

DECISION



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

27129

FILE: B-199233

DATE: December 27, 1983

MATTER OF: Family Separation Allowances

- DIGEST:**
1. Where spouses with a dependent child are both members of the uniformed services, and one member is given a permanent change of station with dependent travel authorized, the Military Pay and Allowances Entitlements Manual may not be interpreted or amended to authorize payment of the Family Separation Allowance to either member. Whether the child travels to the reassigned member's new station or remains at the old station is a matter of personal choice and not a forced separation as when a member is assigned to a restricted station.
 2. Where spouses without dependents are both members of the uniformed services and are assigned to the same overseas permanent duty station immediately before one member chooses to return to the United States for separation from active duty, the continued separation between the member and the released spouse is not an enforced separation, but a matter of personal choice. Therefore, a Family Separation Allowance, under 37 U.S.C. § 427, may not be paid.

This decision is in response to a request from the Assistant Secretary of Defense (Comptroller) in which he requests a decision on questions developed by the Department of Defense Military Pay and Allowance Committee concerning whether Family Separation Allowances should be paid in various circumstances where both spouses are or were members of the uniformed services.¹

We conclude that the separations described in the submission were not enforced separations and, therefore, the allowances may not be paid.

¹ The Assistant Secretary transmitted Department of Defense Military Pay and Allowance Committee Action No. 558 setting forth the details of the request.

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the same dependent. Not being eligible for transportation of the dependent, that parent is said to be eligible for family separation allowances under the terms of paragraphs 30326 and 30304 of the Military Pay and Allowances Entitlements Manual.

When married members have a child one parent may claim the child as a dependent for the purpose of one allowance and the other parent may claim the child for another distinct allowance. Both parents are prohibited from claiming their child as a dependent for the same allowance. Matter of McDonald, 60 Comp. Gen. 154 (1981). See also 54 Comp. Gen. 665 (1975). Following the rule in the McDonald case, paragraph 30326 of the Pay and Allowances Manual provides:

"In the case of member married to member, and they have a child that either parent can claim for BAQ [basic allowance for quarters], one parent may claim the child for BAQ purposes and the other parent, when otherwise entitled, may claim the child for FSA * * *." (Emphasis supplied.)

For a claimant to be "otherwise entitled," the Committee refers to paragraph 30304,² which requires that the claimant not be authorized the transportation of dependents at Government expense, and that they not live at or near the claimant's permanent duty station. That was the situation in the McDonald case since the member claiming the allowance was assigned to an overseas duty station to which dependents' transportation at Government expense was not authorized.

It is the Committee's view that whether the dependent travels or not the family suffers the same effects from the separation. They feel that current regulations may circumvent the basic intent of the statute.

² Paragraph 30304 of the Military Pay and Allowances Entitlements Manual implements 37 U.S.C. § 427(b). See Matter of Stuart, B-205097, March 15, 1982.

not-transferred the dependent was free to remain with that member at his or her duty station.³

The claimant in Matter of King, B-193532, October 15, 1980, while serving a tour of duty in Germany with his dependents, requested the return of his dependents to the United States.⁴ The claim was supported by issuance of orders (subsequent to the dependents transportation) changing his status, in effect, to a restricted status, with the result that there was no authority for his dependents to accompany him to that station. Based on findings 1) that the change of status of the member's station resulted from his request, 2) that the movement of dependents was not the result of permanent change-of-station orders, and 3) the dependents were free to reside with the member until he was required to move, we held that the separation was for personal reasons, and the allowance could not be paid. This rule has been applied where, despite issuance of an alert notice (which is designed to promote the orderly departure of families), if members' dependents are free to remain at the station until issuance of permanent-change-of-station orders, but the dependents relocate upon receipt of the alert notice, the resulting separation is not enforced. 46 Comp. Gen. 151 (1966).

Payment under the circumstances presented in this case is not authorized because the cause of separation supporting a claim is limited to the cause separating the member claiming the allowance and the child, without

³ In 58 Comp. Gen. 183 (1978) the closure of a base, requiring dependents to move away from the members (rather than the situation literally addressed in the statute where transportation is not authorized to the permanent station), was also held to result in an enforced separation; therefore, the Family Separation Allowance was authorized.

⁴ This was accomplished under the provisions of paragraph M7103-2, Item 7, Volume 1, Joint Travel Regulations, which authorizes return transportation of dependents under unusual or emergency circumstances.

claimant at his overseas duty station. Therefore, the separation was not the result of any military orders and could not be viewed as enforced. Payment was not authorized.

Similarly, under the circumstances the Committee presents, the separation must be viewed as voluntary and not due to military orders requiring separation. Thus, the allowance is not payable. See also, B-169012, March 18, 1970.

for *Harry D. Van Cleave*
Comptroller General
of the United States