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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Majors Steven and Karen Nigg, USAF--Basic Allowance for Quarters
File: B-249916
Date: March 30, 1993

DIGEST

Two married members were issued competent orders to different duty stations. Their common class of dependents were split due to those orders. Female member was assigned family-type government quarters for one child and herself. Male member with remaining children residing in nongovernment housing, was receiving basic allowance for quarters (BAQ) at with-dependent rate. Notwithstanding that quarters were available at female member's duty station for the entire class of dependents, under these circumstances since the class of dependents was split by competent orders the male member may continue to receive BAQ at with-dependent rate until the remaining dependents occupy government quarters.

DECISION

We have been asked whether a member who is receiving Basic Allowance for Quarters (BAQ) at the with-dependent rate may continue to receive the allowance when his wife, also a member, makes a permanent change of station taking one of their three children and is assigned to government family quarters at her new station.¹ For the following reasons the member continues to receive BAQ at the with-dependent rate.

Majors Steven and Karen Nigg are married members with three dependent children. Both members were stationed at England Air Force Base (AFB), Louisiana, where they resided in nongovernment quarters with their three children. Steven claimed the three children as his dependents and received BAQ at the with-dependent rate. Karen received BAQ at the without dependent rate. Pursuant to competent orders Karen was transferred to Anderson AFB, Guam, on March 21, 1991. Her orders authorized one of the dependent children to travel with her. On arrival at Anderson AFB on March 29,

¹The question was presented by the Director, Defense Finance and Accounting Service and assigned DFAS number 92-11-M.

1991, she was assigned to family-type quarters and did not receive BAQ. Steven remained at England AFB residing in nongovernment quarters with the other two children until May 25, 1991, when he was transferred to Anderson AFB with the two children. Thereafter, the five family members resided in family-type government quarters.

Section 403 of title 37, United States Code, authorizes payment of a basic allowance for quarters to service members who are not assigned to government quarters adequate for themselves and their dependents, if any. The allowance is payable at lower rates for service members without dependents than for those members with dependents. A dependent includes a spouse and an unmarried child under age 21. 37 U.S.C. § 401. Active duty service members are precluded from claiming each other as dependents by 37 U.S.C. § 420. Children of members married to each other are considered dependents of both members. See 60 Comp. Gen. 154 (1981). Only one of the members, however, ordinarily may claim the children as dependents for the purpose of the increased quarters allowance. See 51 Comp. Gen. 413 (1972). Therefore, married members are not allowed to divide the children for the purpose of each member claiming an allowance. Finally, all the dependents of the married members, including children from previous marriages, are included in the same class. 54 Comp. Gen. 665 (1975).

Thus, the rule enunciated by our cases is that generally only one allowance for dependents should be awarded. As a result, members married to each other ordinarily may not split a class of common dependents in order for them both to qualify for family-type government quarters or to receive increased BAQ. In other words, where a member is assigned family-type government quarters or receives increased BAQ for living with dependents in nongovernment quarters, the member's spouse, if not residing in the same place, ordinarily may not receive additional benefits for dependents residing with the spouse because the whole class of dependents could reside in the same quarters.

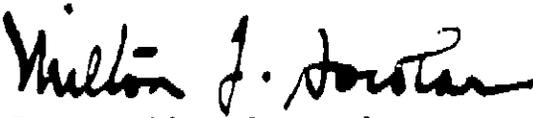
This rule was explained in our decision 62 Comp. Gen. 350 (1983). There, two married members divorced with one member paying child support for one of their two children and the other member having custody of both of the children. Because only one allowance should ordinarily be paid for a common class of dependents and because applicable regulations provided that increased BAQ should be paid to a divorced member paying court ordered child support, we held that only the member paying child support could receive the BAQ at the with-dependent rate. However, we indicated that where a class of common dependents was divided by court order, BAQ at the with-dependent rate could be paid to both members. The Defense Finance and Accounting Service

suggests that the rule applicable to the court ordered division of a class of dependents should apply as well to the situation here, where the class division is caused by military orders.

In this regard, we have held that where married members are living apart because of their military assignments, BAQ entitlement should be determined on an individual basis. See 59 Comp. Gen. 681, 683 (1980). That case involved a member assigned to one location and living in nongovernment quarters whose claim to BAQ at the with-dependent rate entitlement was based on a child support arrangement. At the same time, his spouse was assigned to family-type government quarters at another location, and could have claimed BAQ at the with-dependent rate otherwise, because their child resided with her. The decision allowed each member to receive either the increased allowance or family-type government housing determined on an individual basis because their separate residences were required as a result of their military assignments. Thus, the male member was determined to be entitled to BAQ at the with-dependent rate because his child support payments were sufficient under the regulations to qualify for the increased allowance. His wife qualified for family-type government furnished housing because her dependent children resided with her.

In our view, the rationale stated in the case described above applies to this situation as well, that is, when married members are assigned, pursuant to competent military orders, to different locations, their entitlement to increased allowances or to government furnished quarters should be determined separately, without regard to the general rule that all dependents of members are members of the same class for the purpose of determining allowance entitlements.

Accordingly, Karen Nigg qualified for family-type government quarters in connection with her assignment in Guam because one of her dependent children lived there with her. Steven Nigg likewise qualified for BAQ at the with-dependent rate in connection with his assignment in Louisiana because he resided there in nongovernment quarters with two of his dependent children.

for 
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