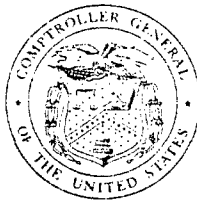


DECISION



12346
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196628

DATE: December 19, 1979

MATTER OF: Lieutenant Jerel D. Bernardy, USNR

Request of Military Member For Reimbursement of Quarters Obtained in Private Sector

DIGEST:

A Navy officer, without dependents, not entitled to basic allowance for quarters obtained quarters in the private sector when quarters aboard the ship to which he was assigned became uninhabitable because of repairs. Government quarters at a local Navy base were available although they had been declared "substandard - incapable of being made adequate." The officer is not entitled to reimbursement for obtaining quarters under 10 U.S.C. 7572(b) (1976) since there was no certification that Government quarters were not available.

The issue presented in this appeal from a settlement of our Claims Division is whether a Navy officer, without dependents, not entitled to basic allowance for quarters (BAQ), is entitled to reimbursement for obtaining quarters under 10 U.S.C. 7572 (1976) where quarters aboard a Navy vessel to which he is assigned become uninhabitable due to repairs or overhaul. Since no certification of nonavailability of Government quarters was issued to him for the period in question and bachelor officer quarters (BOQ) at the naval base were available for him, although they had been declared "substandard - incapable of being made adequate," he is not entitled to reimbursement.

Lieutenant Jerel D. Bernardy, USNR, was assigned to a United States Navy submarine, the U.S.S. Jack (SSN-605), which was undergoing repairs or overhaul at the Portsmouth Naval Shipyard, Portsmouth, New Hampshire. Lieutenant Bernardy was without dependents and was not entitled to BAQ under 37 U.S.C. 403 (1976). The submarine apparently became uninhabitable due to the repairs or overhaul in October 1975. Thereafter Lieutenant Bernardy obtained housing in the local

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community. His claim for reimbursement for housing under 10 U.S.C. 7572 (1976) was denied until June 28, 1976. Until June 28, 1976, when the BOQ was closed, Government housing was available for bachelor officers at the Portsmouth Naval Shipyard. Several years prior to the BOQ closing it had been determined that those facilities at the Portsmouth Naval Shipyard were substandard. In November 1965 the Navy Bureau of Yards and Docks determined that those BOQ buildings were structurally and functionally substandard. On September 23, 1975, it was determined that they were substandard, that they could not be made adequate and that they would have to be replaced in the near future. 18

Lieutenant Bernardy contends that the failure of the Shipyard to certify quarters as nonavailable in view of their substandard condition was invalid. He claims that such quarters cannot legally satisfy the requirement of providing quarters and thereby prevent nonavailability certification.

Under the provisions of 10 U.S.C. 7572(a), the Secretary of the Navy is authorized to provide lodging accommodations for a member on sea duty "who is deprived" of his quarters on board ship because of repairs or because of other conditions which make the quarters uninhabitable. Subsection (b) of section 10 U.S.C. 7572 provides that under regulations prescribed by the Secretary, any officer on sea duty who is deprived of his quarters on board ship for the reasons stated in subsection (a) and who is not entitled to BAQ, may be reimbursed for the expenses incurred in obtaining quarters, in an amount not to exceed the BAQ of his grade, if it is impracticable to furnish accommodations.

The purpose of these provisions is to authorize, where necessary, the expenditures of funds to provide temporary accommodations for ships' crews when other Government accommodations in lieu of ships' quarters are unavailable or impractical during a period that their quarters aboard ship become uninhabitable. The reimbursement for obtaining quarters to an officer without dependents, when he is temporarily deprived

of quarters on board his ship, is authorized only when the conditions set forth in section 7572, and the implementing regulations have been met.

The regulations governing these matters at the time in question are contained in paragraph 30215 (change 36, July 11, 1974) of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) which provides in part:

"a. An officer, without dependents, not receiving BAQ, is entitled to reimbursement for expenses (not to exceed the applicable BAQ) incurred in obtaining quarters, when any of the persons listed in b below certify that:

"(1) Quarters aboard ship are uninhabitable because:

"(a) Repairs, overhaul, or conversion prevents occupancy of quarters on board ship on which an officer is serving:

* * * * *

"(2) Government quarters are not available; and

"(3) The hire of quarters is not practicable.

"b. The certification may be signed by one of the following persons:

"(1) The commandant of any naval district.

"(2) The commanding officer of any US Naval base.

"(3) The supervisor of shipbuilding of any shipyard or drydock where US Naval ships are undergoing repair or conversion.

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"(4) The squadron or division commander of a group of ships.

"(5) The commanding officer of the ship, when it is impracticable for the certificate to be executed by persons listed in (1) through (4)."

The law and the regulations contemplate that if an officer is deprived of his quarters by virtue of repairs, etc., he is entitled to be quartered elsewhere at Government expense or if impracticable, then be reimbursed. However, before an officer has a right to be reimbursed for privately secured quarters in such circumstances, the conditions of being deprived of quarters aboard ship and not being provided other quarters must be first met. B-187222, May 6, 1977.

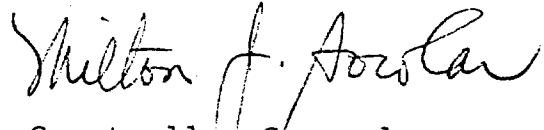
We have determined on a number of occasions that a finding of inadequacy of quarters does not establish their nonavailability. B-147521, July 2, 1962; and B-148767, March 19, 1963. The assignment of public quarters to members of the uniformed services is primarily an administrative matter. There is nothing herein to support the contention that the BOQ at the Portsmouth Naval Shipyard were uninhabitable. While they may not have been adequate for assignment to personnel on a permanent basis, there is no requirement that a classification of substandard or inadequate housing requires that such facilities be immediately abandoned for all purposes.

We also note that the reimbursement for quarters under 10 U.S.C. 7572(b) is not BAQ which is paid under 37 U.S.C. 403. While BAQ under 37 U.S.C. 403 is to be paid to a member (not including members on sea duty) unless Government quarters "appropriate to his grade" and "adequate for himself" are assigned, such provisions are not included in 10 U.S.C. 7572.

Accordingly, since no valid certificate of nonavailability of quarters was issued for the period prior to

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June 1976, reimbursement for housing to Lieutenant Bernardy prior to June 1976 is not authorized.

A handwritten signature in cursive script, reading "Milton F. Fowler".

For the Comptroller General
of the United States