the child's non-military mother. It is our view that payment of the family separation allowance may not be made to Sergeant Brower since the purpose of the allowance is to provide reimbursement for expenses involved in running a split household when a member is separated from his dependents due to military orders. Under these circumstances, Sergeant Brower's wife is already receiving the allowance for their mutual household, and Sergeant Brower does not qualify for the allowance based on his other child because he is not separated from that child due to military orders.

BACKGROUND

This case involves two Air Force enlisted members who are married to each other and assigned to separate duty stations in Korea where they do not reside together. They are both assigned to unaccompanied2/ tours of duty, the wife at Kusan Air Base and the husband at Osan Air Base. The wife has a child from a previous marriage, and the husband has an illegitimate child of a previous relationship for whom he is required to pay child support. They also have a child of their current marriage. Both the wife's child of her previous marriage and the child of the current marriage resided with the members prior to their unaccompanied assignments, and both children are currently residing with the husband's mother in a house owned by the members in the United States. The husband's other child lives with his or her non-military mother.

The wife receives basic allowance for quarters at the with-dependent rate based on her claiming the child of her previous marriage as her dependent. The husband receives basic allowance for quarters at the with-dependent rate based on his claiming as a dependent the child for whom he pays support. The wife has been receiving a family separation allowance, type II, based on her child by the previous marriage since she has been stationed in Korea. The husband, Sergeant Brower, has requested that he receive family separation allowances types I and II on the basis of his separation from the child of his current marriage.

2/ An "unaccompanied" tour of duty is one in which the member is not entitled to have his or her dependents at the duty station at government expense.

ANALYSIS

Provisions of law governing the payment of basic allowance for quarters and family separation allowances to members of the uniformed services are contained in chapter 7 of title 37, United States Code. Section 401 of title 37 defines the term dependent for the purposes of chapter 7 to include a member's "spouse" and "unmarried child," including under certain conditions, a stepchild, an adopted child, and an illegitimate child. However, when two members marry, generally neither may claim the other as a dependent for purposes of these allowances. 37 U.S.C. § 420. If they have a child, only one of them may claim the child as a dependent for an allowance. 54 Comp. Gen. 665 (1975).

Basic allowance for quarters, authorized by 37 U.S.C. § 403, is an allowance intended to reimburse a member for the costs of private living quarters when he is not furnished with government quarters adequate for himself and his dependents, if he has dependents. This allowance is payable at a "without-dependents" rate and at a higher "with-dependents" rate for members who have qualifying dependents. The higher with-dependents allowance is paid at a single rate regardless of the number of dependents. When two members are married to each other and are living together as a family unit, both may receive the quarters allowance but only one member may receive it at the higher with-dependents rate based on the single class of dependent children, which includes children of the members' current marriage and children of prior relationships. This is because only one set of quarters need be provided for the family unit, notwithstanding that some of the children for personal reasons (such as being in the custody of another) may not live with the family unit. Warrant Officer Ronald G. Hull and Petty Officer Doris H. Hull, 62 Comp. Gen. 666 (1983); and 54 Comp. Gen. 665 (1975).

When the members are residing separate and apart due to their duty assignments, however, their quarters allowances are determined on an individual basis since the members must maintain separate quarters due to their military assignments. When that is the case, and each has a child or children of a previous relationship and the children do not all live together, each member may receive a quarters

allowance at the with-dependent rate. Hull, supra; and Sergeant Harold L. Sandkulla, Jr., 59 Comp. Gen. 681 (1980).3/

Family separation allowances are authorized by 37 U.S.C. § 427, and are of two types, referred to in the regulations as types I and II or FSA I and II.4/ Type I is authorized by section 427(a), which provides that a member of the uniformed services with dependents who is on permanent duty outside the United States is entitled to a monthly allowance equal to the basic allowance for quarters payable to a member without dependents in the same pay grade if (1) the movement of the member's dependents to his permanent station or a place near that station is not authorized at government expense, and (2) government quarters are not available for assignment to the member. This is in effect an additional quarters allowance for the member who must use his or her basic allowance for quarters to provide quarters for the dependents who are not authorized to move to the overseas duty station.

Family separation allowance type II is authorized by section 427(b), which provides that a member with dependents is entitled to a monthly allowance equal to $60 if, among other conditions, the movement of the member's dependents to his permanent station or a place near that station is not authorized at government expense. This allowance may be paid in addition to FSA I. The purpose of FSA II is to defray miscellaneous extra expenses incurred for running a split household caused by the member's military assignment. Sergeant Victoire E. McDonald, 60 Comp. Gen. 154 (1981).

Thus, for a member to qualify for either type of family separation allowance, the member's separation from the

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3/ That, presumably, is the basis upon which Sergeant Brower's wife in this case receives the allowance at the with-dependent rate based on the child of her previous marriage who, together with the child of her present marriage, lives with the husband's mother in the United States. It is also the basis upon which Sergeant Brower receives the allowance at the with-dependent rate based on his illegitimate child who is in the custody of his or her mother.

4/ Applicable regulations are found in Department of Defense Military Pay and Allowances Manual, paragraphs 30301 et seq.

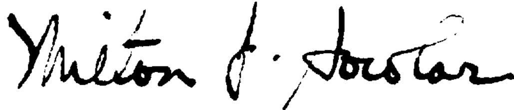
dependents must be because transportation of the dependents is not authorized to or near the new duty station. See Department of Defense Military Pay and Allowances Entitlements Manual, paragraphs 30303, 30304. That is, the separation must be due to military requirements, not because a separate home is maintained for personal reasons, such as where custody of a dependent child is in someone other than the member. See Sergeant Major Alexander Titoff, B-211693, July 15, 1983.

In this case, both members have been assigned to unaccompanied tours of duty in Korea. Sergeant Brower's illegitimate child, whom he claims as his dependent for basic allowance for quarters purposes, is in the custody of his or her mother and, thus, is separated from Sergeant Brower for personal reasons, not because of military requirements. Therefore, Sergeant Brower's separation from that child would not qualify him for FSA I or II.

The two other children, one the child of Sergeant Brower's current marriage and the other a child of his wife's previous marriage, resided with Sergeant Brower and his wife as a family unit until they were assigned to Korea. These two children now continue to reside as a family unit in the same residence with Sergeant Brower's mother. Both members' separation from these children is the result of military orders; thus, that requirement for FSA has been met. The wife has claimed one of the children as her dependent for basic allowance for quarters and she has been receiving FSA II on the basis of that child. Presumably she would also receive FSA I on that basis were government quarters not available for her.

Since Sergeant Brower may not receive FSA on the basis of his separation from the illegitimate child for which he receives the basic allowance for quarters, the question arises whether he may claim the child of his current marriage for that purpose. As previously indicated, that child already resides with the child of the wife's former marriage, in a household established when Sergeant Brower and his wife were assigned to Korea, and no additional expenses were incurred with regard to establishing an additional residence. When the children are together as a family unit, such as the two children living together in this case, they must be considered as a single class of dependents which may not be divided for the purpose of allowing each of the two members to claim the same allowance. Cf. Sergeants Mason and Smith, 64 Comp. Gen. 121 (1984), concerning basic allowance for quarters entitlements

in somewhat similar circumstances. Since the wife is receiving the quarters allowance and FSA based on one of that class, she is considered as receiving it based on the entire class. Thus, to allow the husband also to receive FSA based on a member of that class would be, in effect, paying duplicate allowances for the family unit. Accordingly, family separation allowance may not be paid to Sergeant Brower on behalf of the child of his current marriage in these circumtances.



Acting Comptroller General
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