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DECISION



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

FILE: B-201117

Use for Addressee

DATE: February 18, 1981

MATTER OF: Military Leave Settlements - Variable

[Propriety of Including Variable Housing Allowance in Lump-Sum Leave Settlement]

DIGEST: The variable housing allowance authorized for service members assigned to duty in high housing cost areas within the United States (other than Alaska or Hawaii) is a station allowance which is payable to a member incident to his particular duty assignment rather than by virtue of his membership in the uniformed services; hence it may not properly be included in the lump-sum leave settlement of a member entitled to payment for unused accrued leave computed on the basis of his "basic pay and allowances" upon his separation from active duty. 37 U.S.C. 501(b), as amended by Public Law 94-361, July 14, 1976; 37 U.S.C. 403, as amended by Public Law 96-343, September 8, 1980.

This action is in response to correspondence dated October 22, 1980, with enclosures, from the Disbursing Officer of the Headquarters Battalion, United States Marine Corps, Henderson Hall, Arlington, Virginia, requesting a decision concerning the propriety of including a variable housing allowance in the lump-sum leave settlement of Major General Francis X. Quinn, USMC, who is entitled to payment for unused accrued leave computed on the basis of his "basic pay and allowances" upon his separation from active duty. The request was forwarded here by the Fiscal Director of the Marine Corps by letter dated October 28, 1980, after being assigned control number DO-MC-1356 by the Department of Defense Military Pay and Allowance Committee.

We have concluded that a variable housing allowance may not properly be included in a service member's lump-sum leave settlement upon his separation from active duty.

Section 304 of the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, approved July 14, 1976, 90 Stat. 923, 925-926, amended 37 U.S.C. 501(b) to restrict a service member's lump-sum leave payment to an amount equal to his "basic pay" for the days of unused accrued leave credited to his

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account at the time of his separation from active duty. Previously, 37 U.S.C. 501(b) had authorized a service member's lump-sum leave payment to be computed on the basis of his "basic pay and allowances." However, in deleting "allowances" from lump-sum leave payments, Congress saw fit to preserve inclusion of the allowances in payments for leave accrued before the effective date of the amendments to 37 U.S.C. 501 by including a saving provision in the amendment, i.e., subsection 304(h) of Public Law 94-361, 90 Stat. 926. Under this saving clause, a service member separated from active duty is entitled to have his basic pay, basic allowance for subsistence, and basic allowance for quarters included in his lump-sum leave settlement for leave accrued prior to the amendment's effective date (September 1, 1976); but for leave accrued after that date the member is entitled to have only his basic pay included in the lump-sum payment. See 58 Comp. Gen. 635, 636 (1979). General Quinn is eligible for pay and allowances for at least part of his lump-sum leave entitlement based on that savings clause.

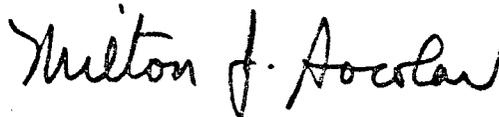
The variable housing allowance here in question is a new allowance for service members authorized by section 4 of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, approved September 8, 1980, 94 Stat. 1123, 1125-1126. Section 4 amended 37 U.S.C. 403 to authorize payment of a variable housing allowance to a service member assigned to duty in a high housing cost area in the United States (other than Alaska or Hawaii). The variable housing allowance was also made payable to a member assigned to an unaccompanied tour of duty outside the United States whose dependents are residing in a high housing cost area within the United States. In the legislative history of Public Law 96-343, the variable housing allowance is referred to as a "station housing allowance," and it is apparently designed to complement the system of overseas station allowances already provided by 37 U.S.C. 405 for service members assigned to duty in high cost-of-living areas outside the United States, or in Alaska or Hawaii. See House Conference Report No. 96-1233, August 19, 1980.

As indicated, in 58 Comp. Gen. 635, supra, we expressed the view that a service member entitled to a

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lump-sum leave payment computed on the basis of his "basic pay and allowances" under subsection 304(h), Public Law 94-361, was to have only his basic pay, his basic allowance for subsistence, and his basic allowance for quarters included in the lump-sum payment. We had previously held that overseas station housing allowances provided by 37 U.S.C. 405 are not for inclusion in any lump-sum leave payment, since those station allowances are not payable by virtue of membership in a uniformed service but accrue incident to particular duty assignments. See 51 Comp. Gen. 312 (1971). We believe that the same rationale is equally applicable to the new variable housing allowance, since it is also a station allowance which is payable to a member incident to his particular duty assignment rather than by virtue of his membership in the uniformed services.

Accordingly, since a variable housing allowance may not properly be included in any lump-sum leave settlement which may be payable to a service member upon his separation from active duty, such allowance may not be included in General Quinn's lump-sum leave settlement.



Acting Comptroller General
of the United States