DECISION

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

FILE: B-180391 DATE: October 29, 1976

MATTER OF: Dislocation allowance -
PDTATAC Control No. 76-4

DIGEST: Where a permanent change of station requires the disestablishment of a household in one place and a reestablishment of the household in another, a dislocation allowance is authorized, except for members without dependents who are assigned to Government quarters. In no event can more than one dislocation allowance be paid where only one movement of a household is required. However, where both members of the uniformed services married to each other qualify for a dislocation allowance upon a permanent change of station but only one movement of the household occurs, they may elect to be paid the greater amount of the two entitlements.

This action is in response to a letter dated February 9, 1976, from the Assistant Secretary of the Navy (Manpower and Reserve Affairs), requesting an advance decision on several questions concerning the rights of military members, married to each other, to receive payment of a dislocation allowance (DLA). The letter was forwarded to our Office by the Per Diem, Travel and Transportation Allowance Committee and has been assigned PDTATAC Control No. 76-4.

The submission states that in our decision B-180391, February 12, 1975, it was held that when a male and female service member are married to one another (both residing in the same household) and both are ordered on a permanent change of station, only one DLA is payable on a move to a new permanent station where they reside in the same residence at the new station. In this connection, the submission points out that the current provisions of the Joint Travel Regulations (JTR) authorize a DLA to each member in the before-mentioned circumstances, but that based on that decision a proposed change to the JTR's was forwarded to the services for consideration.

The submission goes on to state that there exists a disparity of view among the services as to whether that decision was intended

to preclude payment of DLA to the second member (as a member without dependents) when moving under the before-described circumstances. In this connection, it is suggested that support for the theory that two DLA's may be paid (one at the "with dependent" rate and one at the "without dependent" rate), is to be found in decision B-174478, August 4, 1972, and that one of the services expresses the belief that that decision was not modified by B-180391, supra. The belief is also expressed that the Supreme Court decision in the case of Frontiero v. Richardson, 411 U.S. 677 (1973), and subsequent decisions that followed supporting the payment of two basic allowance for quarters (BAQ), would also support payment of two DLA's.

In addition to the foregoing, the submission requests resolution of the following questions:

"a. What are the entitlements of members (residing in separate households) who are married en route before the effective date of orders and reside in the same residence after reporting to the new station?

"b. A husband and wife are members residing in the same household and incident to the senior member's permanent change of station (PCS) to a vessel and his spouse's reassignment to an activity at the home port of that vessel have established their residence off-station at the home port of the vessel.

"(1) Is a dislocation allowance payable to the senior member although he is assigned quarters on board the vessel?

"(2) If the male member is junior to his spouse may the female member be paid a dislocation allowance at the with dependent rate (provided there are dependents involved)?

"(3) What are the entitlements of these members upon subsequent PCS to the same or

adjacent station when public quarters are not assigned to them?

"(4) If both members have dependent parents who reside with them at their last permanent duty station but a separate residence was established for their dependent parents at the home port of the vessel, may each member be paid a dislocation allowance as a member with dependents in his or her own right?

"(5) What would the entitlement be if a service couple reside together and the senior member is reassigned to new station ashore instead of to a vessel and establishes his residence off station and at a later date his spouse has a permanent change of station and moves into the same residence?"

The provisions of law governing entitlement to a dislocation allowance are contained in 37 U.S.C. 407 (1970), subsection (a) of which provides:

"(a) Except as provided by subsections (b) and (c) of this section, under regulations prescribed by the Secretary concerned, a member of a uniformed service—

"(1) whose dependents make an authorized move in connection with his change of permanent station;

"(2) whose dependents are covered by section 405(a) of this title; or

"(3) without dependents, who is transferred to a permanent station where he is not assigned to quarters of the United States;

is entitled to a dislocation allowance equal to his basic allowance for quarters for one month as provided for a member of his pay grade and dependency

status in section 403 of this title. For the purposes of this subsection, a member whose dependents may not make an authorized move in connection with a change of permanent station is considered a member without dependents."

In decision B-180391, February 12, 1975 (54 Comp. Gen. 665), we analysed the legislative history of the before-quoted provisions and determined that the purpose of the DLA is to provide reimbursement for expenses normally incurred in connection with the movement of a member's household incident to a change of permanent station. We concluded in that case that as a general proposition when a husband and wife are both members of a uniformed service residing in the same household and incident to a permanent change of station the household is moved with both members continuing to reside in that household, there would be no justification for the payment of more than one DLA since only one change of residence for the family is involved.

In decision B-174478, August 4, 1972 (52 Comp. Gen. 64), we considered the entitlement of a member without dependents who, upon a change of permanent station, was furnished a certificate of nonavailability of quarters based on economic advantage to the Government. We concluded therein that where such a member is not required to occupy otherwise available quarters, he would be entitled to a DLA.

Basic allowance for quarters as authorized in 37 U.S.C. 403 (1970) was enacted on October 12, 1949, as section 302 of the Career Compensation Act of 1949, ch. 681, 63 Stat. 802, 812. The purpose of that act, including the BAQ provision, was to attract career personnel through a scheme for the provision of fringe benefits to members of the uniformed services on a competitive basis with business and industry. It was intended, and is so defined at the present time in 37 U.S.C. 101(25) (1970), as a part of a service member's "regular military compensation" (RMC).

The DLA, on the other hand, was established by section 2(12) of the Career Incentive Act of 1955, ch. 20, 69 Stat. 18, approved March 31, 1955, to fill a particular need (the incidental cost associated with moving a family and relocation

of that family) in which a specified event must occur before such entitlement is authorized and is not a part of RMC. An entitlement to BAQ accrues to every member regardless of sex or grade by virtue of his or her status as a member of the uniformed services if quarters are not provided by the Government, a DLA does not similarly accrue.

With regard to the decision in Frontiero v. Richardson, supra, it is our view that it did not establish the principle that BAQ could be paid to a husband and wife, both of whom are members of the uniformed services. The Frontiero case determined that the administration of 37 U.S.C. 403 (1970) and other statutes to the extent that a distinction was made and benefits were determined on the basis of sex, did deprive servicewomen of due process. Therefore, the fact that both husband and wife may be entitled to BAQ where they are both members of the uniformed services cannot be cited as authority to authorize payment of a DLA to both on a permanent change of station where only one movement of the household occurs.

We do not consider that our decision 54 Comp. Gen. 665, supra, is inconsistent with, supersedes, overrules or modifies 52 Comp. Gen. 64, supra, nor is it in conflict with the principle established in the Frontiero decision. That decision is for general application and was not intended to be applied in a different manner depending on the member's sex. Therefore, the questions presented in the submission are answered as follows:

a. Where members residing in separate households are married after orders for a change of permanent station are issued to each but before the effective date of the orders and then reside in the same residence after reporting to the new station, it is our view that both meet the statutory entitlement for the DLA at the without dependent rate, if in fact both make a move. The critical point is whether the movement of a household has taken place incident to a change of permanent station.

b. Where a husband and wife are members residing in the same household and incident to the senior member's PCS to a vessel and his spouse's reassignment to an activity at the home port of that vessel and they have established a residence off station at the home port of the vessel:

(1) A DLA may not be paid to the senior member since he is assigned quarters on board the vessel, unless he has dependents (other than his spouse) in his own right. In that connection we do not find that the relative grades of the members would effect their entitlements.

(2) Consistent with the above if the male member is junior to his spouse, the female member may be paid a DLA at the with dependent rate provided there are dependents involved.

(3) Upon a subsequent PCS to the same or adjacent station when public quarters are not assigned to them, neither member would be entitled to a DLA. Paragraph M9004-4 of the JTR's provides that a DLA will not be payable in connection with change of permanent station for travel performed between stations located within the corporate limits of the same city. See, in this connection, 54 Comp. Gen. 869 (1975) and 43 Comp. Gen. 474 (1963). Compare 48 Comp. Gen. 782 (1969).

(4) If at any time on any PCS move it can be conclusively shown that it is necessary to establish separate households by or on behalf of each member or for his or her dependents then it would appear that each member has satisfied the statutory requirements to authorize payment of a DLA in their own right. Compare B-183176, November 18, 1975. Thus, if both members have dependent parents who resided with them at their last permanent station but a separate residence is established for their dependent parents upon a PCS, each member may be paid a DLA as a member with dependents.

(5) If a service couple reside together and the senior member is reassigned to a new station ashore instead of a vessel and establishes his residence off station, which off station housing is otherwise authorized, and at a later date his spouse transfers on PCS to that station and moves into the same residence, it is our view that if at the time of the first PCS it was necessary to disrupt the household, move and reestablish the household in parts, the senior member would be entitled to DLA at the without dependent rate on the initial move and the spouse at the without dependent rate on the later move.

In summary, the controlling factor in determining whether either or both of the members of the uniformed services are entitled to a DLA where they are married to each other and whether or not the DLA is at the with dependents or without dependents rate does not depend upon the sex or the respective grade of the member but rather on the factual circumstances of each case. Generally, where a permanent change of station requires the disestablishment of a household in one place and a reestablishment of the household in another, a DLA is authorized, except for members without dependents who are assigned to Government quarters. The allowance is to be paid as provided by regulation; however, in no event may more than one DLA be paid where only one movement of a household is required. In these circumstances, where both members, married to each other, qualify for a single DLA on a permanent change of station move they may elect to be paid the amount applicable to the senior member, it being recognized that such election--except in unusual circumstances--will provide the greater benefit.

Acting Comptroller General
of the United States