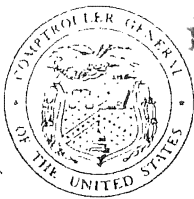


DECISION



DIGEST - L- Mail.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

595

FILE: B-192969

DATE: December 15, 1978

MATTER OF: Sergeant [REDACTED], USAF

- DIGEST:**
1. An Air Force enlisted member paying child support pursuant to a separation agreement placed the amount involved in an escrow account after his wife refused payments. Those funds reverted to the member under the final divorce decree. Since the member did not contribute to the support of the child during the separation and since the member was relieved by the court of the obligation to pay to his wife the funds held in escrow, the Air Force determination that he was not entitled to basic allowance for quarters on behalf of dependents for that period is consistent with the Comptroller General decisions.
 2. Under 37 U.S.C. 403(h) (1976) determinations of dependency for basic allowance for quarters for enlisted members of the uniformed services may be made by the Secretary concerned, or his designee, and such determinations are final and not subject to review by the General Accounting Office or the courts, except in cases of fraud or gross negligence.

This decision is in response to a request for advance decision submitted by First Lieutenant John F. Kaiser, USAF, Accounting and Finance Officer, 354th Tactical Fighting Wing, Myrtle Beach Air Force Base, concerning the propriety of repayment of Basic Allowance for Quarters (BAQ) to Sergeant [REDACTED]. The request was assigned submission No. DO-AF-1303 by the Department of Defense Military Pay and Allowance Committee.

In September 1975, Sergeant [REDACTED] and his wife entered into a separation agreement pursuant to which he agreed to pay his wife

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the sum of \$110 per month for support of their minor child who was placed in her custody. The agreement made no provision for payments for the support of the wife, except that he agreed to provide money for her to purchase an automobile. The child support payments were made until November 1975, when his wife refused all support. Upon the advice of his attorney Sergeant [REDACTED] deposited each payment into an escrow account at his local credit union.

On September 9, 1976, Sergeant [REDACTED] was granted a divorce in the Family Court of Horry County, South Carolina. Noting that the wife had not claimed the support money put in escrow the court released Sergeant [REDACTED] of any future child support payments. Sergeant [REDACTED] was also relieved of any future obligations for transfer of property as alimony to his wife. Thus, reportedly, the member provided no support for his wife and child from November 1975 through September 9, 1976, although he received BAQ on behalf of dependents for that period.

Based on the fact that Sergeant [REDACTED] did not in fact provide actual support for his wife and child during the time of their separation the Air Force initiated collection action to recoup all BAQ payments received during this period. The collection was accomplished pursuant to paragraph 30224 of the Department of Defense Military Pay and Allowances Entitlements Manual which states that a member is not entitled to BAQ on behalf of "a dependent for whom the member has been absolved of the requirement to provide support." Sergeant [REDACTED] now claims repayment of BAQ in the amount of \$1,195.83 on behalf of his wife and child for the period November 1, 1975, through September 9, 1976.

Pursuant to 37 U.S.C. 4037(1976), a member of the uniformed services who is entitled to basic pay is entitled to BAQ at the "with dependents" rate when he has dependents and they are not assigned to appropriate Government quarters. The allowance takes the place of Government furnished quarters, and, at least partially, reimburses the members concerned for the expense of providing private quarters for themselves and their dependents, where Government quarters are not available. However, BAQ at the "with dependents" rate is not paid as a bonus merely for the

technical status of being married or a parent. 52 Comp. Gen. 454✓(1973); B-154312, ✓June 25, 1964; 42 Comp. Gen. 642✓(1963).

We have held that the statutory provisions generally relieve a member claiming BAQ on account of a lawful spouse or an unmarried child of the burden of proof that the spouse or child is in fact dependent upon the member for their support. See, 23 Comp. Gen. 71✓(1943), and 22 Comp. Gen. 1145✓(1943). That general rule, however, is not free from exceptions and, in light of the basic purpose of BAQ, we have consistently held that in the absence of a showing of contributions by the member to the support of his wife or children, entitlement to quarters allowance as a member with dependents is not authorized where the member has been absolved of responsibility to support them. 38 Comp. Gen. 89✓(1958) and 23 Comp. Gen. 71, supra.

In this case Sergeant [REDACTED] apparently did not provide support for his wife and child during the period in question. While he established an escrow account for the receipt of the monthly support payments after his wife refused to accept them, those funds reverted to him at the time of the divorce and were not used for the support of his wife or child. In this regard, the divorce decree provided that the wife had abandoned by her conduct "any further rights to any property" of Sergeant [REDACTED]. It also ordered Sergeant [REDACTED] "relieved of all obligations for child support or other transfer of property" pending future action by the court. Thus, it appears that the court absolved Sergeant [REDACTED] of paying the support money to his wife which he had held in escrow. Accordingly, the Air Force Finance Officer's determination that the member was not entitled to BAQ on behalf of dependents during this period appears consistent with decisions of our Office.

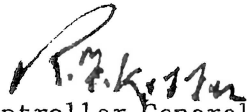
In addition, however, 37 U.S.C. 403(h), ✓as added by Public Law 93-64, section 105, July 9, 1973, 87 Stat. 147, 148-149, provides as follows concerning determinations of dependency for enlisted members under the BAQ statute:

"(h) The Secretary concerned, or his designee, may make any determination necessary to administer this section with regard to enlisted members, including determinations of dependency and relationship, and may, when warranted by the circumstances,

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reconsider and change or modify any such determination. This authority may be redelegated by the Secretary concerned or his designee. Any determination made under this section with regard to enlisted members is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence." (Emphasis added.)

Therefore, since Sergeant [REDACTED] is an enlisted member, a determination by the appropriate Air Force official in this case would be final.


Deputy Comptroller General.
of the United States