



DIGEST

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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OCT 2 1972

Captain

Tripler Army Medical Center
APO San Francisco 96438

Dear Captain

This refers to your letter dated July 21, 1972, with enclosures, requesting that we reconsider our decision of February 16, 1953, B-113093, 32 Comp. Gen. 364, which you say is the basic authority on which the Army has declined to pay you the basic allowance for quarters at the "with dependents" rate on account of a dependent husband. We are also in receipt of a letter in your behalf from the Honorable _____, House of Representatives, concerning this matter.

You contend that the interpretation in the above decision of the term "dependent" as defined in 37 U.S.C. 401 is no longer valid because it is in disagreement with the clear language of that statute and opposed to current expressions of Congressional intent that women must receive equal pay for equal work. You also give other reasons in support of that contention and you have furnished us with a copy of a claim which you had submitted on February 22, 1972, to the Finance Officer, Fort Sheridan, Illinois. That claim contains numerous legal arguments which you contend would serve as justification for that officer to no longer follow the holding in our decision and which represent a legal basis for payment to you of the basic allowance for quarters effective January 26, 1971, the date of your marriage.

Attached to your claim are copies of (1) an affidavit in which you aver that you have provided over 50 percent of the financial support of your husband since January 26, 1971, (2) a statement from an appropriate official at Fort Sheridan concerning the nonavailability of family quarters for you, and (3) laws, regulations, United States Supreme Court case, etc., relating to this matter.

Also in your letter you express the desire to amend your claim to include payment of every entitlement which you are now being denied by reason of the above decision.

Apparently, the Army denied your claim for the allowance on the basis of paragraph 30242 of the Department of Defense Military Pay and Allowances Entitlements Manual. That paragraph provides for payment

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of the basic allowance for quarters to a female member on account of a dependent husband only when it is shown that he is physically or mentally incapable of self-support and is in fact dependent upon her for more than one-half of his support. That regulation is based on our decision in 32 Comp. Gen. 364, ~~supra~~. In that decision we interpreted and applied in the case there ~~involved~~ section 102(g) of the Career Compensation Act of 1949, ch. 681, approved October 12, 1949, 63 Stat. 804, 37 U.S.C. 231(g) (1958 ed.), a provision of law which is substantially similar to 37 U.S.C. 401, mentioned above.

We held that a female officer of the uniformed services who voluntarily assumed the support of her husband in order to permit him to attend college, although he was physically and mentally capable of self-support, did not have a husband who was "in fact dependent" upon her for over half of his support within the meaning and intent of the governing law so as to entitle her to increased basic quarters allowance.

We have reexamined our decision concerning the entitlement of female members to the basic allowance for quarters on account of a dependent husband. By decision of July 3, 1972, B-161261, 52 Comp. Gen. 1, ~~to~~ the Secretary of Defense (copy enclosed), we reconsidered our decision in 32 Comp. Gen. 364, ~~and~~ concluded that effective that date a female member of the uniformed services may be considered as having a dependent husband within the meaning of the governing statute, 37 U.S.C. 401, where there is sufficient evidence to establish his dependence on her for over one-half of his support without regard to the husband's mental or physical capability to support himself.

In that decision, however, we said that unless and until legislation similar to the bills cited in the decision is enacted into law, it was our opinion that there is no authority in the law to authorize to a female member increased quarters allowance on account of a dependent husband unless it is established that he is dependent upon her for over one-half of his support as specifically required by the present law. In this connection, in our decision of July 3, 1972, we cited a decision dated April 5, 1972, by the United States District Court for the Middle District of Alabama in the ~~case~~ ^{case} wherein that court upheld the constitutionality of section 401 of title 37, U.S. Code.

It appears that under the purview of the above decision of July 3, 1972, you may be entitled to the increased basic allowance for quarters commencing July 3, 1972, on account of a dependent husband, should it be determined by the Department of the Army that your husband is in

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fact dependent upon you for more than one-half of his support. However, that decision provides no authority for crediting your account in such instance with the increased allowance for the period prior to the date thereof.

In view of the above, it is suggested that you present this letter and the copy of the decision of July 3, 1972, to the finance officer at your installation with the request that appropriate action be taken on your pending claim for the increased allowance.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

Enclosure