



Comptroller General
of the United States

Washington, D.C. 20548

Smullin 147950

Decision

Matter of: Lieutenant Steven M. Fitten, USCGR--Claim for Variable Housing Allowance

File: B-244912

Date: August 21, 1992

DIGEST

A member occupied Bachelor Officer Quarters and paid a service charge for maintenance of the quarters. He was entitled to Basic Allowance for Quarters (BAQ) only due to payment of child support. A member receiving BAQ solely for payment of child support is not entitled to a Variable Housing Allowance.

DECISION

The issue in this case concerns whether Lieutenant Steven M. Fitten, USCGR, is entitled to Variable Housing Allowance (VHA) while on active duty and residing in Bachelor Officer Quarters (BOQ) in Long Beach Naval Station, California.¹ For the following reasons he is not entitled to VHA.

Lieutenant Fitten resided in the BOQ in 1990. During this period he received Basic Allowance for Quarters (BAQ) at the with-dependent rate because he was paying child support in appropriate amounts. While residing in the BOQ he was billed a service charge of \$8 per day. He contends that this charge was actually a rental charge and that as a result he is entitled to BAQ not only because of child support but also because he was renting quarters and therefore is entitled to VHA for the period he resided in the BOQ. He points out that the BOQ was built and is operated by a nonappropriated fund activity and thus charges assessed to him were actually rental payments. He also notes that quarters in the BOQ should be considered inadequate, therefore providing another reason for payment of BAQ.

Members who are assigned to high cost areas in the United States may be entitled to VHA. Entitlement to VHA is dependent upon entitlement to BAQ. See 37 U.S.C. § 403a. However, a member who is entitled to BAQ only because he is

¹The case was submitted to us by J.R. Dopler, Certifying Officer, USCG.

making child support payments is not entitled to VHA while assigned to government quarters. See 37 U.S.C. § 403a(b) (2) (A); Volume 1, Joint Federal Travel Regulations (JFTR), paragraph 8011.

Section 403(b) of title 37 of the United States Code provides that a service member who is assigned to quarters appropriate for his rank and adequate for himself and his dependents, if with dependents, is not entitled to BAQ except as otherwise provided by law. The definition of government quarters in the Glossary of Terms of the Department of Defense Pay and Allowances Entitlements Manual includes "any sleeping quarters . . . owned or leased by the United States Government." The definition provides that the payment of service charges has no effect on whether the facilities are considered government quarters.

In our decision Department of Defense Military pay and Allowance Committee Action No. 529, 56 Comp. Gen. 850 (1977), we discussed the effect of occupancy of quarters on BAQ. While the decision was primarily concerned with temporary lodging facilities, we also dealt with government quarters in general. We stated the principle that a member who occupies public quarters is not entitled to BAQ. Payment of a service charge for such items as linens and housekeeping services does not constitute rental of quarters since the service charge is not based on the reasonable value of the quarters occupied. 56 Comp. Gen. at 853.

Lieutenant Fitten argues that he was entitled to VHA because he occupied inadequate quarters. We have no information regarding the adequacy of his quarters other than a stamped notation on a form completed when he moved in that he voluntarily accepted inadequate quarters. Voluntary acceptance of inadequate quarters does not provide a basis for payment of BAQ under 10 U.S.C. § 403(b). Furthermore, members residing in inadequate government quarters are not entitled to VHA. See 1 JFTR para. 8010.

Lieutenant Fitten asserts that he should be treated as a member occupying rental quarters as described in 37 U.S.C. § 403(e), which provides that a member who occupies on a rental basis quarters other than public quarters constructed or designated for occupancy without charge by such a member may not be deprived of any allowance to which he would otherwise be entitled while he pays rent for such quarters. He maintains that the BOQ was built and operated with nonappropriated funds. In support of his claim, he draws our attention to OPNAVINST 11103.3, Unaccompanied Personnel Housing Management Manual, June 17, 1982, which was issued by the Chief of Naval Operations.

We have been informally advised by personnel of the Navy office which administers that instruction that BOQs such as that at Long Beach are public quarters constructed with appropriated funds and designated for occupancy without charge by military officers. The BOQs are operated by nonappropriated fund instrumentalities only because of some amenities which are provided. The amounts charged to members are routine service charges which do not reflect the value of the quarters. It was also indicated that \$8 per day is a standard amount charged by many BOQs as a service charge.

In 39 Comp. Gen. 369 (1959), we dealt with quarters which were acquired with appropriated funds but managed by a nonappropriated fund instrumentality. While the quarters were not standard government quarters, we followed the principles set forth above. While the fee paid by the member in that situation was called rent, we said that it was a service charge. Therefore, the member was not entitled to BAQ.

Lieutenant Fitten's situation is governed by 37 U.S.C. § 403(b). He occupied government quarters and paid a service charge. He was entitled to BAQ only because he paid child support. Therefore, he was not entitled to VHA while he resided in the BOQ.

Accordingly, Lieutenant Fitten's claim is denied.

for *Seymour Ebers*
James F. Hinchman
General Counsel