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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Staff Sergeant Thomas R. Jayne - Receipt of Retroactive Basic Allowance for Quarters at With-Dependent Rate

File: B-230988

Date: February 3, 1989

DIGEST

Member of the armed services who was entitled to claim basic allowance for quarters at the with-dependent rate at the time of his divorce from another member, since he was ordered to pay child support, did not receive such payment because he did not formally claim the with-dependent rate. Member, who now has been advised of his entitlement, should be paid at the with-dependent rate retroactive to the divorce, since the record shows that he attempted to initiate a claim at that time but did not pursue it because of erroneous advice from his base finance and accounting officer.

DECISION

This responds to a request for an advance decision on whether Air Force Staff Sergeant (SSgt.) Thomas R. Jayne is entitled to retroactive basic allowance for quarters (BAQ) at the with-dependent rate for a period during which he made child support payments to his ex-wife, who also is an Air Force member.^{1/} We conclude that SSgt. Jayne is entitled to the retroactive with-dependent rate.

Under the provision of 37 U.S.C. § 403 (1982), active duty members of the armed forces are entitled to BAQ if they are not provided with adequate government quarters. A member entitled to BAQ receives it at the without-dependent rate unless the member has dependents he is obligated to support, in which case he can receive a higher rate, called the with-dependent rate.

^{1/}The request was submitted by the Chief, Accounting and Finance Branch, Headquarters, 56th Tactical Training Wing, MacDill Air Force Base, Florida.

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Paragraph 30236.1 of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) contains several provisions describing the conditions under which members are entitled to the with-dependent rate. Subparagraph a provides that when two military members divorce, the member paying child support is "entitled to claim" the child or children for BAQ purposes. Subparagraph d provides that the custodial member can claim children for BAQ purposes only when the support-paying member "declines" to claim them.

SSgt. Jayne was ordered to pay \$250 monthly in child support to his ex-wife pursuant to a court order of December 10, 1986. According to SSgt. Jayne, at or about the time of the divorce he asked first the finance officer at his temporary duty station and then the finance officer at his permanent duty station, MacDill Air Force Base (AFB), whether he would be able to receive BAQ at the with-dependent rate, given the responsibility for child support. Both finance officers told SSgt. Jayne that he would not be entitled to the with-dependent rate. Sometime after his discussion with the MacDill AFB finance officer, SSgt. Jayne's ex-wife, the custodial parent, began receiving BAQ at the with-dependent rate.

It was not until August 1987, during a scheduled BAQ verification meeting, that SSgt. Jayne discovered he did in fact qualify for BAQ at the with-dependent rate. Following this discovery, the Chief of the MacDill AFB Accounting and Finance Branch authorized an increase in SSgt. Jayne's BAQ to include the with-dependent rate, effective September 16, 1987. The custodial parent's BAQ was reduced, effective the same day.

SSgt. Jayne has since sought to collect BAQ at the with-dependent rate for the period beginning December 10, 1986, and ending September 15, 1987, asserting that the misinformation he received from the finance officers prevented him from receiving the with-dependent rate sooner. Thus, the question is whether SSgt. Jayne's failure to claim the with-dependent rate on December 10, 1986, effectively constituted a declination to claim the child under subparagraph d of DODPM paragraph 30236.1.

It is our view that by his actions SSgt. Jayne did not decline to claim the child as his dependent for the purposes of receiving the with-dependent rate. SSgt. Jayne's consultation with the finance officers, and his reliance on the advice he received in deciding not to pursue the matter, were the reasons he did not claim the child for BAQ purposes. In these circumstances, the fact that he did not claim the child as his dependent for the purpose of an

increased allowance, should not be construed as a declination. Accordingly, SSgt. Jayne is entitled to receive BAQ at the with-dependent rate for the period beginning December 10, 1986.

Milton J. Jowles

Acting Comptroller General
of the United States