



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
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Matter of: Claim for Basic Allowance for Quarters (BAQ) -

File: Department of Defense General Counsel Opinion:
DoD/GC #97-7

Date: September 25, 1997

REDACTED COPY

DECISION

An official of the Defense Finance and Accounting Service has requested an advance decision under 31 U.S.C. § 3529 on the claim of [REDACTED] for Basic Allowance for Quarters (BAQ) at the with-dependent rate. The request was submitted to the General Accounting Office (GAO) on May 31, 1995; however, as a result of the transfer of functions from GAO to the executive branch mandated by Public Law No. 104-316, and in accordance with subsequent delegations, GAO transferred the matter to this office for resolution. For the reasons set forth below, we conclude that the claim of [REDACTED] must be denied.

FACTS

[REDACTED] was divorced in May 1989, at which time he became obligated to pay child support to his former spouse on behalf of his dependent child. After his divorce, he lived in single Government quarters and received BAQ at the with-dependent rate by reason of the payment of child support. Incident to a permanent change of station, he vacated his quarters on December 2, 1991, to begin travel to his new duty station. Because he had moved out of Government quarters on December 2, 1991, and therefore was not receiving BAQ at the with-dependent rate solely by reason of payment of child support on December 4, 1991, he lost his entitlement to BAQ at the with-dependent rate.

[REDACTED] moved into Government quarters when he reached his new duty station. It is our understanding that he remarried in 1995 and is therefore claiming full BAQ from the date he lost the entitlement until the time of his remarriage. He argues that if he had known that being in a travel status on December 4, 1991, would cause his BAQ entitlement to decrease, he would have changed the date of his move out of Government quarters.



ANALYSIS

Prior to the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law No. 102-190, December 5, 1991, a member who lived in Government quarters for single members and paid child support was entitled to BAQ at the with-dependent rate. Under section 602(a) of the Act, a member in this situation now receives only the difference between BAQ at the with-dependent and without-dependent rates. However, the Act included a "grandfather" clause, section 602(b), under which a member who was living in Government quarters and receiving BAQ at the with-dependent rate solely by reason of payment of child support on December 4, 1991, could continue to receive BAQ at the with-dependent rate until the member becomes entitled to BAQ at the with-dependent rate for another reason.

This Office must apply the law as it is written.

was not assigned to or living in Government quarters and receiving BAQ at the with-dependent rate solely by reason of his payment of child support on December 4, 1991, the date set forth in section 602(b). Consequently, there is no entitlement to BAQ at the with-dependent rate under the "grandfather" clause in his situation. Further, the fact that was not advised as to the effect that the timing of his permanent change of station move would have on his entitlement to BAQ does not provide a basis for allowing his claim, since the Government is not liable for the erroneous or negligent acts of its officers, agents, or employees. See Comp. Gen. B-191813, July 6, 1978.

Finally, we note that has the option of applying to the Board for Correction of Navel Records for a correction of his records to show that on December 4, 1991, he was residing in Government quarters and collecting BAQ at the with-dependent rate solely due to payment of child support, as required by section 602(b).

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