



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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18992

OFFICE OF GENERAL COUNSEL

In reply refer to
B-201672

July 27, 1981

Captain DeLawrence W. Taylor
9347 Blue Oak Drive
Orangevale, California 95662

Dear Captain Taylor:

This letter is in response to yours of December 11, 1980, in which you request a Comptroller General decision regarding the propriety of the provisions of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) which set forth the conditions under which a member assigned to Government quarters may claim basic allowance for quarters (BAQ) on behalf of his illegitimate child who is in the custody of another person.

In your letter, you state that you have been judicially decreed to be the father of an illegitimate child and ordered by the court to pay child support. While living in non-Government quarters during your assignment to Mather Air Force Base, California, you received BAQ at the "with dependents" rate based on your illegitimate child being your dependent. However, during your assignment to Osan Air Base, Korea, where you resided in single-type Government quarters, you were denied BAQ based on your child because your monthly support payments were not equal to the BAQ at the "with dependents" rate, as required by DODPM paragraph 30238b.

It is your contention that this provision discriminates against military members who have illegitimate children because it requires that when such members occupy single-type Government quarters they must provide the child monthly support in an amount at least equal to the applicable BAQ at the "with dependents" rate, whereas member-parents of legitimate children are not required to provide child support in the amount of the entire BAQ, even though the member may be separated or divorced.

You further contend that, inasmuch as a portion of your child support payments is made pursuant to an order of the court, you qualify for BAQ at the "with dependents" rate under DODPM paragraph 30236e (Change 57, October 26, 1979), which provides in pertinent part:

[Claim for BAQ on Behalf of Illegitimate Child]
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"e. Legal Separation Agreement or Court Order Stating Amount of Support. If there is a court order or legal separation agreement stating the amount of support, the member must contribute to the support of the dependent the amount specified therein, or the full amount of BAQ, whichever is less, but in no case may the support payments be less than the difference between the applicable BAQ at the 'with' and 'without' dependents rate. * * *"

You state that members who are parents of illegitimate children should receive at least the same treatment as divorced parents of legitimate children, in view of recent Supreme Court rulings regarding discrimination based on illegitimacy, followed by congressional authorization of the inclusion of a member's illegitimate minor child in the definition of a military dependent.

You have requested (1) a Comptroller General decision holding the DODPM provision relating to BAQ based on illegitimate children invalid "because of its discriminatory purpose and effect," (2) an amendment of the regulation "to reflect more contemporary decisions," retroactive with respect to your case to the date you were denied BAQ while assigned to Osan, and (3) authorization and payment of BAQ at the "with dependents" rate from the date of your application therefor while at Osan through the date of your inquiry to this Office.

Although a decision of the Comptroller General is not being rendered in response to your inquiry, the following information may be helpful to you.

Payment of BAQ based on a member's illegitimate child was authorized when section 103 of Pub. L. No. 93-64, July 9, 1973, 87 Stat. 148, amended 37 U.S.C. § 401 to include in the definition of military dependents a member's illegitimate child. An indication of the congressional intent in amending the statute is contained in the Congressional Record of June 28, 1973:

"Mr. STRATTON. * * * I want the record of legislative intent to be very clear that

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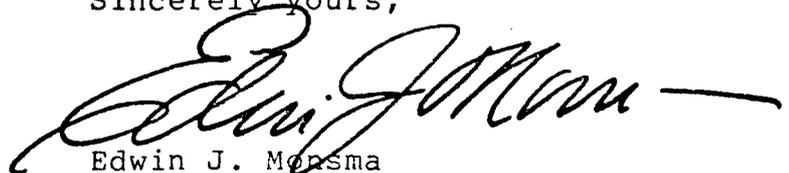
in accepting this amendment the House does so on the understanding that it will be diligently monitored by the Department of Defense to require a showing that additional allowances paid as a result of this section are being used to support the child and that the phrase 'in fact dependent on the member' will normally be interpreted to mean dependent for over one-half of his support on the member. * * * 93 Cong. Rec. 22099 (1973)

Furthermore, during its consideration of the allowance of BAQ based on illegitimate children as dependents, the Conference Committee agreed to accept the provision, provided that "it would be implemented by the Department of Defense in such a manner as to prevent abuse." House Conference Report No. 93-361, 93d Cong. 1st Sess. 6 (1973). It appears, therefore, that the DODPM provisions to which you object were written to carry out the requirements of the law (that illegitimate children be "in fact" dependent on the member) and the congressional intent in that regard.

It also appears that the intent of those regulations was not to discriminate against illegitimate children; rather, it was to prevent the abuse Congress was concerned about by requiring the member to actually provide significant support for them.

Concerning your claim of eligibility for BAQ on behalf of your child during the period in question on the basis of DODPM paragraph 30236e, that entire paragraph pertains to entitlement to BAQ on behalf of a spouse or dependent former spouse and legitimate children. Accordingly, it does not refer to a court order for the support of an illegitimate child.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel