Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lieutenant Keith A. Manson, USNR—Claim for Variable Housing Allowance

File: B-261838

Date: February 14, 1996

DIGEST

A Navy member was sentenced to confinement by a general court-martial. His dependents remained at his prior duty station while he was in confinement. He was not entitled to variable housing allowance (VHA) at the place of confinement because he was assigned there for confinement, not for duty as required by statute. He was not entitled to VHA based on the location of his dependents because he was not separated from them by reason of military necessity.

DECISION

This is in response to the appeal of Claims Group settlement Z-2869387, May 8, 1995, which denied the claim of Lieutenant Keith A. Manson, USNR, for variable housing allowance (VHA) during his confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas. We affirm the denial of Lieutenant Manson's claim.

The record indicates that Lieutenant Manson was convicted in a general court-martial and sentenced to confinement. He then was assigned to the Disciplinary Barracks and began serving his sentence in June 1993. While Lieutenant Manson was in confinement, his family remained in Georgia, where he had been stationed. While in confinement, he received basic allowance for quarters (BAQ) for his dependents, but the Navy denied his claim for VHA. He claims VHA for 10 months. Lieutenant Manson questions our decision Private Vaughn Desha, USMC, B-214731, Sept. 4, 1984, in which we denied VHA to a member in confinement. In this regard he cites our decision Lance Corporal J.F. Murphy, USMC, B-223425, Nov. 3, 1986, which he considers inconsistent with the above decision. He also calls our attention to SECNAV Instruction 7220.82, July 31, 1987, which he believes supports his claim for VHA.

Under 37 U.S.C. § 403a, a member entitled to BAQ is also entitled to VHA when he is assigned to duty in an area of the United States which has high housing costs with respect to that member. Since January 1, 1985, a member with dependents

may be paid VHA based on the residence of the dependents if he is assigned to a duty station in the United States and the location or circumstances of the duty station prevent the member and his dependents from residing together. Under SECNAVINST 7220.82, supra, payment is to be allowed when "military necessity" causes the member to reside separately.

Our decision B-214731, supra, dealt with a member whose duty station was Camp Lejeune, North Carolina, until he was transferred to Camp Pendleton, California, for confinement. We held that a member assigned to confinement not serving in a duty status is not entitled to VHA, since the statute requires that a member be "assigned to duty" in a high-cost area.

In B-223425, supra, we dealt with a member who was stationed at Camp Lejeune, but chose to take leave in Chicago for 7 days while awaiting discharge. While he was not entitled to VHA at Camp Lejeune, he claimed VHA for the 7 days he spent on leave in Chicago. We said that Camp Lejeune remained his duty station because he chose to go to Chicago on leave while awaiting discharge rather than being "assigned to duty" there by military authorities. Therefore, he was not entitled to VHA while he was in Chicago.

We do not believe that this case supports Lieutenant Manson's claim. Clearly, Lieutenant Manson was not entitled to VHA at Fort Leavenworth for the period in question because he was assigned there for confinement, not for duty. B-214731, supra. He was also not entitled to VHA based on the location of his dependents in Georgia because he was not residing separately by reason of military necessity within the meaning of the statute. As Lieutenant Manson points out, he was not allowed to reside with his dependents and could not commute to their location on a regular basis. His assignment to Fort Leavenworth for confinement was the result of his conviction and not a matter of military necessity. That is, it was not in furtherance of the Navy's military mission, as assignment to duty would be. See SECNAVINST 7220.82, supra.

Accordingly, Lieutenant Manson's claim for VHA is denied.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel