

DECISION

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

29535

FILE: B-209342

DATE: October 10, 1984

MATTER OF: Multinational Force and Observers --
Basic Allowance for Quarters--**DIGEST:**

1. Army members without dependents are not entitled to a basic allowance for quarters during 6-month periods when they are assigned on a rotating basis from the United States to peacekeeping duty with the Multinational Force and Observers in the Sinai Peninsula of Egypt. During those 6-month periods they are furnished with Government quarters in the Sinai, and they are eligible to store their household goods in the United States at Government expense. They are on "field duty" in the Sinai within any acceptable meaning or definition of that term. The applicable statutes and regulations preclude payment of a quarters allowance to service members on field duty in those circumstances. Captain John A. Davis, USA, B-209342, June 1, 1983, affirmed.
2. In June 1983 the Comptroller General decided that Army members without dependents on 6-month periods of field duty with the Multinational Force and Observers in the Sinai Peninsula were not entitled to a basic allowance for quarters under the terms of the statute governing payment of the allowance. This decision involved an original construction of the statute, so that it is not limited to prospective application only but instead applies to all Army members who have served with the Multinational Force beginning in February 1982. Those who received erroneous overpayments of the allowance are, however, eligible to apply for a waiver of their refund obligations on an individual basis if they have reason to believe that collection action would be inequitable.

030283

B-209342

We have been asked to reconsider our decision in Captain John A. Davis, USA, B-209342, June 1, 1983.^{1/} There we determined that Army members without dependents are not entitled to a basic allowance for quarters during 6-month periods when they are assigned on a rotating basis from the United States to peacekeeping duty with the Multinational Force and Observers in the Sinai Peninsula of Egypt. We affirm the conclusions reached in our June 1, 1983 decision.

Background

The Multinational Force and Observers was established in 1981 to monitor compliance with agreements contained in the 1979 peace treaty between Egypt and Israel. The United States contribution to the Multinational Force includes an infantry battalion and a logistical support unit which hold positions at several observation outposts and camps in the Sinai Peninsula. Meals and quarters are furnished by the Government. Units are assigned to the Multinational Force for 6 months at a time and are then returned to their permanent stations in the United States with other units taking their places. These rotational deployments of American personnel began in February 1982.

Some service members without dependents prior to assignment to a 6-month deployment with the Multinational Force were authorized to live off post in private lodgings near their permanent duty stations in the United States, and on that basis they were being paid a basic allowance for quarters at the "without dependent" rate. Those members are eligible to have their household goods stored at Government expense in the United States during the 6-month periods when they are assigned to duty in the Sinai Peninsula.

^{1/} This action is in response to a request for a decision submitted by Lieutenant Colonel B. E. Braswell, FC, Finance and Accounting Officer, Fort Bragg, North Carolina. The request was forwarded here by the Office of the Comptroller of the Army after being assigned control number DO-A-1434 by the Department of Defense Military Pay and Allowance Committee.

B-209342

The statutes and regulations governing payment of the basic allowance for quarters to military personnel contain a prohibition requiring that service members without dependents not be credited with the allowance while they are on field duty for periods of 3 months or more, unless their commanding officer certifies that they were necessarily required to procure quarters at their own expense at the field duty site.^{2/} In our decision of June 1, 1983, we concluded that this prohibition operated to terminate the entitlement of Captain John A. Davis to a basic allowance for quarters at the "without dependent" rate in February 1983 when he was assigned from Fort Campbell, Kentucky, for 6 months of duty with the Multinational Force in the Sinai Peninsula.

In requesting reconsideration of the conclusions reached in that decision, the Finance and Accounting Officer of Fort Bragg, North Carolina, indicates that a number of Army members stationed at Fort Bragg have been adversely affected by it. He indicates that prior to the issuance of our decision in Captain Davis' case on June 1, 1983, similarly situated personnel stationed at Fort Bragg were credited with a basic allowance for quarters at the "without dependent" rate while they were serving with the Multinational Force. Some of them used the allowances to maintain and pay for vacant living accommodations near Fort Bragg during the 6-month periods when they were assigned to duty in the Sinai Peninsula. The Finance and Accounting Officer relates that those individuals believe they will suffer undue financial hardship if they are now required to refund the allowances as the result of our June 1983 decision in the Davis case.

The Finance and Accounting Officer notes that our June 1983 decision was predicated on a determination that service with the Multinational Force in the Sinai

^{2/} 37 U.S.C. § 403(c); Rule 7, Table 3-2-3, Department of Defense Military Pay and Allowances Entitlements Manual.

Peninsula constituted "field duty" within the meaning of that term as it appears in the statutes and regulations relating to the basic allowance for quarters, and he questions the correctness of that determination. Essentially, he suggests that the purpose of the Sinai duty, involving the implementation of a peace treaty, is not of a nature commonly associated with the term "field duty." In addition, regarding the conditions of the Sinai duty, he states that the personnel generally perform 8-hour shifts of duty 5 days per week and that ammunition for their weapons is restricted, and he suggests that these circumstances are unlike those involved in the combat operations and maneuvers often associated with the term "field duty." He also points out that personnel at the observation outposts and camps in the Sinai are quartered in masonry structures and trailers, and they are generally furnished with at least one hot meal per day. He suggests that these living conditions are significantly different from those involving the use of tents, dugouts, lean-tos, and C rations which are frequently associated with the term "field duty."

If these arguments do not persuade us to change our June 1983 decision, then the Finance and Accounting Officer asks that we consider making it prospectively effective only from and after August 1983. He suggests that this be done to avoid undue hardship on those who maintained vacant living quarters in the United States while they were on duty in the Sinai on the assumption that they could continue to receive the allowance payments, including those personnel whose 6-month tour of duty in the Sinai began in February and ended in August 1983.

Field Duty Determination

The President, in the exercise of his authority to prescribe regulations under the statute governing payment of the basic allowance for quarters, has defined the term "field duty" as it appears in the statute as:

"* * * service by a member under orders with troops operating against an enemy, actual or potential, or service with troops on maneuvers, war games,

field exercises, or similar types of operations."^{3/}

This is derived from the definition of field duty contained in a decision of ours rendered more than 60 years ago.^{4/} We do not find that the term "field duty" has been limited by this definition or otherwise to mean only actual or simulated combat duty. The term has consistently been held to include operations conducted for purposes of peacekeeping or policing as well.^{5/} Moreover, while sleeping and subsistence conditions are factors for consideration in making field duty determinations, those conditions in themselves are not controlling.^{6/} It is settled, for example, that personnel serving with occupation forces or on training maneuvers may properly be regarded as being in a field duty status even though they may be billeted in permanent structures, and even though hot meals may be available to them on a regular basis.^{7/}

^{3/} Executive Order No. 11157, June 22, 1964, as amended (37 U.S.C. § 301, note).

^{4/} See 8 Comp. Gen. 302, 305 (1928); and 3 Comp. Gen. 272 (1923).

^{5/} See 8 Comp. Gen. 302, cited above (footnote 4). See also 26 Comp. Gen. 439, 441 (1946); and 7 Comp. Gen. 205 (1927).

^{6/} Captain Steven B. Sonnenberg, USMC, 63 Comp. Gen. 37, 41 (1983); 50 Comp. Gen. 773, 775-776 (1971).

^{7/} See Stewart v. United States, 70 Ct. Cl. 540 (1930) (use of hotel on occupation duty); and Captain Steven B. Sonnenberg, USMC, 63 Comp. Gen. at 41 (use of barracks and mess halls on maneuvers). Compare also 22 Comp. Gen. 420, 425 (1942) (all service with troops during World War II was field duty, whether within or outside the United States).

The responsibility for making initial determinations concerning whether any particular military duty constitutes "field duty" rests primarily with the military commanders most closely familiar with the facts and circumstances.^{8/} When we are presented with a matter involving the proper expenditure of public funds in which such a determination is required for a resolution of the issues, however, and the facts indicate strongly that field duty is involved even though it has not previously been so designated by the military commanders, we will be guided by the facts.^{9/}

On the basis of the facts presented here, we have no alternative but to affirm our previous conclusion that United States personnel serving with the Multinational Force in the Sinai Peninsula have been on field duty within any acceptable meaning or definition of that term. The facts clearly reflect that the character of the service is one of a peacekeeping or policing mission in the field, and that the circumstances under which it has been performed are the same as those frequently encountered by personnel serving with occupation forces, or serving on training maneuvers and similar types of operations properly classified as field duty.

Effective Date of Determination

Our June 1, 1983 decision constituted our original construction of the statute governing payment of the basic allowance for quarters as applied to Captain Davis and other members without dependents similarly situated while on duty with the Multinational Force. It did not involve the modification or the overruling of a prior decision upon which any reliance could have been placed by the accounting officers of the Government. Hence, we have no proper basis to limit the effect of that

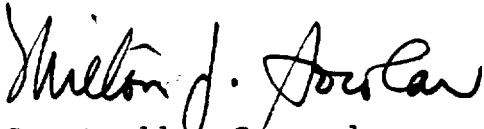
^{8/} Captain Steven B. Sonnenberg, USMC, 63 Comp. Gen. at 41.

^{9/} See 22 Comp. Gen. at 423; 8 Comp. Gen. at 307; 3 Comp. Gen. at 273.

decision so that it will apply prospectively from and after June or August 1983 only.^{10/}

Those members like Captain Davis who received erroneous payments of the basic allowance for quarters at the "without dependent" rate while on duty with the Multinational Force from and after February 1982 are therefore liable to make restitution in the full amount. They are also eligible to apply for a waiver of their debts on an individual basis, however, under the statute and regulations authorizing the waiver of overpayments of pay and allowances when there is no indication of fault on the member's part and it is otherwise shown that collection action would be "against equity and good conscience and not in the best interests of the United States."^{11/}

The questions presented are answered accordingly.

for 
Comptroller General
of the United States

^{10/} See, e.g., -39 Comp. Gen. 455, 456 (1959); and Sergeant Franklin L. Secrest, USMC, B-210827, September 21, 1983.

^{11/} 10 U.S.C. § 2774 (1982); 4 C.F.R. §§ 91.1-91.5 (1984). See Veterinary and Optometry Officers, 56 Comp. Gen. 943, 951-953 (1977).