Salad Plaza

DECISION

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

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FILE: B-157586 DATE: December 28, 1978

MATTER OF: Family Separation Allowance, Type II

[Granting of Type II Family Separation Allowance]

DIGEST: Where a base closure plan requires the transfer, using Government-furnished transportation, of dependents to the sponsor's next permanent duty station, while the sponsor remains behind to implement base closure, "enforced" separation exists within the contemplation of 37 U.S.C. § 427(b)(1), and the granting of Family Separation Allowance, Type II is authorized.

This action is in response to a letter dated January 19, 1978, from H. M. Trost, Disbursing Officer, Morocco - U.S. Naval Training Command, FPO New York 09544, requesting our decision as to the propriety of granting Family Separation Allowance Type II (FSA-II) incident to a base closing. The request was approved by the Department of Defense Military Pay and Allowance Committee, and forwarded to us on July 28, 1978, as submission No. DO-N-1299.

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The request arose from the planned phaseout of the United States Naval Training Command, Kenitra, Morocco, in September 1978. The base closure plan, promulgated pursuant to Office of the Chief of Naval Operations notice number 5450, dated May 2, 1977, required that dependents vacate Government quarters, at the convenience of the Government, but not later than June 30, 1978. It was stated that members' dependents would be furnished Government transportation to the next permanent duty station, and that there would be an enforced separation, as military members would be required to remain in Morocco to implement the base closure.

Section 427(b), title 37, United States Code, which authorizes FSA-II, provides in pertinent part:

> "Except in time of war or national emergency hereafter declared by Congress, and in addition to any allowance or per diem to which he otherwise may be entitled under this title, including subsection (a) of this section, a member of a uniformed service with dependents (other than a member in pay grade E-1, E-2, E-3, or E-4

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(4 years' or less service)) is entitled to a monthly allowance equal to $30 if—

> "(1) the movement of his dependents to his permanent station or a place near that station is not authorized at the expense of the United States under section 406 of this title and his dependents do not reside at or near that station;" (Emphasis added.)

Given a strictly literal reading, section 427(b)(1) would seem to permit FSA-II payments only when movement to the member's present permanent station, or a place nearby, is not authorized at Government expense under 37 U.S.C. § 406. However, when the purpose of FSA-II is considered, a different conclusion is required.

The legislative history of the section shows that it originated in a Department of Defense proposal, and was enacted by section 11(1) of the Uniformed Services Pay Act of 1963, Public Law 88-132 (October 2, 1963), 77 Stat. 210, 217. Congress' rationale for enacting the section was that:

> "* * * enforced separations of servicemen from their families cause added household expenses where the member is absent for any extended period of time. This condition results in an inequity as compared with those members whose dependents are authorized to accompany them. The extra expenses include such matters as home and automobile maintenance, increased child care costs, etc." S. Rep. No. 387 (Aug. 5, 1963) at p. 25; [1963] U.S. Code, Cong. & Ad. News p. 925.

The inequity results from the necessity of the service members maintaining two "households", one for themselves, and one for their dependents who are prevented from traveling with the members, concurrently, and residing at or near their permanent stations. The situation where the enforced separation is due to military orders (volition of the Government) must be distinguished from the one where the separation is of the

member's own choice; FSA-II, may be granted only for the former. 43 Comp. Gen. 332, 347 (Question 18) (1963).

There is nothing in the legislative history of the section to indicate that Congress intended to distinguish between barred transit to the permanent duty station of the member, and departure from the permanent duty station, on Government orders, as affecting eligibility for FSA-II.

In an analogous situation, a question was raised as to eligibility for FSA-II, beginning on the date of dependent's departure, where the member's dependents had been furnished transportation from that station pursuant to paragraph M7105 of the Joint Travel Regulations. Paragraph M7105 authorized transportation of dependents from an overseas area prior to the termination of the sponsor's overseas tour of duty when the Secretary of the service concerned, or a higher authority, determined their return to be in the national interest. We held, in effect, that a determination pursuant to this section has the effect of converting the station for affected members into a restricted duty station, necessitating the maintenance of two "households." Hence, if otherwise proper, the granting of FSA-II in those circumstances was determined to be appropriate. 43 Comp. Gen. 332, 348, supra.

Due to lack of necessary services, residence by dependents at the present duty station in Morocco is barred by the base closing plan, and an enforced separation is the result. Government-furnished transportation is apparently authorized only to the next duty station or the United States. In such circumstances, the enforced sepraration is at the behest of the Government only. The result is inequitable treatment as contemplated by the Congress in enacting section 427(b). Thus, based on the facts presented, FSA-II is payable to otherwise eligible members with dependents in these circumstances.

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Acting Comptroller General
of the United States