

DECISION

18642 Mr. Riedinger
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-201746

DATE: June 26, 1981

MATTER OF: BAQ for Coast Guard Members on Sea Duty

DIGEST: Proposed amendment to Coast Guard regulations to authorize continuance of basic allowance for quarters (BAQ) to members without dependents, performing periods of temporary duty away from a permanent duty station to which they will return (temporary additional duty (TAD)) aboard a vessel at sea for 3 months or more is not authorized. 37 U.S.C. 403(c) prohibits payment of BAQ to members on sea duty but provides that duty for a period of less than 3 months will not be considered sea duty. That provision makes no distinction between temporary and permanent duty. Neither the statute nor the implementing Executive orders issued under 37 U.S.C. 403(g) define sea duty in a way to exclude TAD in Coast Guard vessels from definition of sea duty, nor do they permit the Service Secretaries to define sea duty differently.

This action is in response to a request from the Comptroller of the Coast Guard as to whether Coast Guard regulations may be amended to permit payment of a Basic Allowance for Quarters (BAQ) to members performing sea duty in the circumstances described in the submission.

It is stated that the Coast Guard would like to amend its regulations to permit all members without dependents performing temporary additional duty (that is temporary duty after which they will return to the same permanent duty station) aboard a vessel to continue to receive BAQ, if previously entitled, regardless of the length of the temporary duty. To permit this it is proposed to amend the Coast Guard regulations to, in effect, exclude such temporary duty performed by such members from the definition of sea duty. It is our view that the proposed amendment would not be in accord with the applicable statute and Executive orders.

The request for such amendment has apparently arisen because of problems encountered by members, without dependents, who are required to perform such temporary additional duty. It is reported that governing regulations require such a member's entitlement to BAQ to be temporarily discontinued during periods of temporary duty aboard a vessel, if the period

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exceeds 3 months. It is pointed out that in cases where a member's permanent station is normally a shore station--where he must secure and maintain his own quarters--the regulations governing entitlement create an undesirable hardship. Because of the discontinuance of BAQ, some members have had to sell or sublease their non-Government quarters to avoid financial loss.

The problems involved in this situation are more apparent because BAQ is not discontinued when a member without dependents is ordered on temporary additional duty to another shore station for 3 months or more even if Government quarters are provided at the temporary duty location during the entire period. In an effort to equalize treatment in these situations, it is proposed that Coast Guard regulations be amended to permit the performance of temporary additional duty for 3 months or more aboard a vessel without discontinuance of BAQ. It is suggested that authority for such amendment could possibly be considered as derived from section 405 of Executive Order No. 11157, June 22, 1964.

The provisions of law governing entitlement to BAQ are contained in 37 U.S.C. 403. Subsection (c) thereof provides in part that a member of a uniformed service without dependents is not entitled to BAQ while he is performing sea duty or, in most cases, field duty. It further provides that such duty for a period of less than 3 months is not considered to be sea or field duty. In this connection, subsection (j) of the same section authorizes the President to prescribe regulations for the administration of the section including the defining of the phrase "sea duty" as it relates to the period of duty of 3 months or more. Pursuant to that authority, section 401(c) of Executive Order No. 12094, 3 C.F.R. 251, 252 (1979), which amended section 401(c) of Executive Order No. 11157 defined the term "sea duty" as meaning service performed by either an officer or enlisted member in a self-propelled vessel that is in an active status, in commission or in service and is equipped with berthing and messing facilities. Rule 5 of Table 2B01030-2 of the Coast Guard Comptroller Manual is consistent with these provisions.

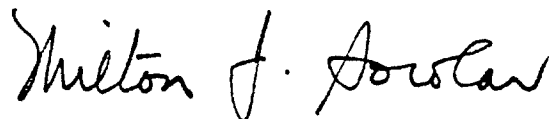
Section 405 of Executive Order No. 11157 provides, generally, that a member on temporary duty away from his

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permanent station may occupy Government quarters at the temporary duty station without affecting his right to continue to receive a basic allowance for quarters or assignment to quarters, if any, at his permanent station.

In addition to the foregoing, section 407 of Executive Order No. 11157 authorizes the Secretaries of the uniformed services to prescribe such supplementary regulations not inconsistent with the Executive order as may be deemed desirable and necessary for carrying out the regulations. While Executive Order No. 12094, amended Executive Order No. 11157, it did not affect the Secretaries' limited authority to issue regulations, provided such regulations are consistent with the governing statute and Executive orders. 59 Comp. Gen. 192 (1980).

Under the present provisions, the terms sea duty and field duty have been specifically recognized and differentiated from other types of duty for BAQ entitlement purposes. Further, the statute specifically provides that periods of sea duty less than 3 months will not result in loss of a member's right to BAQ, if previously established, regardless of how the term "sea-duty" is defined by the President under authority of 37 U.S.C. 403(j). In 59 Comp. Gen. 486 (1980) we considered a similar question presented by the Marine Corps. There we held that no distinction is made by the statute between temporary and permanent assignments; rather, it is the length of the assignment that is critical. Accordingly, it is our view that Coast Guard regulations which administratively supplement these Executive orders may not be amended in such a way as to permit continued payment of BAQ in the situations described in the submission.



Acting Comptroller General
of the United States