DECISION

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

FILE: B-188464 DATE: JUL 19 1977

MATTER OF: Master Sergeant , USAF

DIGEST:

Family Separation Allowance, Type I, under 37 U.S.C. §427(a) (1970) is not authorized to an otherwise eligible member who is legally separated from his spouse since his separation from her results from personal considerations, not military assignment.

This action is in response to a request dated October 14, 1976, for an advance decision from First Lieutenant S. Morris, USAF, Accounting and Finance Officer, Headquarters TUSLOG Detachment 10 (USAFE), concerning payment of Family Separation Allowance, Type I (FSA-I) to Master Sergeant , USAF, , in the described circumstances. The request has been approved by the Department of Defense Military Pay and Allowance Committee as Air Force Submission No. DO-AF-1263, and forwarded here by letter dated February 23, 1977.

Sergeant is apparently assigned to duty outside the United States; he is legally separated from his spouse upon whom he bases his request for FSA-I; Government quarters are not available for assignment to him; and he is otherwise eligible for FSA-I. The Accounting and Finance Officer questions whether in these circumstances the member is entitled to FSA-I since the member and his spouse are prevented from living together at his duty station for personal reasons, not military reasons. Regarding this question, it is stated that the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) paragraph 30303 is silent and our decisions are in apparent conflict. In 43 Comp. Gen. 332, 350-352 (1963) (question 23) we considered a similar question for the first time along with 26 other questions submitted by the Department of Defense Military Pay and Allowance Committee seeking advance decisions on entitlement to the then new Family Separation Allowance. In response to question 23 it was decided that "the member would be entitled to payment if otherwise proper" under 37 U.S.C. 427(a). As the Air Force points out, subsequent decisions, 44 Comp. Gen. 572 (1965), B-161781, August 9, 1967, and 49 Comp. Gen. 867 (1970), appear to be inconsistent with this position.

Section 427(a), title 37, United States Code (1970), which is the statutory authority for FSA-I, provides as follows:

> "(a) In addition to any allowance or per diem to which he otherwise may be entitled under this title, a member of a uniformed service with dependents who is on permanent duty outside of the United States, or in Alaska, is entitled to a monthly allowance equal to the basic allowance for quarters payable to a member without dependents in the same pay grade if--
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> > "(1) the movement of his dependents to his permanent station or a place near that station is not authorized at the expense of the United States under section 406 of this title and his dependents do not reside at or near that station; and
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> > "(2) quarters of the United States or a housing facility under the jurisdiction of a uniformed service are not available for assignment to him."

Section 406 of title 37, United States Code (1970) provides in pertinent part, that when a member is ordered to make a change of permanent station, he is entitled to transportation in kind for his dependents, to reimbursement therefor, or to a monetary allowance in lieu of transportation in kind, subject to such conditions and limitations, grades, ranks, and ratings, and to and from such places as prescribed by the Secretaries concerned. Section 401 of title 37 (1970) defines a "dependent " as used in sections 406 and 427 as including a member's spouse.

The legislative history pertaining to family separation allowance discloses that the purpose of the allowance authorized by 37 U. S. C. 427(a) is to compensate a member for the expense of procuring public quarters for himself during periods of enforced separation from his dependents, where Government quarters are not available for assignment to him at his overseas station. Although it is not necessary that a member and his dependents reside together immediately prior to his transfer overseas in order to qualify for

such allowance, it is our view that the allowance was not intended to be paid if the family separation does not result from military orders. See B-161781, August 9, 1967, and 49 Comp. Gen. 867, supra, both involving family separations as the result of divorce decrees, and in which FSA-I was denied. The reason for denial in those cases being primarily that the separation was not caused by military orders. See also 44 Comp. Gen. 572, supra. It is our view that the same rationale would apply to family separation when a legal separation is involved. In such cases the separation is the result of the member's action and not military assignment, and FSA-I payment is not authorized. To the extent this decision is inconsistent with the answer to question 23, 43 Comp. Gen. 332, that holding is overruled.

Since Sergeant 's separation from his spouse was the result of a legal separation, he is not entitled to FSA-I, and the voucher enclosed with the submission will be retained in this Office.

Paul G. Dembling

For the Comptroller General
of the United States