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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-187112

FEB 13 1978

Mr. William Anderson
National Vice President
Naval Civilian Administrators
Association
215 Hamilton Road
Marlton, New Jersey 08053

Dear Mr. Anderson:

This is in response to your letter of December 12, 1977, wherein you asked for our comments concerning the effect of section 854 of the Department of Defense Appropriations Act, 1978, Public Law No. 95-111, September 21, 1977, 91 Stat. 908, on our decision, B-187112, September 16, 1976.

At the outset, we must inform you that formal decisions are generally rendered only to heads of departments and agencies, disbursing and certifying officers, or to claimants who have filed monetary claims with our Office. See 31 U.S.C. 74 and 82d. (1970). However, we believe that the following information may prove helpful to you.

The section of the Defense Appropriations Act, *supra*, to which you refer is section 853, rather than 854, and it provides:

"None of the funds appropriated by this Act or available in any working capital fund of the Department of Defense shall be available to pay the expenses attributable to lodging of any person on official business away from his designated post of duty, or in the case of an individual described under section 5703 of title 5, United States Code, his home or regular place of duty, when adequate government quarters are available but are not occupied by such person." (Emphasis added.)

The legislative history of the above-quoted section leaves no doubt as to its purpose:

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" * * * the Comptroller General ruled in decision (B-187112) - /September 16, 1976/ that government employees should not be required to occupy government quarters in connection with education, training and other work assignments and that the DOD may not make orders for attendance at training courses contingent upon occupancy of government quarters in view of the provision of 5 USC 5911(e).

"In view of this decision, the Committee has no choice but to include a general provision in the bill which will prevent the expenditure of federal funds when adequate government quarters are available but not used." See H. R. Rep. No. 451, 95th Cong., 1st Sess. 122 (1977).

Accordingly, the rule in our decision B-187112, September 16, 1976, and similar decisions, is no longer in effect in the Department of Defense for so long as section 853, or similar provisions, are in effect. Thus, when adequate Government quarters are available, but not occupied, by a civilian employee of the Department of Defense, there is no appropriation available for payment of the lodging portion of per diem.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins
Assistant General Counsel