

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

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PLM-2

[Amendment to Joint Travel Regulations]
April 8, 1980

FILE: B-196121

DATE:

MATTER OF: Dislocation allowances

DIGEST: An amendment of the Joint Travel Regulations permitting treatment of a member with dependents who are authorized to travel with him to his new permanent station but who in fact, do not travel to the new station, as a member without dependents for purposes of receiving dislocation allowance, is not prohibited by 37 U.S.C. § 407. 48 Comp. Gen. 782 (1969) and similar decisions will no longer be followed.

This action is in response to a letter dated August 22, 1979, from the Assistant Secretary of the Army (Manpower and Reserve Affairs) requesting an advance decision concerning a proposed amendment to Volume 1 of the Joint Travel Regulations (1 JTR) relating to the dislocation allowance entitlements of military members with dependents. Specifically, the Assistant Secretary asks whether under 37 U.S.C. § 407 (1976), the JTR may be amended to permit a military member with dependents, who are authorized to relocate with him, to receive a dislocation allowance when he is transferred to a new permanent station, where his dependents do not relocate incident to his change in permanent duty station. As explained below, we conclude that the adoption and implementation of such an amendment is authorized under 37 U.S.C. § 407.

That statute provides:

"§ 407. Travel and transportation allowances: dislocation allowance

"(a) Except as provided by subsections (b) and (c) of this section, under regulations prescribed by the Secretary concerned, a member of a uniformed service--

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"(1) whose dependents make an authorized move in connection with his change of permanent station;

"(2) whose dependents are covered by section 405a(a) of this title; or

"(3) without dependents, who is transferred to a permanent station where he is not assigned to quarters of the United States;

is entitled to a dislocation allowance equal to his basic allowance for quarters for one month as provided for a member of his pay grade and dependency status in section 403 of this title. For the purposes of this subsection, a member whose dependents may not make an authorized move in connection with a change of permanent station is considered a member without dependents."

Thus, a member who has no dependents, or whose dependents are not authorized to move to his new station is entitled to a dislocation allowance equal to the monthly basic allowance for quarters (BAQ) for a member without dependents. Similarly, a member with dependents who are authorized to and in fact do move with him is entitled to dislocation allowance payment equal to his BAQ.

Sometimes, however, a third situation arises. A member may have dependents who are authorized to move with him and if they did so, he would be entitled to a dislocation allowance as a member with dependents under 37 U.S.C. § 407. However, that member may instead decide, for whatever reason, that his dependents will not accompany him to his new station, so that his position for change of station purposes is similar to that of a member without dependents. Because this individual does have dependents, we have found in the past that he cannot be considered a member without dependents, nor is he a member with dependents who in fact relocated with him, and therefore we have held that section 407 does not authorize the payment of any dislocation allowance to him. 48 Comp. Gen. 782 (1969).

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In certain circumstances we have held that although a member has dependents, since they were not entitled to Government transportation, the member may be considered to be "without dependents" and entitled to the appropriate dislocation allowance. See e.g., B-189020, August 18, 1977, B-176601, March 27, 1973. See also B-188849, September 1, 1977. However, where the circumstances do not support such a finding, the rule currently requires that a member with dependents who are authorized to, but do not move incident to his change in station, is not entitled to a dislocation allowance.

This inequity is noted in the submission, and forms the basis for the proposal to revise the JTR definition of "member without dependents" to include a member with dependents when the dependents do not in fact relocate even though they are entitled to move at Government expense. Although technically, such individuals are not included in the statutory discussion of "member without dependents," we have reconsidered the whole matter. It seems that Congress did not intend to preclude payment of a dislocation allowance in these cases. Both the House and Senate Reports state in support of section 407(a)(3) that:

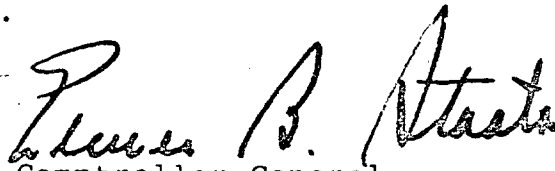
"(A) member without dependents incurs the same general type of additional expenses when he is not furnished Government quarters at the new station as does a member with dependents. It is thus believed that the original intent of the dislocation allowance will be better served if the proposed legislation is enacted to provide an amount equal to 1 month's basic allowance for quarters for a member without dependents * * *" H.R. Rep. No. 787, S. Rep. No. 808, 90th Cong., 1st Sess. (1967).

The purpose then, of section 407(a)(3) is to ensure that military personnel receive a dislocation allowance regardless of whether they have dependents or not. In the past, we have interpreted that section to permit amendment of the JTR to provide dislocation allowance payments in circumstances not specifically covered by section 407

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when in keeping with its purpose. 57 Comp. Gen. 178 (1977). Similarly here, while section 407(a)(3) authorizes dislocation allowance payments under certain specified circumstances, it appears that Congress did not intend to preclude payment of any allowance when a member whose dependents although authorized to do so, do not relocate incident to his change in permanent station. In such cases the member would usually incur the same types of expenses as members without dependents who relocate and are entitled to a dislocation allowance. It is now our view that these individuals may be considered members "without dependents" for dislocation allowance purposes. Therefore, the JTR definition of "member without dependents" may be modified as proposed.

Decisions to the contrary, such as 48 Comp. Gen. 782, will no longer be followed.


James B. Atch
Comptroller General
of the United States