

**DECISION**

19152 Roberts  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-200198**DATE:** August 17, 1981**MATTER OF:** Lieutenant Wayne R. Van Doren, USN

**DIGEST:** Naval officer's entitlement to basic quarters allowance at the with dependent rate for spouse does not automatically terminate upon issuance of decree of divorce where, under governing State law, the finality of the divorce decree is suspended when the judgment is appealed and although on disposition of the appeal the original judgment becomes final, the member is considered as having a lawful spouse during the pending of the appeal. Under applicable regulations, member's entitlement to basic quarters allowance for spouse continues until appeal is resolved provided, however, that member proves that he actually provided support for spouse during pendency of appeal.

At what point in time does a member's entitlement to basic allowance for quarters (BAQ) at the with dependent rate cease when a divorce decree is granted under Texas law, but an appeal to such action is taken and not decided until a later date? Under Texas law a husband and wife retain their marital status pending disposition of the appeal, thus, the member is entitled to BAQ at the with dependent rate on account of his wife until the appeal is settled if he can demonstrate that he actually provided support.

This request for decision was submitted by the Director, Navy Family Allowance Activity and was assigned control number DO-N-1352, by the Department of Defense (DOD) Military Pay and Allowance Committee. The question relates to the propriety of payment of a voucher in favor of Lieutenant Wayne R. Van Doren, USN, for basic allowance for quarters (BAQ) at the with dependent rate for his spouse during the period between December 13, 1977, to September 25, 1978. The issue in this matter is whether Lieutenant Van Doren's entitlement to BAQ at the with dependent rate continued for the period between December 13, 1977, when the Family District Court of Fort Bend County, Texas, issued a decree of divorce to the Van Dorens and September 25, 1978, at which time the Court of Civil Appeals for the First Supreme Judicial District

*[Termination of Divorced Military Member's Entitlement to BAQ]*  
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of Texas dismissed Mrs. Van Doren's appeal of that divorce decree.

Lieutenant Van Doren's entitlement to BAQ at the with dependent rate commenced upon his marriage on May 31, 1975. On October 7, 1977, petitions for divorce were filed by Lieutenant Van Doren and his wife in Texas and Louisiana, respectively. On October 31, 1977, the Louisiana Civil District Court of Orleans Parish ordered Lieutenant Van Doren to make monthly alimony pendente lite payments to Mrs. Van Doren in the amount of \$400. A divorce decree was issued by the Family District Court of Texas on behalf of Lieutenant Van Doren on December 13, 1977, and Mrs. Van Doren instituted an appeal from that judgment. On September 25, 1978, upon Mrs. Van Doren's motion, the appeal to the Texas Court of Civil Appeals was dismissed. This judgment was subsequently accorded Full Faith and Credit by the Louisiana court, which on June 22, 1979, dismissed its pending action. Thereafter, Lieutenant Van Doren filed an application to terminate the dependency status of his ex-wife effective September 25, 1978. It is the Navy's position, however, that this member's entitlement to BAQ at the with dependent rate terminated on December 13, 1977, since it was at this point the marital relationship of the parties was dissolved by judicial decree.

Section 403 of title 37, United States Code, provides that except as otherwise provided by law, a member of the uniformed services who is entitled to basic pay is entitled to a basic allowance for quarters at the with dependent rate when he has dependents and they are not assigned to appropriate Government quarters. Section 401 of title 37, United States Code, defines "dependent" to include the member's spouse. Section 30232 of the DOD Military Pay and Allowances Entitlements Manual, provides, in pertinent part, that a member's lawful spouse is at all times considered a dependent for BAQ purposes except in the circumstances not pertinent here. Section 30236 of the Manual provides that where a member is subject to an interlocutory decree of divorce which does not provide for support of the spouse, the member is not entitled to BAQ for the spouse after the date of the decree unless proof of support is furnished.

In determining whether this member is entitled to BAQ at the with dependent rate for the period in question, we

are urged by the member's attorney to apply the law of Louisiana to this case. This view is predicated on the ground that Lieutenant Van Doren was required to pay alimony pendente lite by this jurisdiction, and therefore Mrs. Van Doren was in fact his dependent pending the outcome of the Texas litigation. We, note however, that the above-cited statute and regulations allow as a rule a member to claim his spouse as a dependent for purposes of obtaining a BAQ allowance only during the course of a lawful marriage. It is our view, however, that we must apply the law of Texas, the State which ultimately issued the final decree of divorce in this matter, in order to determine the point at which the member's wife was no longer his lawful spouse within the meaning of 37 U.S.C. 401 et seq.

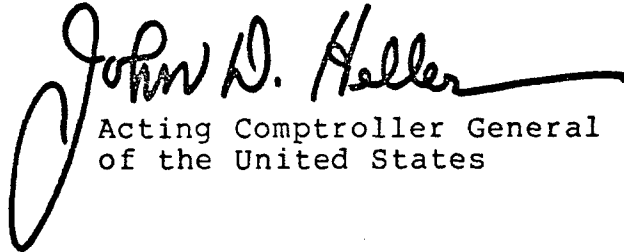
A judgment of divorce in Texas constitutes a complete and final termination of the marital status between the parties, and if no appeal is filed it is a final judgment of divorce, except in certain limited circumstances which are inapplicable here. Johnson v. Davis, 198 SW 2d 129 (Civ. App. 1946). Where, however, a party to the divorce action perfects a writ of error to the Court of Appeals, the judgment in the divorce action is suspended until the appellate court renders a final judgment on the action. Ex Parte Hodges, 109 SW 2d 964 (Tex. 1937). Upon disposition of the appeal, the initial decree of divorce becomes operative and relates back to the date of the decree insofar as the rights of the parties to the action are concerned. However, pending outcome of the appeal the marital status of the parties remains the same under Texas law insofar as third parties are concerned. Acker v. State, 421 SW 2d 398 (Crim. App. 1967).

Accordingly, since the appeal of the divorce decree issued on December 13, 1977, by the Family District Court of Fort Bend County, Texas, has the effect of rendering the decree interlocutory in nature until settled, Lieutenant Van Doren's wife may be regarded as his lawful spouse until his divorce decree became final under Texas law on September 25, 1978. In this regard, although an interlocutory decree of divorce is not involved, the similarity of the effects of an interlocutory decree and appeal lead us to the view that the same rule must be applied in both situations. Paragraph 30236 of the DOD Military Pay and Allowances Entitlements Manual, should be applied to such situations. Accordingly

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Lieutenant Van Doren should show that, after the decree of divorce and during the pendency of the appeal he in fact continued to provide support to his spouse until that decree became final on September 25, 1978. Upon receipt of such proof, the submitted voucher may be paid for the period of time in question.

The voucher is returned herewith for action in accordance with this decision.

  
Acting Comptroller General  
of the United States