

Security

19427

DECISION



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

FILE: B-201313

DATE: September 18, 1981

MATTER OF: Lieutenant Colonel Joseph E. Underwood, USMC

DIGEST:

1. A service member may, if necessary, be involuntarily assigned to Government quarters classified as inadequate or substandard when reporting to an overseas duty station for a tour of duty he is to perform unaccompanied by his dependents. In such circumstances, he may not secure private housing near his duty station, decline the involuntary assignment to "inadequate" quarters, and thereby gain entitlement to overseas housing and cost-of-living allowances, which are payable under prescribed conditions to service members overseas when they are not furnished with Government quarters. 37 U.S.C. 405.
2. If a service member declines an assignment to Government quarters or elects to move out of his assigned quarters, the responsible installation commander may properly reassign the quarters to another person without thereby incurring any liability on behalf of the United States for payment of allowances to the member on the basis that Government quarters are then unavailable for assignment to him, since commanders of military installations have no obligation to maintain unoccupied quarters for service members who have voluntarily elected to reside elsewhere.
3. A service member on an unaccompanied overseas tour of duty may not be paid military overseas housing and cost-of-living allowances on account of dependents who move to the overseas area, because in those circumstances the dependents' overseas residence is purely a matter of personal choice. 37 U.S.C. 405; 53 Comp. Gen. 339 (1973).
4. A Marine Corps officer serving an unaccompanied tour of duty in Okinawa chose to

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bring his family to Okinawa at personal expense, and he moved off base into private family housing. His Government quarters were reassigned to another, but he was offered substitute, substandard quarters for potential emergency use. He is not entitled to a certificate of nonavailability of quarters nor to payment of overseas housing and cost-of-living allowances on his own account based on a theory that he was thereby personally forced to reside and take his meals off base since his move was a matter of personal choice.

This action is in response to a request from a disbursing officer of the Marine Corps Finance Center for an advance decision concerning the propriety of crediting Lieutenant Colonel Joseph E. Underwood, USMC, 022-28-8855, with military overseas housing and cost-of-living allowances for periods in 1978 and 1979 after he moved out of his room at the bachelor officers quarters at Marine Corps Air Station, Futenma, Okinawa, Japan, to reside off base in private living quarters with his family. The disbursing officer's request was given Control Number 80-31 and forwarded to our Office by the Department of Defense, Per Diem, Travel and Transportation Allowance Committee. In light of the facts presented, and the applicable provisions of law and regulation, we have concluded that Colonel Underwood is not entitled to the overseas housing and cost-of-living allowances in question.

Certain Fleet Marine Force units in the Western Pacific are kept in a constant state of combat readiness, and it has been the practice of the Marine Corps to assign personnel to those units on unaccompanied, "dependents-restricted," tours of duty lasting 12 months. Marine Corps directives define a "dependents-restricted duty station" as an overseas location where dependents of marines are not authorized to be present, but the directives recognize that the families of marines on "dependents-restricted" assignments may be able to visit those overseas locations if the visits are otherwise permitted by the United States Government as well as by the concerned foreign governments. See generally, Marine Corps Order 1300.8L, January 22, 1979. Families joining marines

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on "dependents-restricted" assignments, through the use of tourist visas or other means, must make arrangements to do so privately and at personal expense, without assistance from the Marine Corps. They have the status of being "individual sponsored" rather than "command sponsored" dependents under the terms of the administrative directives.

In June 1978 Colonel Underwood reported to the Air Station, Futenma, Okinawa, for a 12-month "dependents-restricted" tour of duty. He was assigned a private room in the installation's bachelor officers quarters which was, according to guidelines contained in applicable housing regulations, "adequate" for an unaccompanied officer of his rank. An officers mess was also available at the installation for his meals.

Apparently, Futenma remained a "dependents-restricted duty station" throughout 1978 and 1979, and Colonel Underwood was not eligible to have his wife and children join him as "command sponsored" dependents. He chose, however, to bring them to Okinawa at personal expense as his "individual sponsored" dependents. They arrived on about the first of October 1978, and he then moved into private off-base living quarters with them.

By letter dated October 17, 1978, the base commander of the Air Station advised Colonel Underwood that since he was residing off base, his private room at the bachelor officers quarters was being reassigned to someone else who had a "bona-fide" need for it. The base commander further advised him that "minimal" accommodations in a four-man room would be kept available for his possible use, adding, "The minimal support is a contingency should something occur requiring (your) presence on base for a short period." It is undisputed that under applicable housing regulations, the space in the four-man room then assigned to him for his potential on-base use did not constitute "adequate" Government quarters for an unaccompanied officer of his rank.

Colonel Underwood responded by advising the base commander that he had vacated his private room in the bachelor officers quarters, but that he declined to accept the space in the four-man room assigned to him because he believed he could not properly be required to accept an assignment to

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"inadequate" Government quarters. He simultaneously applied to the base commander for a certificate of non-availability of quarters and messing facilities in order to obtain eligibility for overseas housing and cost-of-living allowances. The base commander denied his application for that certificate.

Subsequently, Colonel Underwood filed a claim for overseas housing and cost-of-living allowances for the period from November 1, 1978 (the date of his reassignment to inadequate on-base quarters), through June 11, 1979 (the date his 12-month tour of duty at Futenma ended). In substance, he expressed the belief that since adequate on-base Government quarters were not assigned to him during that time, he had been forced to reside and take most of his meals off base in non-Government facilities. He suggested that he should, therefore, have been entitled to the housing and cost-of-living allowances payable to service members stationed overseas who are not furnished with Government quarters and dining facilities.

In requesting an advance decision in the matter, the disbursing officer essentially questions whether, on the basis of his assignment to inadequate Government quarters, Colonel Underwood may be paid the overseas housing and cost-of-living allowances he has claimed.

Provisions of statutory law governing the payment of military allowances are contained in chapter 7 of title 37, United States Code (37 U.S.C. 401-429). The overseas housing and cost-of-living allowances at issue here are payable under 37 U.S.C. 405, which states in pertinent part that:

"* * * the Secretaries concerned may authorize the payment of a per diem, considering all elements of the cost of living to members of the uniformed services under their jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses, to such a member who is on duty outside of the United States or in Hawaii or Alaska * * *."

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No reference is made in 37 U.S.C. 405 to either "adequate" or "inadequate" Government quarters.

Regulations implementing 37 U.S.C. 405 are contained in chapter 4 of Volume 1, Joint Travel Regulations (1 JTR). Paragraph M4300-2, 1 JTR, provides that a service member on an unaccompanied tour of duty, including one "who has individual sponsored dependents residing in the vicinity of his permanent duty station," is considered to be a "member without dependents" for purposes of establishing eligibility for the per diem authorized by 37 U.S.C. 405. This is consistent with our decisions holding that a service member on an unaccompanied assignment overseas may not be paid allowances under 37 U.S.C. 405 on account of dependents residing with the member overseas, since in those circumstances the dependents' overseas residence is purely a matter of personal choice. See 53 Comp. Gen. 339 (1973) and 49 Comp. Gen. 548 (1970).

Paragraph M4301, 1 JTR, provides for payment of housing and cost-of-living allowances at different rates and under different conditions for service members classified as being either "with" or "without" dependents. Subparagraph M4301-3f(1) generally precludes payment of a cost-of-living allowance to a "member without dependents" if Government dining facilities are available to him. Moreover, subparagraph M4301-3f(3) directs that the housing allowance is payable to a "member without dependents" only "for any day upon which Government quarters are not assigned to him at his permanent duty station," and there is no qualifying language in the regulation requiring that the assigned Government quarters be "adequate."

It is our view that a service member may acquire no entitlement to a housing allowance under the above-cited provisions of law and regulation on the basis of an involuntary assignment to Government quarters classified as "inadequate" since, as noted, 37 U.S.C. 405 makes no provision for any payment based on an assignment to "inadequate" Government quarters, and subparagraph M4301-3f(3), 1 JTR, specifically precludes payment of a housing allowance if the member is assigned Government quarters, regardless of their classification as adequate or inadequate. Furthermore, our Office has long held that the military and

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naval departments are under no requirement to close housing units classified as inadequate or substandard, and that a finding of inadequacy of quarters does not in and of itself establish their nonavailability. See B-196628, December 19, 1979, and decisions there cited. Hence, we conclude that a service member on an unaccompanied overseas tour of duty may not secure private off-base housing, decline an involuntary assignment to "inadequate" Government quarters, and thereby gain entitlement to overseas housing and cost-of-living allowances.

This conclusion is consistent with the regulatory rule barring an unaccompanied service member involuntarily assigned to "inadequate" Government quarters overseas from entitlement to the Family Separation Allowance, Type I, which is payable under 37 U.S.C. 427(a) to reimburse a member for extra housing expenses when he must maintain one home for his dependents and another for himself. See paragraph 30303a(3), Department of Defense Military Pay and Allowances Entitlements Manual.

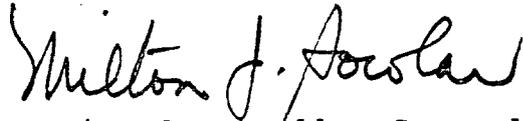
When Colonel Underwood was joined by his wife and children in Okinawa in October 1978, he established a private off-base family residence with them near the Air Station at Futenma. Because the members of his family were his "individual sponsored" dependents who had been brought to the overseas area as a matter of personal choice, he remained classified as a "member without dependents" under the provisions of paragraph M4300-2, 1 JTR, and was ineligible to draw overseas housing and cost-of-living allowances on their account.

Furthermore, at the time Colonel Underwood moved into the private off-base residence with his family near Futenma, adequate on-base Government quarters remained assigned to him for his personal use, and Government dining facilities remained available to him at the base if he elected to occupy those quarters. Consequently, under the provisions of paragraph M4301, 1 JTR, he remained ineligible to draw overseas housing and cost-of-living allowances on his own account as a "member without dependents." Moreover, it is our view that at that point the base commander could properly have assigned his on-base Government quarters to another person without giving him any substitute quarters at all and without incurring any liability on behalf of the Government for payment of housing

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and cost-of-living allowances to him, since commanders of military installations have no obligation to maintain unoccupied quarters for service members who have voluntarily elected to reside elsewhere. See 57 Comp. Gen. 194, 197 (1977), and McVane v. United States, 118 Ct. Cl. 500 (1951), concerning the entitlement of members to the Basic Allowance for Quarter after they voluntarily vacate adequate Government quarters. Thus, while the base commander did assign Colonel Underwood substitute "inadequate" quarters for his potential on-base use in the interests of military preparedness, such action does not support a conclusion that Colonel Underwood was "forced" by the Marine Corps to move off base and was, therefore, entitled to overseas housing and cost-of-living allowances.

Accordingly, Colonel Underwood may not be credited with the housing and cost-of-living allowances in question.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States