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DECISION



D. M. ...
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548
PLA I

FILE: B-188979

DATE: July 24, 1978

MATTER OF: Hiroshi Ichiki - Separate maintenance allowance

DIGEST: A civilian employee of the Department of the Army stationed overseas may be granted a separate maintenance allowance since it has been established by the chief medical officer and the commander of the Eighth Army that the employee is compelled to maintain his dependent elsewhere than at his post because of the lack of medical or hospital facilities in the area to provide adequate treatment required for the illness of his dependent.

This action is in response to a letter from the National Federation of Federal Employees on behalf of Mr. Hiroshi Ichiki, a civilian employee of the Department of the Army, concerning his claim for payment of a separate maintenance allowance (SMA). Specifically we have been asked for the proper interpretation of the provision in the Department of State's Standardized Regulations (Government Civilians, Foreign Areas) for the granting of an SMA due to the lack of appropriate medical or hospital facilities for dependents in the area.

The administrative report supplied by the Army in the case of Mr. Ichiki indicates that he was initially granted an SMA on December 15, 1970, when he arrived in Korea because his dependent was precluded from joining him. He was subsequently assigned to Bupyeong, Seoul, and Chunchon where his dependent was also precluded from joining him. On September 30, 1973, he was promoted to a position at Pusan, Korea, where dependents were authorized as of January 7, 1974. Due to an administrative oversight, he was not officially advised until April 14, 1976, that he was eligible for a 24-month tour of duty at Pusan, Korea. He was also advised that since he was authorized a 24-month accompanied tour, his SMA would be terminated not later than 90 days from the date of receipt of the notice of eligibility for an accompanied tour or the date dependents arrive at the duty post, whichever is earlier.

The position of the Army in denying the SMA after July 19, 1976, is based upon the rationale that an overseas tour by

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civilian employees is voluntary and that payment of an SMA is not appropriate when a dependent does not join an employee because of a unique medical condition which should have been considered by the employee in his decision whether to remain in the area.

In a letter dated June 6, 1977, from the Commanding Officer, Department of the Army, 543rd General Dispensary, APO San Francisco 96218, Mr. Ichiki was informed that his wife's illness had been diagnosed as systemic lupus erythematosus, acute bronchitis, and diffuse osteosclerosis of undetermined etiology and that "The description of her disease progression, course, and treatment regime leave me of the opinion that she could not be medically cared for in the Taegu, Waegwan area in the ROK. Her disease course is not expected to change and her problems will probably be present indefinitely."

On June 28, 1977, the Acting Chief of Staff, Headquarters, Eighth United States Army, John J. Koehler, Jr., Major General, USA, informed Mr. Ichiki as follows:

"The Chief of Professional Services, MEDCOM-K, has determined that the illnesses your wife is afflicted with cannot be treated in Korea. If you were to request dependent travel at government expense for your spouse it would be denied and you would then be entitled to SMA.

"To avoid your having to submit such a request and have it denied, you are hereby denied dependent travel at government expense. The Civilian Personnel Office will be informed of this denial and that you are now entitled to Separate Maintenance Allowance."

On August 26, 1977, the Chief of Staff, Robert C. Kingston, Major General, USA, Headquarters, Eighth United States Army, withdrew the decision contained in the letter dated June 28, 1977, based upon the fact that the National Federation of Federal Employees had requested a decision on this matter from the Comptroller General.

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The SMA is authorized by 5 U.S.C. 5924 (1976) which, in pertinent part, provides:

"The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

* * * * *

"(3) A separate maintenance allowance to assist an employee who is compelled, because of dangerous, notably unhealthful, or expressively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expenses of maintaining, elsewhere than at the post, the employee's spouse or dependents, or both." (Emphasis added.)

Authority to prescribe regulations under this section was delegated to the Secretary of State by Exec. Order No. 10903, January 11, 1961, as amended, 5 U.S.C. 5921 note (1976). These regulations are presently found in Department of State Standardized Regulations (Government Civilians, Foreign Areas), Sections 260-268. Section 262.1c(2) sets forth one of the conditions warranting an SMA as follows:

"A separate maintenance allowance may be granted to an employee whenever the head of agency determines that the employee is compelled to maintain any or all dependents (Sec. 261.1) elsewhere than at his post of assignment because of the existence at his post of one of the following conditions:

* * * * *

"c. Excessively Adverse Conditions

* * * * *

"(2) Lack of medical or hospital facilities in the area, as determined by reliable

medical authority, to provide adequate treatment required for an illness or other condition of health of a dependent;" (Emphasis added.)

As a further implementation of the Standardized Regulations, supra, issued by the State Department, the Department of Defense has issued instructions which set forth the purpose, applicability, and policy of the Department of Defense for payment of the SMA to civilian employees of DOD stationed in foreign areas. These are found in DOD Instruction 1418.1 dated September 16, 1974, and Department of the Army Civilian Personnel Regulations, chapter 592, subchapter 4 (CPR 592.4). Paragraph 2 of CPR 592.4 reads in part as follows:

"It is noted that employee's separation from the family must be caused by exceptionally adverse living conditions at his post of assignment, or the convenience of the Government. Family separation caused by other reasons, such as divorce, legal separation, or the dependent's failure to join the employee at his permanent duty post are not adequate basis for payment of the SMA."


The Standardized Regulation, supra, cited permits the granting of an SMA whenever the head of the agency determines the employee is compelled to maintain a dependent elsewhere than at his post because of the lack of medical or hospital facilities in the area to provide adequate treatment required for an illness of a dependent. See B-175980, November 28, 1972, and B-152683, November 18, 1963.

The law and regulations give to the agency or department concerned wide discretion on the granting of SMA. Accordingly, it appears that the Army policy as set forth in the administrative report - that payment of an SMA is not appropriate when a dependent does not join an employee due to a unique medical condition because that should have been considered by the employee in his decision whether to remain in the area - is at variance with both the Standardized Regulations, supra, and the Army Civilian Personnel Regulations, supra. The letter from the medical officer dated June 6, 1977, and the decision of the Acting Chief of Staff dated June 28, 1977, indicate that there was a lack

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of medical facilities to properly treat Mr. Ichiki's wife in Korea. Therefore, since it has been determined by reliable medical authority that there is a lack of medical or hospital facilities in the area to provide adequate treatment required for the illness of the dependent and the Acting Chief of Staff, Headquarters, Eighth United States Army, has denied dependent travel for Mrs. Ichiki to Korea at Government expense because of her illness and lack of treatment facilities, we believe such determinations meet the criteria for establishing eligibility for SMA as set forth in the Standardized Regulations, supra, and the Army Civilian Personnel Regulations, supra.

Accordingly, we will not object to an administrative determination authorizing payment to Mr. Ichiki of SMA from July 19, 1976, if such payments are otherwise proper.


Deputy Comptroller General
of the United States