

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

FILE: B-183671

DATE:

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MATTER OF: Entitlement to basic allowance for quarters
while on active duty for training - Mr. Scott A.
SherryDIGEST: Where member of National Guard, ordered to
active duty for training for 30 days or more,
and entitled to BAQ at "with dependent" rate
authorized by 50 U.S.C. App. 2204, as amended
by section 207 of Public Law 92-129, failed to
make application for BAQ while serving on that
duty as required by footnote 1 of table 3-2-8,
DODPM, such claim must be denied.

This action is in response to a letter dated January 3, 1975, from Allan Sherry, Esq., on behalf of Mr. Scott A. Sherry, requesting reconsideration of the settlement by our Transportation and Claims Division, dated December 26, 1974, issued in Mr. Sherry's case, which disallowed his claim for basic allowance for quarters (BAQ) at the "with dependent" rate for the period November 14, 1971, through January 31, 1972, while serving on active duty for training with the Ohio National Guard.

The file reflects that the member, who was married in August 1970, was ordered to serve on active duty for training for the period August 12, 1971, through January 31, 1972.

Under the provisions of section 4 of the Dependents Assistance Act of 1950, ch. 922, 64 Stat. 795, as amended, 50 U.S.C. App. 2204, which were in effect at the time Mr. Sherry entered into an active duty status, an enlisted member of the uniformed services in pay grades E-1 through E-4 (4 years or less service), is entitled to payment of the basic allowance for quarters at the "with dependent" rate provided in 37 U.S.C. 403(a) "for such periods as the enlisted member has in effect an allotment of pay [class Q allotment] not less than the sum of the basic allowance for quarters to which he is entitled plus" an additional amount specified in that section (50 U.S.C. App. 2204), for the support of his dependents.

Subsection 403(g) of title 37, United States Code, provides that the President may provide regulations for the administration of 37 U.S.C. 403. Pursuant to that authority, Executive Order No. 11,157, June 22, 1964, was promulgated and, as amended, provides in section 407 thereof that the Secretary concerned, with respect to the personnel of the uniformed services within his department, may prescribe such supplementary regulations as he deems necessary or desirable for carrying out the Executive order.

B-183671

Footnote 1 of table 3-2-8, Department of Defense Military Pay and Allowances Entitlements Manual, provides that in addition to the requirement that a class Q allotment be in effect, the application for BAQ must be filed by the member while he is serving on active duty.

Effective November 14, 1971, 50 U.S.C. App. 2204 was amended by section 207 of Public Law 92-129, approved September 28, 1971, 85 Stat. 359, to provide that the class Q allotment requirement was no longer applicable to members who were serving on active duty for training for 30 days or more.

Thus, while members on active duty for training for 30 days or more were no longer required to have class Q allotments in effect on or after November 14, 1971, the amendment to 50 U.S.C. App. 2204 did not change the regulatory requirement that an application for BAQ must be filed by the member while serving on active duty.

Mr. Sherry contends that he filed an application for BAQ when he was called to active duty for training, but that it was denied.

We have been unable to find anything of record which would support Mr. Sherry's claim. In fact, our file indicates that Mr. Sherry made no application for BAQ during the period involved. In his letter dated February 3, 1974, addressed to the Adjutant General of the Ohio National Guard, Mr. Sherry made the following statement:

"I was unaware of this eligibility [for BAQ] until sometime after my return from active duty and therefore did not make a previous claim".

In view of the foregoing, there appears to be no legal basis upon which the claim may be allowed. Accordingly, the action heretofore taken in this matter by our Transportation and Claims Division is sustained.

Deputy]

B.F.KELLER

Comptroller General
of the United States