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DECISION



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

FILE: B-203354

DATE: February 8, 1982

MATTER OF: Major James C. Rhodes, USAF

DIGEST: Service member legally separated from his spouse who relocates in connection with a permanent change of station and resides in non-Government quarters but does not relocate his spouse at Government expense is entitled to a dislocation allowance at the "without dependents" rate.

This decision is rendered in response to a request submitted by Lieutenant Colonel L. T. Howard, Director of Accounting and Finance, Eglin Air Force Base, Florida, for an advance decision concerning the entitlement of Major James C. Rhodes to a dislocation allowance in connection with his permanent change of station from Langley Air Force Base, Virginia, to Eglin Air Force Base in April 1979. The request was assigned control number 81-16 by the Per Diem, Travel and Transportation Allowance Committee.

As is explained below, we find that Major Rhodes is entitled to the dislocation allowance at the "without dependents" rate.

The finance officer states that at the time of the change of station, Major Rhodes was legally separated from his wife and did not relocate her in connection with his move. Upon completion of his move, he submitted a claim for dislocation allowance as a "member without dependents." His claim was denied on the basis that at the time of his move he was married and, thus, considered a member with dependents under Volume 1 of the Joint Travel Regulations (1 JTR). Effective June 19, 1980, the Joint Travel Regulations definition of a "member without dependents" was amended to include a member with dependents when the dependents do not relocate at Government expense incident to the member's move, even though they are entitled to do so. 1 JTR, paragraph M9001.2 (change 331, September 1, 1980). See also 59 Comp. Gen. 376 (1980), upon which that amendment was based. After the definition was amended, Major Rhodes resubmitted his claim for a dislocation

allowance incident to this same change of station, but was again denied payment because the date of his move preceded the effective date of the amendment.

The issue here is whether a member legally separated from his spouse who was subject to a permanent change of station before the effective date of the amendment of the JTR definition of "member without dependents" is, nevertheless, entitled to a dislocation allowance at the "without dependents" rate if he resides in non-Government quarters at the new duty station.

Pursuant to 37 U.S.C. § 407, under regulations prescribed by the Secretary concerned, a member of a uniformed service without dependents who is transferred to a permanent station and is not assigned to Government quarters is entitled to a dislocation allowance. We held, prior to the revision of the JTR broadening the definition of "member without dependents," that a member who is legally separated from his spouse before his permanent change of station is without dependents, for dislocation allowance purposes. Such a member may, therefore, be paid the allowance at the "without dependents" rate. See 53 Comp. Gen. 787 (1974) and B-178191, June 21, 1973.

Since Major Rhodes was legally separated from his wife at the time of his move, the amendment to the definition of "member without dependents" was not necessary to entitle him to the dislocation allowance. Accordingly, Major Rhodes is entitled to the dislocation allowance at the "without dependents" rate, and the voucher submitted is being returned for payment.

for *Milton J. Fowler*
Comptroller General
of the United States