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Office of the General Counsel

Attached is the first revision (Change 1) to the Military Personnel Law Manual issued by this Office in 1983. It includes pertinent Comptroller General decisions issued through December 31, 1983. The new or additional information has been included in the form of reprinted pages which are to be substituted for the pages currently in the various chapters of the Manual while retaining the unchanged pages. The Table of Contents has been completely revised and should be substituted for the existing Table of Contents in its entirety.

To the extent possible we plan to continue revising the Manual annually. Additional copies of the revisions may be requested from:

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created positions are also entitled to receive the pay of rear admiral (lower half). 55 Comp. Gen 58 (1975). But see B-204267, March 19, 1982, affirmed in B-204267, March 1, 1983, concerning the 1981 repeal of extra pay for these officers.

Navy rear admiral retained on active duty--A naval officer who at the time he is placed on the retired list and retained on active duty has served more than 2 years in the grade of rear admiral of the lower half may not have the 2 years of active duty performed prior to retirement regarded as qualifying service for active duty pay or subsequent retired pay of the upper half under 37 U.S.C. 202(e) and 10 U.S.C. 6487, which require that the 2 years of qualifying service be performed after rather than prior to retirement and, therefore, if the officer is retained on active duty for 2 years after placement on the retired list he will be entitled to the pay and allowances and subsequent retired pay for a rear admiral upper half. 44 Comp. Gen. 93 (1964).

Coast Guard "extra numbers" rear admirals--Coast Guard officers serving on active duty as "extra numbers" in the grade of rear admiral under the authority of 14 U.S.C. 432 and 433 who are specifically excluded, pursuant to 14 U.S.C. 42(e), in determining the authorized strength of that grade are, nevertheless, entitled to receive the active duty basic pay of a rear admiral of the upper half in the order of their seniority in the grade, in view of the unqualified provision of 37 U.S.C. 202(f) that one-half the number of officers on the active list of rear admirals are entitled to the basic pay of a rear admiral of the upper half the extra numbers officers are considered rear admirals within the meaning of 37 U.S.C. 202(f) and should be included in determining the number of rear admirals on the active list of the Coast Guard entitled to receive the basic pay of the upper half. 44 Comp Gen. 317 (1964).

Navy officers whose special appointments expire--Naval officers whose appointment or details to offices which entitle them to a higher rank and pay, while so serving, expire or terminate in the month preceding the effective date of voluntary retirement are not entitled by reason of the provision in the Uniform Retirement Date Act of April 23, 1930, 5 U.S.C. 47a(a), for the computation of retired pay at the rate of active duty pay as of the date of retirement, to a continuation of the higher active duty pay and allowances after the expiration or termination of the office or detail. 38 Comp. Gen. 543 (1959).

Surgeon General, Public Health Service--The provision in section 206(a) of the Public Health Service Act (1944) that the Surgeon General of the Public Health Service (PHS) "during the period of his appointment as such, shall be of the same grade, with the same pay and allowances, as the

conflict with the act of June 30, 1906, 5 U.S.C. 84, which requires computation of service on a 30-day-month basis. 38 Comp. Gen. 824 (1959).

VI. RESERVES

A. Duty Status

Status dependent on advance written or verbal orders--A National Guard member may not be placed in a duty status in the absence of advance written or verbal orders, nor may he issue such orders to himself. Hence, an Air National Guard officer who stated that he planned to perform military duty on October 20, 1978, may not be regarded as being in a duty status at the time of his death on that date where no advance orders authorizing the performance of such duty had been issued. B-194189, January 7, 1980.

Written confirmation of verbal orders--Army National Guarad members, for whom written orders were requested but not received prior to duty period, performed annual training on verbal orders of unit commander. Since the oral orders were subsequently confirmed in writing within a reasonable time by the Adjutant General who had authority to order the annual training, payment may be made to the individual members for the duty performed. B-208346, November 9, 1982. However, confirmatory written orders are invalid if issued after an unreasonable and unexplained period of delay. 43 Comp Gen. 281 (1963).

B. Entitlement to Pay Based On Statute

Some action by member required--Member of an Army Reserve unit who was given general discharge which was later upgraded to honorable and who was told not to attend inactive duty drill periods or active duty for training while discharge proceedings were in progress is not entitled to pay for the period in which he did not attend the drill periods and the active duty for training. A military member's entitlement to pay is based on statute and the relevant statutes, 37 U.S.C. §§ 206(a), 204(a)(2), require a Reserve member to attend meetings or perform other equivalent duty or be ordered to active duty or active duty for training in order to be paid. See B-187167, December 23, 1976. B-196462, May 5, 1980.

Combined active duty and inactive duty pay--Air Force reservist who served 355 days of active duty and 10 periods of inactive duty training in fiscal year 1981 is entitled to receive pay for all service performed. Although active duty pay is paid on a daily basis inactive duty pay is paid for drill sessions which may be less than a day. Therefore, in the absence of regulations to the contrary the total pay need not be restricted based on the combined total. B-207339, February 8, 1983.

C. Inactive Duty Pay (Drill Pay)

National Guard - federal recognition requirement

Federally recognized officer entitled to pay--Under the Career Compensation Act of 1949, a federally recognized officer of the National Guard - as distinguished from the National Guard of the United States - is entitled to pay for armory drills and field training actually attended

Missing, interned, captured while on inactive duty for training

Not entitled to credit for pay while missing--A reservist who becomes missing while on inactive-duty training is not entitled to credit for pay and allowances under the Missing Persons Act. 35 Comp. Gen. 422 (1956).

Member subsequently determined to have died--A reservist who is in a missing status while on inactive-duty training and is subsequently determined to have died under conditions which do or do not establish that death resulted from injuries incurred in line of duty is not entitled to have his account credited retroactively with pay and allowances from date of commencement of absence and up to date of determined death under the Missing Persons Act. 35 Comp. Gen. 422 (1956).

Waiver of VA disability compensation

Retroactive Waiver--A Reserve member is required to waive disability compensation paid by the Veterans Administration in order to receive compensation for inactive-duty training. 10 U.S.C. § 684. If retroactive waivers of disability compensation are acceptable under laws and regulations administered by the Veterans Administration, resulting in recoupment of payments made for periods of inactive duty training performed and for which compensation has been paid, the Comptroller General does not object to the member's retention of pay received for training duty. B-207913, April 15, 1983.

Failure to execute waiver--If a wavier of disability compensation required by 10 U.S.C. § 684 is not executed, payment of compensation for inactive-duty training may not be made. Any payments for inactive-duty training in the absence of such waiver are erroneous payments and must be collected from the member unless a retroactive waiver of disability compensation may be accepted by the Veterans Administration. B-207913, April 15, 1983.

D. Reserves - Active Duty or Active Duty for Training

National Guard called to active duty

Member on detached service until discharged by physical disqualification--A member of the National Guard who under competent orders reported for active military service of the United States at an assigned station where he was on detached service until discharged because of physical disqualification for Federal service is entitled under section 201(e), Career Compensation Act of 1949, to receive active duty pay for the period between date of reporting for active duty and date of discharge from service. 29 Comp. Gen. 402, (1950), modified, 34 Comp. Gen. 369 (1955).

Federal civilian employees - members of National Guard--Civilian employees who were members of the Arkansas National Guard when it was federalized pursuant to Executive Order No. 10730 are not entitled to military pay and allowances until the date they actually report to the unit point of assembly or, if absent from the vicinity, from the date they began direct travel to the duty station. 37 Comp. Gen. 655 (1958).

Active duty for physical examination

Physical exam incident to active duty for more than 30 days--A Reserve ordered to active duty to take a physical examination incident to being ordered to active duty for more than 30 days is entitled to pay and allowances for the period of the examination and travel time to and from the examination, provided orders place the member in an active duty status. B-181762, July 18, 1975.

Entitlement based on waiver of retired pay

Retired members of armed services who perform Reserve duty, active or inactive, on the 31st day of a calendar month must waive 1 day's retired pay (or other compensation received on account of their prior service) in order to be entitled to active duty pay or inactive duty pay which would otherwise accrue for that day. This is required by 10 U.S.C. § 684. 62 Comp. Gen. 266 (1983).

E. Reserves Injured or Ill on Duty

Status during hospitalization

A member of the Army National Guard or Army Reserve called or ordered to active duty for a period of 30 days or less under self-terminating orders who is hospitalized under the provisions of 10 U.S.C. 3721(c) because of an in-line-of-duty injury not due to own misconduct during that time, remains in an active military status only through the last day of duty as prescribed by those orders, with the right to continue to receive pay and allowances thereafter based on disability to perform military duty as authorized by 37 U.S.C. 204(g)(2). 57 Comp. Gen. 305 (1978). 40 Comp. Gen. 664, modified.

Orders purporting to extend active duty

A member of the Army National Guard or Army Reserve, called or ordered to active duty for a period of 30 days or less under self-terminating orders who is hospitalized due to an in-line-of-duty injury not due to own misconduct during that time, would not be placed in a status of being on active duty for 30 days or more even though the period of hospitalization is covered by an amendment to his orders or new orders issued to extend his period of active duty solely for the purpose of such hospitalization, since such a change in status is not authorized. Thus, such orders would not carry him beyond 30 days for active duty purposes and his rights to be retired for physical disability would remain determinable under 10 U.S.C. 1204. 57 Comp. Gen. 305 (1978).

Pay entitlement while disabled

Pay continues while member incapacitated for military duty--A member of the Air Force Reserve who is disabled in line of duty from injury while performing annual training is entitled by law to continued pay and allowances during the subsequent period when the member remains incapacitated for the performance of normal military duties, and the determination as to how long the disability continues is left to the exercise of sound administrative judgment. In each case the service concerned is to determine when the

injured member has recovered or determine that such member should be separated for disability. 37 U.S.C. 204(g)(2) (1976). B-195470, November 14, 1979.

Pay terminates when found fit for military duty--Upon reconsidering the entitlements of National Guard members and other reservists under the act of June 20, 1949, which prescribes the same benefits for reservists injured or disabled in line of active duty or training as is accorded Regular members, although the holding that the ability to

pursuits, notwithstanding that he received pay and allowances for the full day of his release. 44 Comp. Gen. 408 (1965).

Members injured returning home during drill period for forgotten equipment--Three National Guard reservists who after reporting for multiple unit training assembly two incident to the inactive duty training authorized by 32 U.S.C. 502 (a)(1), answering the roll call, and participating for 65 minutes in the first assembly, were ordered home to pick up equipment, and who while traveling in a privately owned car were in a collision in which two members were killed and one injured, passed out of military control when they ceased to perform inactive duty training. Since their 65 minutes of scheduled training does not create eligibility for pay under 37 U.S.C. 206(a), and the members were not in training for the purposes of 32 U.S.C. 318(2) and 37 U.S.C. 204(h)(2), the situation of the deceased does not meet the requirements of 10 U.S.C. 1481(a)(3), authorizing the disposition of remains, nor entitle the injured member to medical care and pay and allowances. 52 Comp. Gen. 28 (1972). See also 43 Comp. Gen. 412(1963), and B-164204, July 12, 1968.

Member injured after dismissal from drill--A naval reservist sustained an injury outside the Reserve Center building following dismissal from an inactive-duty training drill. He is not eligible to receive benefits (medical care, pay and allowances, etc.) under 10 U.S.C. § 6148 and 37 U.S.C. § 201(i) (1976) since under those statutes the injury must have been incurred while the member was employed in inactive-duty training which extends only from the time the reservist is first mustered in until dismissal from that day's activities. Also, 10 U.S.C. § 1074a and 37 U.S.C. § 204(j) now authorize medical care, etc., in such circumstances, but those statutes contain no authority for basic pay during the period of recuperation. 63 Comp. Gen. 66 (1983).

Member ordered home during drill to get records--Military member who during attendance at multiple unit training assembly two (MUTA-2) was instructed by his first sergeant to take the most direct route home to obtain his clothing records and return to the Armory, and who was injured on return trip when he lost control of his motorcycle, is entitled to disability pay and allowances since his return home was not due to an omission on his part with respect to the training schedule. 52 Comp. Gen. 28, (1972), distinguished. 54 Comp. Gen. 165 (1974). See also 43 Comp. Gen. 412 (1963), and B-156628, June 1, 1965.

Members permitted to use Government facilities prior to drills--Injuries sustained by reservists while they are permitted to use Government furnished quarters or Government transportation prior to the performance of inactive

duty training drills may not be regarded as injuries suffered while actually performing inactive duty training for entitlement to coverage under the act of June 20, 1949, 34 U.S.C. 855c-1, notwithstanding that reservists receive drill pay and allowances based on the entire drill day. 38 Comp. Gen. 841 (1959). See also 43 Comp. Gen. 412 (1963).

Members disabled while serving without pay

Disabled from disease during active duty period in excess of 30 days--Members of Reserve components of the Armed Forces who, with their consent, are called or ordered to active duty without pay for periods in excess of 30 days under authority of section 240 of the Armed Forces Reserve Act of 1952 and who, while so employed, suffer disability in line of duty from disease are entitled, under the act of June 20, 1949, to pay and allowances during hospitalization, or from the date disease is contracted. 33 Comp. Gen. 411 (1954).

Disabled from injury during active duty for any period--Members of Reserve components of the Armed Forces who, with their consent, are called or ordered to active duty without pay for any period of time under authority of section 240 of the Armed Forces Reserve Act of 1952, and who, while so employed, suffer disability in line of duty from injury are entitled, under the act of June 20, 1949, to pay and allowances during hospitalization, or from date of injury. 33 Comp. Gen. 411 (1954).

and distinct from the other and at times separated by days or weeks may not by reason of the fact that he is qualified for both and performs both hazardous duties be entitled to dual incentive payments under 37 U.S.C. 301(e). 44 Comp. Gen. 426 (1965). This decision overruled in part by 56 Comp. Gen. 983 (1977).

Aviation - parachute duty

An experienced pilot and parachutist of the uniformed services training for or fulfilling the position of forward air controller, whose duties do not qualify him for flying pay or require the performance of parachute jumps to carry out assigned duties, may not be paid the dual incentive pay. Executive Order No. 11120 limits dual payments of incentive pay to those members required by competent orders to perform specific hazardous duties in order to carry out their assigned missions; therefore, the fact that a member is qualified to perform hazardous duty is not the criterion for entitlement to dual incentive pay. 43 Comp. Gen. 667 (1964).

Simultaneous performance not required

A member is entitled to dual payments of hazardous duty incentive pay, provided he is required to perform specific multiple hazardous duties in order to carry out his assigned mission and otherwise meets the criteria established by departmental regulations. 37 U.S.C. 301(e) (1970) and Executive Order No. 11157, June 22, 1964, as amended. However, such duties need not be performed simultaneously or in rapid succession as was stated in 44 Comp. Gen. 426 which, to that extent will no longer be followed. Air Force parachute team members may qualify for hazardous duty incentive pay as aerial crewmembers, provided they are an integral part of an aircrew contributing to the safe and efficient operation of an aircraft, and their flight duties are not merely incidental to their duties involving parachute jumpings. 56 Comp. Gen. 983 (1977).

E. Demolition

Assignment

Military officer who was not assigned by orders to demolition of explosives as his primary duty and whose work with explosives is not shown to have come within the meaning of "duty involving demolition of explosives" under applicable regulations is not entitled to hazardous duty incentive pay on the basis of working with explosives. 63 Comp. Gen 70 (1963).

Training duty

Members who are taught how to set underwater demolition charges may not have such training duty regarded as a pri-

mary duty involving demolition of explosives to be entitled to incentive pay for demolition duty, notwithstanding that the duty may be performed under extremely hazardous conditions. 39 Comp. Gen. 731 (1960).

Primary duty assignment

If a member is otherwise entitled to incentive pay for demolition duty and actually performs such duty during a

portion of a month involved, conditions such as leave while in a pay status will not affect his eligibility for such pay for the month. However, upon permanent change of station where leave is taken en route, a member's entitlement continues only to date of departure from the old station, and that entitlement at the new station is dependent upon orders issued and duty performed at the new station. B-147915, February 19, 1962.

F. Diving Duty

Qualification requirements

To qualify for special pay for diving duty, under 37 U.S.C. 304(a), an individual must be assigned to, maintain a proficiency in, and actually perform diving duty. Each requirement must be met before special pay begins to accrue. Therefore, where a member was assigned to duty as a student at Officer Candidate School during which he did not actually perform diving duty, although he may have met the other requirements, he may not recieve special pay. 62 Comp. Gen. 612 (1963).

Qualification lapse

A Navy regulation, effective August 17, 1961, which precludes members from qualifying for heliumoxygen diving pay after diving qualifications have lapsed must be viewed as superseding the regulations under which members were given a 3-month grace period to make up diving deficienies; therefore, members who were prevented until September 1961 from making up diving qualifications which lapsed in July 31, 1961, must be regarded as merely having an inchoate right to make up their diving deficiencies until August 17, 1961, and when the regulation was superseded it deprived them of any further right so that the members who failed to meet the diving requirements for August and who were not entitled under the new regulations to make up diving deficiencies in September 1961 may not be credited with diving pay for the period August 1 to 16, 1961. 41 Comp. Gen. 392 (1961).

G. Treatment of Leprosy Patients

Length of assignment

Section 204 (a) of the Career Compensation Act of 1941 (37 U.S.C. 301(a)(7)), and Executive Order contemplate the payment of incentive pay to members of the uniformed services for duty involving intimate contact with persons afflicted with leprosy during any month, or part thereof, when the member concerned is assigned to such duty by orders of competent authority and actually performs some duty of such nature on one or more days of the month, provided that the orders require the performance of duty on either a full-

time basis, or a part or intermittent basis extending over a continuous period of not less than 30 days. 34 Comp. Gen. 55 (1954). See also B-137656, June 2, 1961.

Orders required

Army officer whose orders contemplated the performance of clinic duty at a leprosarium from time to time over an indefinite, but extended period of time of 30 days or more, may be paid one month's incentive pay for each calendar month during which he was under orders to clinic duty at the leprosarium and during which he actually performed such duty on one or more days; however, any part of a month when officer was not under orders to such duty should be

making payments to selected high school graduates to induce them to enlist and serve satisfactorily in the Army should not be implemented without additional statutory authority in view of the possible applicability of the prohibition against enlistment bounties (10 U.S.C. 514(a)) and the prohibition against receiving extra earnings gained in the course of the soldiers' service to the Army belong to the United Sates and must be paid into the Treasury. B-200013, April 15, 1981.

C. Reenlistment Bonus

Extension of enlistment in order to retain status as member of the armed services

Air Force member whose enlistment is extended in 30-day periods for over 24 months while placed on international hold to give him the benefit of retaining his status as a member of the armed forces while awaiting the adjudication of his criminal trial and appeal by civilian authorities in a foreign country is not entitled to a reenlistment bonus based on such extensions since he was ineligible for reenlistment during that period and the bonus was not intended to be paid in such circumstances. B-193225, December 29, 1978.

Early release

Member who within 3 months of the expiration of his current enlistment or extension thereof, is discharged for the sole purpose of reenlisting, may not have that unexpired term of enlistment or extension thereof considered as "additional obligated service" for the purpose of determining the multiplier for Selective Reenlistment Bonus computation under 37 U.S.C. 308. 55 Comp. Gen. 37 (1975). See also B-200974, March 9, 1981, B-206550, October 27, 1982.

In Matter of Timm, B-206550, October 27, 1982, we held that notwithstanding agency regulations, no recoupment action need be taken when a service member who received a regular reenlistment bonus was discharged early for the purpose of immediate reenlistment for which a selective reenlistment bonus was payable. We effectively held that the recoupment regulations were inconsistent with the governing bonus statute and were therefore void effective on the date of enactment of the statute in 1974. Therefore, the Timm decision is to be applied retroactively, and a service member who had an improper recoupment action taken against him prior to the Timm decision may be refunded the amounts recouped. B-210827, September 21, 1983.

Creditable service

Member's period of authorized excess leave pending appelate review of his court-martial is creditable service for com-

puting period served on term of enlistment and, even though court-martial sentence was approved and discharge effected thereafter, period of such leave is not to be included in unexpired part of enlistment upon which computation of recoupment of reenlistment bonuses is based. 55 Comp. Gen. 1244 (1976).

Critical military skill

Member serving in a critical skill at the time of his reenlistment is entitled to a variable reenlistment bonus notwithstanding the fact that he reenlisted for the purpose of being trained and serving in a new critical skill since

Quarters assigned before household goods arrive

Although 37 U.S.C. 403 provides for the payment of BAQ when because of orders by competent authority the dependents of a member are prevented from occupying assigned quarters, where the Government arranges for the movement of the household goods of an Army officer to family-type quarters designated adequate and the move is not accomplished by the effective date stated in the assignment orders, nevertheless payment of BAQ with dependents to the officer may not be continued beyond the effective date of the quarters assignment, as the transportation contract does not constitute the "competent authority" required to create entitlement to the allowance after the effective date of the assignment. 50 Comp. Gen. 174 (1970).

Family quarters available but dependents do not join member

Member who was assigned public family quarters but whose family later elected not to join the member at his new permanent duty station, was properly terminated from assignment to such quarters, and he then became entitled to BAQ as a member with dependents even though adequate Government quarters were available at the duty station. 48 Comp. Gen. 216 (1968). See also 59 Comp. Gen. 291 (1980).

Quarters aboard ship while traveling

The fact that a member occupies accomodations aboard a ship as a passenger en route to his new permanent duty station does not affect his basic allowance entitlement under 37 U.S.C. 403 in view of the rule that accommodations furnished members and their dependents while traveling incident to a change of station are not considered the equivalent of public quarters. 48 Comp. Gen. 40 (1968).

Occupancy of temporary quarters after PCS

Thirty-day rule, generally--The occupancy by member and his dependents of visiting officers quarters for a period of less than 30 days at his new permanent duty station while awaiting the assignment of suitable on-base housing does not deprive him of entitlement to a basic allowance for quarters for the period of the temporary occupancy, section 403 of Executive Order No. 11157, dated June 22, 1964, providing for such temporary occupancy without loss of basic allowance for quarters for a period not to exceed 30 days while a member is in a duty or leave status "incident to a change of permanent station," and the right to the allowance is not affected by a more temporary occupancy of the visiting quarters resulting from the movement of the officer's dependents incident to a permanent change of station. 45 Comp. Gen. 589 (1966).

A member of the uniformed services may not occupy temporary lodging facilities, built and maintained with appropriated funds, in excess of 30 days at his permanent duty station incident to a permanent change of station, without a loss of basic allowance for quarters and variable housing allowance since applicable regulations prohibit it. However, the services may amend the regulations to authorize payment for periods in excess of 30 days in certain deserving cases. B-208762, April 14, 1983.

be reimbursed for electric costs under 10 U.S.C. 4593 in addition to BAQ, since BAQ covers both rent and extra utility expenses. B-194847, June 19, 1981.

D. Members Without Dependents

While on sea or field duty

The prohibition contained in 37 U.S.C. § 403(c) against payment of BAQ to members without dependents while on field or sea duty of 3 months or more applies to temporary as well as to permanent duty assignments. 59 Comp. Gen. 486 (1980). See also 59 Comp. Gen. 192 (1980); B-201746, June 26, 1981; 60 Comp. Gen. 596 (1981); B-195691, November 16, 1982, B-211380, October 12, 1983.

An Army officer who had no dependents is not entitled to a quarters allowance for the period (which exceeded 3 months) he was assigned to temporary duty in Sinai with the Multinational Force and Observers monitoring the implementation of the Egyptian-Israeli peace treaty. During such duty he apparently was furnished quarters by the Government and his household goods were stored at Government expense. Since duty with the Multinational Force is determined to be "field duty;" he may not receive a quarters allowance because 37 U.S.C. § 403(c) precludes payment of the allowance to a member on field duty in these circumstances. B-209342, June 1, 1983.

While occupying transient quarters upon transfer

Members without dependents under permanent change-of-station orders authorizing leave en route who occupy transient type quarters before departing the old station or upon arrival at the new station may be paid BAQ not to exceed 30 days of such occupancy whether or not in a leave status. 45 Comp. Gen. 347 (1965).

While traveling between permanent stations

To the extent that members without dependents are not assigned Government quarters while traveling, or during delays en route, they are entitled to BAQ from date of departure from the old station to the date of arrival at the new station overseas, including periods while in a per diem or group travel status for the overseas portion of the travel, the accommodations furnished during such travel not being regarded as the assignment or occupancy of public quarters within the meaning of 37 U.S.C. 403(b). 48 Comp. Gen. 40 (1968).

Transfer between vessels having same home port

A transfer from one vessel to another where both vessels are home-ported in the same area not constituting a

permanent change of station within the purview of Executive Order Np. 11157; implementing 37 U.S.C. 403, and the transfer not coming within the exception contemplated by the Executive order, which permits the occupancy of Government quarters without loss of BAQ while a member is in a leave or duty status incident to a change of permanent station, members without dependents who occupy transient quarters incident to a transfer from one vessel to another in the same home port are not entitled to BAQ for the period of occupancy of transient quarters. 48 Comp. Gen. 40 (1968).

Navy members above E-6 assigned to a ship

A naval officer or enlisted member above grade E-6 who is "without dependents" is entitled to a basic allowance for quarters while assigned to a ship at its homeport if he elects not to occupy available Government quarters. The member continues to receive the allowance for the first 90 days the ship is deployed. He is also entitled to receive the allowance for 90 days after transfer to a deployed vessel if the homeport of that ship is the same as the homeport of his previous assignment and he was receiving the allowance at the homeport at the time of the transfer. B-211380, October 12, 1983.

After basic training before permanent assignment

An enlisted member without dependents in pay grade E-4 (less than 4 years' service) or below while performing temporary duty between the date he completes basic training and the date he receives orders naming a permanent duty station to which he will report on completion of temporary duty is not in a travel status and is entitled to BAQ when Government quarters are not available to him while serving at the place of performance of his basic duty assignment, which may be regarded as his permanent station for this purpose. 53 Comp. Gen. 740 (1974).

"Partial BAQ" for single members assigned to public quarters

Generally--A member assigned Government single type quarters (barracks), who is therefore ineligible for regular BAQ under 37 U.S.C. 403(b) is entitled to "partial BAQ" under 37 U.S.C. 1009(d). 58 Comp. Gen. 136 (1978). See also 57 Comp. Gen. 194 (1977).

Assignment to family type quarters--A single member without dependents is not entitled to partial BAQ under 37 U.S.C. 1009(d) when assigned to family quarters since partial BAQ is intended to be paid to low-value Government single quarters, not higher value family quarters. 56 Comp. Gen. 894 (1977). See also B-206980, November 4, 1982, to the same effect when a Government-leased apartment is occupied.

E. Members With Dependents

Dependency determinations

Under 37 U.S.C. § 403(h) the Secretary of the service concerned may make dependency and relationship determinations for enlisted members' quarters allowance entitlements and the determinations are final and may not be reviewed by the General Accounting Office. However, that provision does not apply to officers and the Comptroller General renders decisions in officers' cases and also in enlisted members' cases when requested by the service. In the interest of uniformity it seems appropriate to forward doubtful cases to the Comptroller General for decision particularly where an officer is married to an enlisted member. 62 Comp. Gen. 666 (1983).

Common-law marriage

Member who entered into a common-law marriage in Texas, where such marriages may lawfully be contracted, is legally married under Texas law and may claim his spouse as a dependent for increased BAQ purposes. B-186179, June 30,

1976. But a claim for BAQ at the with dependennt rate based on a Texas common-law marriage is too doubtful to permit payment where there is conflicting evidence pursuant to an agreement to cohabitate as man and wife and held each other out to the public as husband and wife. B-191316, September 27, 1978.

Divorce pending appeal

Naval officer's entitlement to BAQ at the with dependent rate for spouse does not automatically terminate upon issuance of decree of divorce where, under governing State law, the finality of the divorce decree is suspended when the judgment is appealed and although on disposition of the appeal the original judgment becomes final, the member is

considered as having a lawful spouse during the pendency of the appeal. Under applicable regulations, member's entitlement to BAQ for spouse continues until appeal is resolved provided, however, that member proves that he actually provided support for spouse during pendency of appeal. B-200198, August 17, 1981.

Living apart

An Army officer lived apart from his wife for 1 year prior to their divorce, without a legal separation, during which time although he made no direct payments to her, he indicates he provided her with various types of indirect monetary support by paying joint obligations, etc. In these circumstances the payments made to him of basic allowance for quarters, and variable housing allowance at the with-dependents rate need not be recouped. B-208650, March 21, 1983.

Family evacuated to safe haven

Government quarters occupied--When the dependents of a member are evacuated under emergency conditions from assigned Government quarters at his permanent station and occupy Government housing facilities at a safe haven area, considered voluntary occupation of adequate quarters as the dependents are not required to occupy the quarters, nor is rent paid for the facilities, the member not having incurred any personal expense is not entitled to payment of BAQ for dependents in order to reimburse a member for the expenditure of personal funds, and the member, not entitled to BAQ, also is not entitled to a family separation allowance. 46 Comp. Gen. 869 (1967).

Same - short duration of evacuation--A member who must continue to maintain and pay rental for private housing in anticipation of the return of his dependents evacuated to Government housing facilities at a temporary safe haven for a relatively short period pending further transportation to a designated place, or return to the place from which evacuated, during which time he occupies single-type quarters at his permanent station, may continue to be credited with BAQ on account of dependents and family separation allowance until his dependents are authorized to return to the member's permanent duty station or arrive at the designated place contemplated by applicable regulations. 47 Comp. Gen. 355 (1968).

Entitlement based on child support

General rule--Divorced service member assigned barracks quarters, but also paying child support for private living quarters for dependent children, is entitled to BAQ at "with dependent" rate since he has not been furnished Gov-

ernment quarters "for himself, and his dependents" under 37 U.S.C. 403. But if member remarries and is reassigned Government family quarters, entitlement to BAQ ceases even though child support obligation remains unchanged; member has then been furnished quarters "for himself, and his dependents," and in fact that some dependents for personal reasons cannot join him in family quarters is no basis for continued BAQ payments. 48 Comp. Gen. 28 (1968). See also 59 Comp. Gen. 681 (1980); and B-200946, December 15, 1980.

the person adopting him, may be regarded as the legitimate child of the member from the date of issuance of the interlocutory decree to determine her entitlement to a basic allowance for quarters under 37 U.S.C. 403. 44 comp. Gen. 417 (1965).

Illegitimate children

An unmarried member who, although acknowledging the paternity of an illegitimate child and contributing to the support of the child, has not established a home in which his child lives with him as a member of his family, may not be credited with increased BAQ on account of the child, the law of the State of California, the place of birth of the child and the residence of all the parties requiring, in addition to acknowledging an illegitimate child, that a father receive the child into his family and treat the child as his legitimate offspring. 48 Comp. Gen. 311 (1968).

Mother

Former member seeks waiver of a debt which arose as a result of "with-dependents" basic allowance for quarters which he received on account of his mother, who did not qualify as his dependent. Since he was timely informed of her ineligibility as his dependent for the purpose of his entitlement to the allowance, he was on notice of the overpayment and, therefore, is not without fault in the matter. Waiver of his debt is denied. B-212477, September 19, 1983.

Dependent in Confinement

Military member claims basic allowance for quarters at the with-dependent rate on account of her husband, a military member who is not entitled to pay and allowances due to his being in confinement under a 15-year prison sentence. The quarters allowance at the with-dependent rate is not authorized. The member may no longer be considered to have a dependent for quarters allowance purposes since the dependent will be absent for an extended period of time and the member is for all practical purposes absolved of the responsibility of providing quarters for her husband for the duration of his confinement. B-209744, February 1, 1983.

F. Women Members

Frontiero v. Richardson

Air Force member whose husband was a civilian not dependent upon the member for over one half of his support, was entitled to claim her husband as her dependent for purpose of

obtaining increased BAQ. Frontiero v. Richardson 411 U.S. 677 (1973).

III. UNIFORM ALLOWANCES

A. Officers

Inclusion in back pay award

Air Force officer released from active duty on July 31, 1961, but who through judgment of the Court of Claims became entitled to "back pay, less appropriate offsets," and to be credited with active duty service through July 31, 1969, did not become entitled to uniform allowances for such eight-year period, since he was not required to wear any military uniforms during that time. 53 Comp. Gen. 813 (1974). Officer retroactively restored to active duty by Board for correction of Military Records is not entitled to uniform allowance upon actual return to active service. B-195129, April 28, 1980.

For Ready Reserve service

A Ready Reserve officer, including a former Regular officer transferred to the Reserves, is entitled to the $50 quadrennial reimbursement uniform allowance provided in 37 U.S.C. 416(a) if he has not become entitled to a uniform

Separation must be caused by military assignment

Separation due to personal considerations--Family separation Allowance, Type I, under 37 U.S.C. 427(a) is not authorized to an otherwise eligible member who is legally separated from his spouse since his separation from her results from personal considerations, not military assignment. 56 Comp. Gen. 805 (1977). see also B-205097, March 15, 1982.

Court-ordered separation subsequent to separation by military orders--An Army sergeant serving an unaccompanied tour of duty in Portugal was authorized a family separation allowance, types 1 and 2 since his separation from his wife and children was due to military orders. While the member was serving that tour of duty, a California court granted to him and his wife an interlocutory decree of divorce that apparently incorporated a separation agreement which gave each joint custody of the children but gave physical custody of the children to the wife. The Army then terminated the member's family separation allowances. This action was correct since, although the member's separation from his wife and children initially was due to military orders, the interlocutory decree of divorce changed the nature of the separation to one for personal reasons which makes him ineligible for the allowances. B-211693, July 15, 1983.

Separation due to military orders--Where a base closure plan requires the transfer, using Government furnished transportation, of dependents to the sponsor's next permanent duty station, while the sponsor remains behind to implement base closure, "endorced" separation exists within the contemplation of 37 U.S.C. § 427(b)(1), and the granting of Family Separation Allowance, Type II (FSA-R), is authorized. 58 Comp. Gen. 183 (1978).

Delay in travel otherwise authorized

Member must request travel approved--In view of the fact that command sponsored dependents of members of the uniformed services, who are dependents permitted at the member's overseas station when approved by the overseas commander, may be given authority to move overseas promptly upon request by the member and, in some circumstances without approval of the overseas commander, transportation is automatically authorized when requested, such command sponsored dependents may not be regarded as dependents not authorized transportation to the overseas station within the meaning of the FSA provisions of 37 U.S.C. 427 (b) (1) until the member has applied for and been refused authorization to bring his dependents to the overseas station, and, therefore, FSA may not be automatically paid to members for command sponsored dependents

prior or subsequent to the approval of the overseas commander. 43 Comp. Gen. 547 (1964).

Unreasonable delay in dependent travel--When the delay between the date of the departure of a member from his old station to an overseas station at which his dependents are permitted and the date the dependents join the member is an unreasonable delay caused by the Government or its agents and is not due to personal causes, the dependents may be regarded as not being authorized transportation to the overseas station within the meaning of FSA provisions of 37 U.S.C. 427(b)(1), and for such undue delay regulations to authorize payment of the family separation allowance would not be improper. 43 Comp. Gen. 547 (1964).

Delay in authorization--A member who, incident to an overseas change of permanent station, moved his dependents from the old station in Florida to Nevada pursuant to

was entitled to a temporary lodging allowance, B-184460, February 25, 1976.

Dependent spouse--Member of the uniformed services, a resident of the Hawaiian Islands, who enters on active duty and is assigned to the Island of Oahu, but whose dependent wife remains on the Island of Maui, is entitled to station allowances at the with dependent rate. B-196603, February 18,1981.

Dependent status - stepchild--Member was entitled to transportation and cost-of-living allowances on account of his two stepchildren incident to his assignment to Alaska, despite the fact that the natural father was also a member and was vested within a primary entitlement to a quarters allowance credit for the children because of court ordered support payments, since there was no duplicate credit of allowances involved in the matter. 43 Comp. Gen. 690 (1964). See also B-197384, August 12, 1980; B-196727, May 20, 1980.

Dependent status-adopted child--An Army officer stationed in Alaska claims a cost-of-living allowance on account of his adopted son during the 8-month period immediately preceding entry of the final order of adoption. He is not entitled to the allowance because under the relevant state adoption statutes, a legal adoption was not effected during that period. B-209495, April 22, 1983.

Unaccompanied overseas assignment--A service member on an unaccompanied overseas tour of duty may not be paid military overseas houusing 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). 60 Comp. Gen. 689 (1981).

Permissive orders for overseas assignment-- Since members arriving at new permanent duty stations overseas under permissive travel orders issued at their request for personal convenience are required to pay their own travel and transportation expenses under such permissive orders, the temporary lodging allowance, which is in substance a continuation of the travel per diem to reimburse the members for more than normal expenses directly attributable to the change of station, are not payable; however, housing and cost-of-living allowances, which are based on average costs normally incurred on permanent duty overseas, are to be distinguished from costs incident to the change of station and such allowances are payable to the members. 43 Comp. Gen. 584 (1964).

Entitlement to HOLA Government quarters available

Quarters leased by NATO--When officers stationed at Headquarters Allied Forces Southern Europe are furnished

quarters leased by NATO for occupancy by United States and foreign personnel and secured with funds contributed in part by the United States, they are not entitled to quarters and housing allowances, the leased quarters being considered "Government quarters" within the contemplation of the Joint Travel Regulations notwithstanding a redefinition of the term "Government quarters" deleted reference to a

non-Government family-type housing until the arrival of the dependents is not regarded as a continuation of the travel per diem, and the fact that the transfer of the member is made under permissible orders which do not entitle the member to travel and transportation expenses does not bar entitlement to the IHA, and otherwise proper payments of such allowance under permissive orders will not be questioned. 43 Comp. Gen. 584 (1964).

C. Temporary Lodging Allowance (TLA)

General restrictions

While enroute to permanent station--Under permanent change-of-station orders, an Army sergeant traveled from Germany to Fort Wainwright, Alaska, which was designated in the orders as his new permanent duty station. In fact, his assignment to Fort Wainwright was merely for the purpose of undergoing processing at the personnel center there and diversion to another Alaskan post for permanent duty. During the personnel processing Fort Richardson, Alaska, was designated as his new permanent duty station. He claims temporary lodging allowances for the 2-day period he resided in temporary quarters at Fort Wainwright. He is not entitled to temporary lodging allowances since that allowance is a permanent station allowance and Fort Wainwright was actually not his permanent duty station. However, he is entitled to per diem allowances for the 2-day period since he was in a travel status en route to his genuine permanent duty station at Fort Richardson. B-207624, October 19, 1982.

Temporary duty station not within limits of permanent station--The Joint Travel Regulations may be amended to authorize temporary lodging allowances to members of the uniformed services when incident to a permanent change of station they perform temporary duty en route within the limits of their new permanent duty station prior to reporting to that station. This allowance may be paid at the time the member reports to the temporary duty station. If the temporary duty station is not within the limits of the permanent station, temporary lodging allowances are not authorized and in the absence of a more specific proposal with respect to this situation the regulations should not be amended to provide this entitlement. B-208740, January 31, 1983.

On day of arrival at permanent station--Reimbursement to a member for hotel expenses incurred on day of arrival at an overseas permanent station may not be authorized by amendment to the Joint Travel Regulations to provide payment of a temporary lodging allowance of mileage, whichever is greater. 47 Comp. Gen. 724 (1968). However while

payment of mileage and TLA may not be made for the same day, this does not preclude payment of travel per diem reduced for quarters and TLA for the day of arrival at the permanent station. B-130608-O.M., June 5, 1975.

FSA and TLA for same period--Upon the termination of the assignment of Government quarters at a permanent station overseas due to the closing of a military installation, a member in receipt of family separation allowance, type 1, under 37 U,S,C, 427(a) may, in addition, for the period prior to departure to his new station be paid a temporary lodging allowance in 10-day increments under 37 U.S.C. 405, the allowances not considered as a duplicate of each other. 47 Comp. Gen. 788 (1968).

Commander's determination necessary

Need for occupancy of hotel quarters--Where there was nothing to show the overseas commander had made a determination that temporary lodgings were necessary incident to a member's permanent change of station in Italy, and there was uncertainty as to the effective date of the permanent change of station orders and the proximity of the old duty station to the new duty station, TLA was not payable. 45 Comp. Gen. 510 (1966). See also B-186784, November 24, 1981, B-211573, June 7, 1983.

Decision to discontinue allowance--A member who was paid temporary lodging allowance for 36 days of the initial 60-day period after arrival of his dependents in Taiwan but was denied this allowance for the remaining 24 days of the initial 60-day period by the overseas commander on the basis that the member's actual expenses for the 60-day period did not exceed the amount of the allowance plus his basic allowance for subsistence and basic allowance for quarters for the 36-day period, is entitled to payment for the remaining 24 days since the regulations do not authorize those grounds as a basis for disallowing TLA during the initial 60-day period. B-179655, September 27, 1974.

Failure to keep commander advised--Under regulations directing the overseas commander to advise a member upon arrival of the member's responsibility to aggressively seek permanent quarters and to report his progress in obtaining permanent housing at least every 10 days, member who failed to submit such periodic reports after being advised of his responsibilities was not entitled to TLA beyond the initial 10-day period following his arrival at the overseas station. B-184746, August 16, 1976.

Extension of eligibility

Failure to request extension--Member who continued to reside in a German hotel following the expiration of the period of his TLA entitlement, was not entitled to additional TLA in the absence of determination by overseas commander that additional TLA was necessary, notwithstanding the member's contentions that he could not request an extension due to a unit reorganization. B-185784, February 14, 1977, and November 24, 1981.

Retroactive effect--The authority in the Joint Travel Regulations to extend by special determination the 60-day period of entitlement to a temporary lodging allowance provided for the more than normal expenses that occur incident to an overseas assignment requiring change of residence may not be amended to provide for a time extension after the expiration of 60 days, the rights of the Government and members having vested, any special determination to extend

sector when 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. B-196628, December 19, 1979. See also 48 Comp. Gen. 480 (1969); 59 Comp. Gen. 708 (1980).

C. Heat and Light Allowance Under 10 U.S.C. 4593

Generally

Member in Government housing for which he pays rent and utilities while assigned to Panama Canal Government may not be reimbursed for electric costs in excess of his basic allowance for quarters under 10 U.S.C. 4593. Basic allowance for quarters payment includes not only an amount for rent but also an amount for utilities. B-194847, June 19, 1981.

D. Variable Housing Allowance

Complement to overseas station housing allowance

The variable housing allowance authorized for service members assigned to duty in high housing cost areas within the United States (other than Alaska or Hawaii) is a conus station allowance designed to complement the overseas housing allowance, and is payable to a member incident to his particular duty assignment rather than by virtue of his membership in the uniformed services; hence it may not properly be included in the lump-sum leave settlement of a member entitled to payment for unused accrued leave computed on the basis of his "basic pay and allowances" upon his separation from active duty. 37 U.S.C. 501(b), as amended by Public Law 94-361, July 14, 1976; 37 U.S.C. 403, as amended by Public law 96-343, September 8, 1980. B-201117, February 18, 1981.

Use of temporary lodging

A member of the uniformed services may not occupy temporary lodging facilities, built and maintained with appropriated funds, in excess of 30 days at his permanent duty station incident to a permanent change of station, without a loss of basic allowance for quarters and variable housing allowance since applicable regulations prohibit it. However, the services may amend the regulations to authorize payment for periods in excess of 30 days in certain deserving cases. B-208762, April 14, 1983.

E. Allowances Not Included

In addition to the allowances discussed above, the statutes authorize payment of a variety of other allowances designed to reimburse personnel for expenses incurred in participating in certain activities or in fulfilling the responsibilities of specified positions. Included are special provisions for members participating in international sports (37 U.S.C. 419), and band concert tours (37 U.S.C. 425); allowances for band leaders (37 U.S.C. 207, 424), contract surgeons (37 U.S.C. 421), and certain high ranking officers (37 U.S.C. 414). Another statute (5 U.S.C. 5943) authorizes

Overseas station allowances

TLA while on training in Europe--Officers of State Army National Guard who performed annual field training in Europe within the authority of 32 U.S.C. 502(a)(2) and 503 during a period Government quarters were not available and living accommodations had to be obtained at their own expense in nearby hotels, are not entitled to the temporary lodging allowances provided under 37 U.S.C. 405, the Joint Travel Regulations contemplating entitlement to the allowance only when members are permanently assigned to duty at a station outside the United States for performance of duty of an indefinite or extended period rather than a period of short duration, such as the duty performed by the officers; however, the Joint Travel Regulations may be amended to authorize payment of a temporary lodging allowance for future short periods of training outside the United States or in Hawaii or Alaska. 45 Comp. Gen. 794 (1966).

COLA while on Reserve duty in Alaska--The cost-of-living allowance authorized by the Joint Travel Regulations for the purpose of defraying the average excess cost experienced by members on permanent duty outside CONUS is not payable to an Air Force Reserve officer ordered from his home in the United States to active duty training in Alaska for a 44-day period, and the fact that a member ordered to active-duty training of short duration is entitled to certain allowances which are paid incident to a permanent duty assignment does not make a short duration assignment for active-duty training permanent in nature. 45 Comp. Gen. 798 (1966).

HOLA and COLA for Alaska reservists--In view of the broad authority contained in 37 U.S.C. 405, Volume 1, Joint Travel Regulations, may be amended to authorize payment of station allowances at with or without dependent rates as appropriate to members of Reserve components who perform active duty for less than 20 weeks outside the United States or in Hawaii or Alaska and who reside permanently in those areas with their families (if any). 55 Comp. Gen. 135 (1975).

B. Husband and Wife Both Members

Basic allowance for quarters (BAQ) - No children involved

Sham marriages--Two service members married each other for the admitted purpose of being allowed to live off base and being paid BAQ under a service policy which authorizes such a procedure to encourage the maintenance of the family unit when Government family-type quarters are not available. In such a case the members should be assigned single-type government quarters, if available, which would discontinue BAQ payments since there is no family unit to maintain. B-195670, December 14, 1979.

Effect of Frontiero v. Richardson, 411 U.S. 677 (1973)--Although the Frontiero decision has no effect on the dependency status of service members married to each other as prescribed by 37 U.S.C. 420, since a member may not be paid an increased allowance on account of a dependent for any period during which the dependent is entitled to basic pay, the differential treatment accorded male and female members in assigning quarters requires amendment of Department of Defense Directive to prescribe entitlement to both male and female members to BAQ at the without dependent rate when adequate public quarters for dependents are not available, notwithstanding the availability of adequate single quarters to reflect that neither husband nor wife occupying Government quarters for any reason who has only the other spouse to consider as a dependent is entitled to BAQ in view of 37 U.S.C. 402; and to provide that when husband and wife are precluded by distance from living together and are not assigned Government quarters, each is entitled to BAQ as prescribed for members without dependents. 53 Comp. Gen. 148 (1973).

One member on excess leave--An Army captain, whose wife is authorized excess leave without pay and allowances for the period between being commissioned and reporting to her new duty station, during which time she is neither furnished nor occupies quarters in kind, may be paid an increased quarters allowance under 37 U.S.C. 403 on behalf of his wife for the period she was in excess leave status. The limitation in 37 U.S.C. 420 that a member may not be paid increased allowances on account of a dependent for any period during which that dependent is entitled to basic pay does not bar BAQ at the with dependent rate, since the wife was not receiving basic pay and her active duty status in itself is not determinative of the husband's entitlement. 47 Comp. Gen. 467 (1968).

One member in prison--Military member claims basic allowance for quarters at the with-dependent rate on account of her husband, a military member who is not entitiled to pay and allowances due to his being in confinement under a 15-year prison sentence. The quarters allowance at the with-dependent rate is not authorized. The member may no longer be considered to have a dependent for quarters allowance purposes since the dependent will be absent for an extended period of time and the member is for all practical purposes absolved of the responsibility of providing quarters for her husband for the duration of his confinement. B-209744, February 1, 1983.

Members occupying inadequate Government quarters--A husband and wife, members of the uniformed services in pay grades E-5 and E-4, respectively, each member in receipt of a basic allowance for quarters while accupying private quarters, when assigned inadequate Government quarters on a

rental basis may continue under 42 U.S.C. 1594j(a) to receive the allowance as members without dependents. However, their combined allowances exceeding the allowance received by the usual military family - one member only in the service - occupying inadequate quarters, the reduction provided by section 1594j(a) when a rental rate exceeds 75 per centum of the quarters allowance may not be applied on the basis of the husband's allowance alone. The manner or from whom the rental charges are collected is immaterial under the landlord and tenant relationship. 48 Comp. Gen. 68 (1968).

Members occupying transient quarters while awaiting adequate family - type housing--Service members married to each other, while awaiting adequate family-type housing, for 17-day period resided in transient housing at their duty station for which they paid nominal service charge. Although members who occupy transient quarters for a nominal service charge are considered to be in assigned rent-free and adequate Government quarters, the members are both entitled to receive BAQ at the "without dependent" rate for 7 days under the authority of Executive Order No. Part IV, Section 403(a), June 22, 1964, as amended. B-198081, February 26, 1981.

Effect of sea duty for one spouse--Husband and wife who are both members of the uniformed services, have no dependents other than each other, and do not live in Government quarters, are both entitled to BAQ at the without dependent rate appropriate for their grades. However, when the husband goes on sea duty, his entitlement to BAQ ceases, and the wife does not thereby become entitled to BAQ at the increased with dependent BAQ rate. B-178979, October 23, 1974. See also 57 Comp. Gen. 194 (1977).

BAQ-Members' children - No children of a prior marriage involved

Child-whose dependent--When two service members marry, neither may claim the other as a "dependent" for military allowance purposes, but if they have a child, that child becomes their joint "dependent" for purposes of establishing entitlement to allowance payments. Although both parents may not claim their child as a dependent for the same allowance payment where dual payments would result, it is permissible for one parent to claim the child as a dependent for the purpose of BAQ and for the other parent to claim the child for other allowances. 60 Comp. Gen. 154 (1981).

Effect of members' separation--A member of the uniformed services who is separated from his or her spouse, who is also a member, and who has legal custody of one or more of their children on whose behalf the spouse contributes no support, is entitled to a basic allowance for quarters at the with-dependent rate, regardless of the spouse's entitlement, provided that the dependents on account of whom the increased allowance is paid do not reside in Government quarters. 62 Comp. Gen. 315 (1983).

Effect of separation agreement--A properly executed separation agreement generally is legally sufficient as a statement of the parties' marital separation and resulting legal obligations, for the purpose of determining entitlement to a basic allowance for quarters, even though the agreement was not issued or sanctioned by a court.

However, a member's entitlement to basic allowance for quarters based on child support obligations created by a separation agreement should be reassessed following court action since the court is not bound by the agreement in awarding custody. 62 Comp. Gen. 315 (1983).

After divorce-in general--Where two Air Force members married to each other with one child are divorced, the male member paying child support and the female member having custody of the child, the child is the dependent of both members under 37 U.S.C. 401; however, since only one member may receive BAQ at the with dependent rate. However, if the member receiving the increased BAQ does not claim the dependent child, the female member who has custody of the child may claim BAQ at the with dependent rate. 60 Comp. Gen. 399 (1981). See also 58 Comp. Gen. 100 (1978); 52 Comp. Gen. 602 (1973); and B-189973, February 8, 1979.

Same-more than 1 child-effect of court order--Where two married Air Force members with common dependents subsequently divorce, only one member may receive basic allowance for quarters based on the children as dependents, unless the class of common dependents is divided by separation agreement or court order. The member paying child support, which is stated to be on behalf of one child but is sufficient to qualify for entitlement under the applicable regulation, is entitled to the basic allowance for quarters at the with dependents rate while the member having custody of the children receives the allowance at the without dependents rate. 62 Comp. Gen. 350 (1983).

BAQ-Children of a prior marriage involved

Members reside in separate quarters-each has child prior to marriage--Both of two uniformed service members, who are married to each other, and had dependent children in their own right prior to their marriage, may be paid an increased basic allowance for quarters on account of their respective dependents, when the spouses do not reside together as a family unit because of their duty assignments. Whether the dependents reside with one, both, or neither of them would not affect their entitlement, provided that each member individually supports his or her dependent and is not assigned to Government family quarters. 62 Comp. Gen. 666 (1983).

Members reside together-each has child of prior marriage--When two uniformed service members who are married to each other and who had dependent children in their own right prior to their marriage, are assigned to the same or adjacent bases, are not assigned Government quarters, and live together as a family unit, only one member may receive a quarters allowance at the increased "with-dependents" rate. Only one set of family quarters is

required and all the dependent children belong to the same class of dependents upon which the increased allowance is based whether the children live with the members or not. To the extent that 60 Comp. Gen. 399 (1981) may be understood to contradict this holding, it is hereby modified. 62 Comp. Gen. 666 (1983).

Child of prior marriage determined to be a "dependent" after member's remarriage--When a uniformed service member's child meets the qualifications for becoming the member's dependent following the member's marriage to another member who is not the child's natural parent and the members have other dependent children, the child joins the class of dependent children upon which the member-parent's increased basic allowance for quarters entitlement is determined. 62 Comp. Gen. 666 (1983).

Status of child of current marriage-members reside together--Female service member married to and residing with male member who receives BAQ at the with dependent rate on account of children of a previous marriage is not entitled to BAQ at the with dependent rate for a child of the present marriage since, although this child is not claimed as a dependent by the other member, the child must be considered a dependent of the spouse who is receiving BAQ at the with dependent rate by virtue of other dependents and may not provide a basis for allowing both spouses to receive BAQ at the with dependent rate. 54 Comp. Gen. 665 (1975).

Same-members reside separately--A military member married to a military member occupies Government quarters with their dependent child. Upon a permanent change of station of the male member, the female member remains in Government quarters with the dependent child. Male member is not provided Government quarters at new station and claims BAQ at the with-dependent rate since he is paying child support to a former non-military spouse not residing in Government quarters with dependent children. The male member is entitled to BAQ at the with-dependent rate since his BAQ entitlement is determined independent of his military spouse where they do not reside in the same household. 59 Comp. Gen. 681 (1980).

"Partial BAQ" under 37 U.S.C. 1009(d)

Generally--A member of a uniformed service married to another member, who has no dependents other than his or her spouse, is entitled to "partial BAQ" under 37 U.S.C. 1009(d) when assigned to single-type Government quarters. However, such a member assigned to family quarters is not entitled to partial BAQ. 56 Comp. Gen. 894 (1977).

Effect of sea duty for one spouse--A member assigned to sea duty who occupies Government family-type quarters assigned to his spouse when the vessel is in port is assigned to quarters on the vessel and is considered a member without dependents by virtue of 37 U.S.C. 420 (1970). Therefore he is not entitled to partial BAQ authorized by 37 U.S.C. 1009(d). 57 Comp. Gen. 194 (1977).

Family separation allowance (FSA)

Member with no dependents other than member spouse--A member with no dependents, as his wife, his only dependent, is also a member of the service on active duty is not entitled to the family separation allowance (FSA-II) provided by 37 U.S.C. 427(b) because, notwithstanding the elimination from the section pursuant to Public Law 91-533 of the qualifying language for entitlement to FSA-II of the phrase "who is entitled to a basic allowance for quarters," the prohibition in 37 U.S.C. 420 against increasing a member's allowance on account of a dependent entitled to basic pay under 37 U.S.C. 204 precludes payment of the FSA-II. 51 Comp. Gen. 116 (1971).

Same-1 member returns to CONUS for discharge--Where spouses without dependents are both members of the uniformed services and are assigned to the same overseas permanent duty station immediately before one member chooses to return to the United States for separation from active duty, the continued separation between the member and the released spouse is not an enforced separation, but a matter of personal choice. Therefore, a Family Separation Allowance, under 37 U.S.C. § 427, may not be paid. B-199233, December 27, 1983.

Member with child and member spouse-unaccompanied overseas tour--Marine Corps member separated from her child and husband while serving an unaccompanied tour of duty overseas may properly be regarded as a "member with dependents" under 37 U.S.C. 427(b)(1) and is entitled to a Family Separation Allowance, Type II-R, notwithstanding that her husband is also a Marine and is drawing a Basic Allowance for Quarters at the "with dependent" rate on behalf of the child, since their child is their joint dependent and since payment of the two allowances--each for a separate purpose--would not improperly result in dual payments of the same allowance for the same dependent. 60 Comp. Gen. 154 (1981).

Same-PCS with dependent travel authorized--Where spouses with a dependent child are both members of the uniformed services, and one member is given a permanent change of station with dependent travel authorized, the Military Pay and Allowances Entitlements Manual may not be interpreted or amended to authorize payment of the Family Separation Allowance to either member. Whether the child travels to the reassigned member's new station or remains at the old station is a matter of personal choice and not a forced separation as when a member is assigned to a restricted station. B-199233, December 27, 1983.

Same-when dependent travel could have been authorized--An Army member claims entitlement to Family Separation Allowances, type I and type II, on the basis that he was separated from his minor child due to orders assigning him to his new permanent duty station in Germany to which his dependent was not authorized concurrent transportation. The member seeks to establish dependency as of the date he arrived at his new duty station when apparently the child previously had been considered the dependent of his wife, also a member of the Army. The member's orders show that a dependent's concurrent travel may well have been authorized had the member clarified the dependency and pursued travel authorization and, as a matter of fact, a few months later the dependent traveled with the member's wife to Germany upon her assignment there. In these circumstances, the separation between the member and his dependent may not be considered as enforced so as to authorize payment of the Family Separation Allowances. B-201887, April 21, 1981.

Dislocation allowance (DLA)

Both spouses transferred--Where female and male service members are married and reside in the same household and incident to a change of permanent station for each member the household is moved and the members continue to reside in the same household only one dislocation allowance may be paid for such movement, and since the male member already has received such allowance the female member's claim must be denied. However, upon repayment of DLA previously received by male (junior) member, DLA may be paid to the female (Senior) member. 54 Com. Gen. 665 (1975).

Same - separate quarters at old station--Husband and wife, both Navy members, are each entitled to a dislocation allowance (DLA) (without dependents rate) upon permanent changes of station where at the old station the husband was assigned to quarters aboard a ship homeported at Pearl Harbor and the wife occupied quarters on land near Pearl Harbor, her duty station, and both were transferred to Long Beach, California, where they occupied non-Government quarters together. Although the husband stayed with his wife in her quarters when he was not required on board ship at the old duty station, the move involved transfer from a

station where the members were assigned separate quarters and thus was not a move of a single household to preclude payment of two DLA's. B-191742, August 1, 1978.

One spouse separated--A member under permanent change-of-station orders traveled concurrently with his wife, who was traveling under separation order. He is not entitled to dependent transportation allowance on account of his wife as his dependent since she was paid travel and transportation expenses to her home of record in connection with her separation from active service in the Air Force. However, he may be paid a dislocation allowance at the with-dependent rate on account of his wife since she is considered his dependent on the effective date of his transfer. 63 Comp. Gen. 55 (1983).

Child dependent--An Army member's claim for travel expenses and a dislocation allowance for his wife's and child's travel to his new permanent duty station may not be allowed. Although such travel was mistakenly provided for in the member's orders, on the effective date of his orders (the date he was required to begin travel to his new duty station) his wife was on active duty in the Army and she was claiming their child as a dependent. Since a member may not claim a spouse, who is also a member entitled to basic pay, as a dependent, the member had no dependents for transportation or dislocation allowance purposes. B-202313, October 9, 1981.

After divorce - custody of child--Two members were husband and wife and had a child by that marriage but are divorced at the time of entitlement to a dislocation allowance incident to a transfer. The female member has custody of the child although the male member pays child support. Regardless of basic allowance for quarters entitlements the female member is entitled to dislocation allowance at the "with dependent" rate since under regulations applicable to that allowance she does have a dependent. B-183176, November 18, 1975.

C. Members in Missing-In-Action or Prisoner-Of-War Status

Continuation of allowances

When a member enters a status covered by the Missing Persons Act, permanent items of pay and allowances, except temporary allowances, may continue to be credited to his account provided no change occurs in conditions of entitlement, section 2 of the act authorizing the same basic, special and incentive pay, basic allowances for subsistence and quarters, and station per diem allowances, not to exceed 90 days, for a period of absence that a member was entitled to at the beginning of his absence, and the family separation allowance authorized by 37 U.S.C.427(a), falling

within the purview of section 2 of the Missing Persons Act may be allowed, but not the cash clothing allowance provided for enlisted personnel under 37 U.S.C. 418, an item that is not enumerated in the act. 44 Comp. Gen. 657 (1965).

Basic allowances for subsistence and quarters (BAS and BAQ)

Enlisted members, whether with or without dependents, who, prior to being carried in a missing status (37 U.S.C. 551-558), were quartered and subsisted by the United States Government under the concept of "changed conditions", may

CHAPTER 4

MEMBERS' TRAVEL

I. BASIC ENTITLEMENT RULES

A. Orders Requirement

Necessity

The right of military personnel to reimbursement of travel expenses and the extent of such reimbursement is dependent upon the performance of official travel directed by competent orders. B-175211, March 31, 1972; B-182803, October 24, 1975.

Travel status

Member at permanant station without travel orders--Service members not in a travel status, and acting on their own volition, incurred personal expenses for meals and lodgings incident to their military duties at their permanent duty station during a snowstorm and seek reimbursement. The entitlement of members of the armed services to be so reimbursed for expenses incident to their military service is contained in title 37, United States Code. In the absence of specific authorization, there is no legal basis upon which this Office may authorize reimbursement. B-194499, October 31, 1979.

Same-emergency orders to vacate quarters--Because of imminent danger of a natural gas explosion, a military installation commander responsible for protection of personnel and facilities, ordered two Army officers and their families to vacate Government family housing. Claims for reimbursement of the reasonable costs of motel lodgings necessarily incurred as a result of that order may be paid from the installation's operation and maintenance funds, since those costs were directly related to the commander's orders and the proper administration of the installation. B-213293, December 7, 1983.

TDY canceled after travel under orders begins--A service member was ordered on TDY via Fly-It-Yourself rental aircraft. Several hours after departure, he was forced to return to the starting point due to inclement weather without reaching the TDY station. Although 1 JTR states a requirement that to be in a travel status the travel must be pursuant to orders which require a landing be made away from starting point, the member in this case is considered in a travel status since the travel orders provide for such a landing point and the travel was properly begun. A travel status existed, even though the outward bound portion of the journey was not completed. B-203356, February 9, 1982.

Competency

Verbal orders--A verbal order given in advance of travel and subsequently confirmed in writing giving the date of the verbal order and approved by competent authority will meet the requirements for written orders. Written orders confirming verbal orders, together with evidence showing that an emergency prevented the issuance of written orders may be accepted only if the written confirmatory orders, fully substantiated, are issued within a reasonable time

23 Comp. Gen. 713 (1944); 24 Comp. Gen. 439 (1944); 37 Comp. Gen. 627 (1958); 37 Comp. Gen. 683 (1958); 44 Comp. Gen. 405 (1965); 48 Comp. Gen. 119 (1968); 51 Comp. Gen. 736 (1972); 55 Comp. Gen. 1241 (1976); B-199464, August 29, 1980; B-203623, March 23, 1982; 63 Comp. Gen. 4 (1983).

Determination of "inadvertence" after orders executed--Former commissioned officer of Public Health Service who requested separation from the service in abrogation of his agreement to serve a specified period after being trained at Government expense and who was advised that he would be divested of travel and transportation allowance benefits to home on separation, may not have separation orders amended retroactively to authorize reimbursement for these expenses, on the basis of a subsequent administrative determination that his separation had been "inadvertent." B-186036, January 26, 1977.

Error at time orders prepared clearly demonstrated--The separation orders of a Public Health Service officer, released from active duty upon the completion of his obligated term of service, must be amended retroactively to authorize payment for travel and transportation allowances, where it is clearly demonstrated that the withholding of these entitlements under the original orders was the result of an erroneous assumption made when those orders were prepared that the members had breached an agreement to remain on active duty. B-190458, January 26, 1978. See also 44 Comp. Gen. 405 (1965); 33 Comp. Gen. 98 (1953); B-207624, October 19, 1982.

Fraudulent claims

Part of claim fraudulent - invitational orders--The decision in 57 Comp. Gen. 664 (1978), holding that where a civilian employee submits a travel voucher wherein part of the claim is believed to be fraudulent, only the expenses for days for which fraudulent information was submitted should be denied, is applicable to military members and non-Government employees traveling pursuant to invitational travel orders as well. 59 Comp. Gen. 99 (1979). See also 60 Comp. Gen. 357 (1981); 61 Comp. Gen. 399 (1982); and B-211220, September 27, 1983.

B. Official Business Requirement

General rule

The entitlement of a member of the uniformed services to travel at Government expense is for determination on the basis of whether the travel is performed on public business, that is--that the travel relates to the activities or functions of the member's service - or is performed solely for personal reasons. If before completing a temporary

assignment, a member's assignment is changed by competent orders, as defined in the Joint Travel Regulations, because of the bona fide needs of the service, the fact that the change might also be beneficial to, or in accordance with the needs of the member, would not defeat his entitlement to the travel authorized incident to the change in assignment. 49 Comp. Gen. 663 (1970).

Return to designated post of member on appellate leave--In the event a court-martialed service member who has been involuntarily placed on appellate leave under the Uniform Code of Military Justice is returned to a designated post for the purpose of participating in further judicial proceedings ordered in his case, or for other purposes of an official nature, his return travel may be regarded as having been performed under orders on official business while away from his designated post, so that his personal transportation at Government expense may be authorized. B-211797, December 23, 1983, 63 Comp. Gen. ___.

Travel expenses for personal business

The travel allowances authorized for members of the uniformed services are for purposes of reimbursing them for the expenses incurred in complying with the travel requirements imposed on them by the needs of the service over which they have no control. Expenses of travel for personal business and not performed on public business are not authorized as reimbursable expenses. B-191681, November 21, 1978.

Circuitous route for personal convenience

Expenses of circuitous travel performed by a member of the uniformed services for his personal convenience may be reimbursed only in an amount not to exceed the amount for the cost of travel between the member's duty stations via the most direct route. 54 Comp. Gen. 850 (1975). See also B-191681, November 21, 1978; and B-198341, April 28, 1981.

Education activities

Orders issued at member's request--An Army officer who performed travel and temporary duty incident to orders issued at the officer's personal request that he be temporarily assigned to the Armed Forces Institute of Pathology at Washington, D.C. and later to St. Louis to take the American Board of Pathology examination, was not on public business so as to be in a travel status during such period within the contemplation of the travel and transportation allowance provisions of paragraph 3050 of the Joint Travel Regulations and is not entitled to payment of travel and transportation allowances. 33 Comp. Gen. 196 (1953). See also 57 Comp. Gen. 201 (1978).

Orders canceled after registration fee paid--Member was advised of cancellation of temporary duty orders to attend pediatrics course in Hollywood Beach, Florida, prior to his travel there but after having paid registration fee. He may not be reimbursed for travel costs incurred in attending said course during administrative absence under permissive orders nor may he be reimbursed for registration fee absent showing fee would have been forfeited had he not attended course. B-186250, November 4, 1976.

depart on leave, at the end of which period he should return to his permanent duty station, is not entitled to reimbursement for the travel expenses incurred, even though subsequently he is returned to the temporary duty station, or that formal orders were issued to support the oral directions. The travel expense did not relate to the activities or functions of the member's service and, therefore, were not incurred on public business, and having been induced by the personal needs of the member, reimbursement of the travel expenses may not be authorized. 49 Comp. Gen. 663 (1970). However, 37 U.S.C. 411e as added by Public Law 97-60, October 14, 1981, now provides specific statutory authority for travel at Government expense in certain circumstances when a member returns home from a TDY station due to a family emergency.

Return to assist dependents in PCS move

PCS with TDY--A member of the uniformed service is detached from his permanent duty station upon being assigned to temporary duty and the new permanent duty station is not designated until the end of temporary duty assignment. Member may be authorized travel at Government expense from the temporary duty station to the old duty station for the purpose of arranging for relocation of dependents and personal effects resulting from the permanent change of station and then travel to the new permanent duty station. The date of the detachment from the old permanent duty station does not affect this entitlement. 60 Comp. Gen. 564 (1981). See also 57 Comp. Gen. 198(1977).

Change of ship's home port--When the home port of a ship or other mobile unit to which a Navy member is being transferred is in the process of being changed the member may accompany his dependents or otherwise travel to the newly designated home port prior to reporting to the ship or other mobile unit if that travel is authorized by amendment to the Joint Travel Regulations provided the travel is necessary to assist in the transportation of the member's dependents or property. 60 Comp. Gen. 561(1981).

Return from unaccompanied tour--Dependents of a military member are located at a designated place away from his duty station because of the member's isolated duty, unusually arduous duty, or unaccompanied overseas tour. Travel by the member to the designated place upon assignment to the permanent duty station to which he is not authorized to take his dependents and upon his next permanent change of station at Government expense may be authorized by amendment to the Joint Travel Regulations, but the authorization of travel to the designated place must be based on the member's need to assist in arranging for transportation of dependents, household or personal effects, or privately owned conveyance. 60 Comp. Gen. 562(1981). See also B-210205, August 24, 1983; and 62 Comp. Gen. 651 (1983).

directed to return to his permanent duty station upon completion of his leave is entitled to travel allowances equivalent to the round-trip distance between his permanent duty station and leave point, not to exceed the round-trip distance between his permanent and temporary duty stations, even though ordinarily such allowances are not payable for leave travel performed for personal reasons and not public business, since the member performed the circuitous travel to his leave point under competent orders, travel he would not have undertaken had he not been ordered to perform the temporary duty. 51 Comp. Gen. 548 (1972).

Leave with TDY in United States--An Air Force enlisted member on permanent duty in Germany, whose travel orders direct travel by Government air, but who by amemdment to those orders is authorized to take leave in the United States following his temporary duty assignment there, is responsible for the commercial transportation costs incurred in getting from his temporary duty station to his leave address and to the Air Force base from which he departs by Government aircraft to return to Germany. B-210197, June 6, 1983.

Location of ship changed while on liberty

Reimbursement authorized--Prior to taking leave while assigned to a ship at San Diego, California, member was informed that upon return from leave the ship would be at Pearl Harbor, Hawaii. After leave in San Antonio, Texas, he traveled to Travis AFB, California, and being unable to secure onward Government transportation, he went by taxi to the San Francisco airport and from there via commercial air to Honolulu, Hawaii, and by taxi to Pearl Harbor. Under Joint Travel Regulations then in effect, member may be reimbursed for travel at personal expense from Travis AFB to Pearl Harbor. B-184374, September 18, 1975.

When Government transportation unavailable--Member returning from leave to ship formerly at San Diego, California, but then at Pearl Harbor, Hawaii, was unable to secure Government transportation and traveled by first class commercial air on earliest flight available. He may be reimbursed for such travel not in excess of cost for tourist class travel in absence of indication that such travel was not available within a reasonable time. B-184374, September 18, 1975.

Leave in connection with consecutive overseas tours

Second tour at same station--Proposed revision of Volume 1 of the Joint Travel Regulations granting leave travel entitlements authorized under 37 U.S.C. 411b, to members reassigned to second tours of duty at same overseas station is contrary to clear language of statutory provision which

provides from this entitlement in connection with a "change of permanent station to another station to another duty station. 55 Comp. Gen. 284 (1975). However, 37 U.S.C. 411b was amended by Public Law 97-60, October 14, 1981, to specifically authorize leave travel for a member ordered to a consecutive tour of duty at the same overseas duty station.

Delayed leave--There is no objection to a proposed revision of Volume 1 of the Joint Travel Regulations to grant leave entitlements under 37 U.S.C. 411b, where because of the

Permanent station is ship and home port changed during TDY--A chief petty officer who incident to a permanent duty station change from Memphis, Tennessee, to Patrol Squadron Eight at Brunswick, Maine, is ordered to report on April 29, 1971, for 19 weeks of instruction on temporary duty with Squadron Thirty at Patuxent River, Maryland, is entitled to per diem for the entire period of the temporary duty, notwithstanding the unit to which assigned at his new permanent duty station was located at Patuxent River until June 30, 1971, since paragraph of the Joint Travel Regulations prohibiting the payment of per diem within the limits of a permanent duty station has no application as the officer was not a member of Squadron Eight until he reported to Brunswick and, therefore, his travel status and per diem entitlement were not affected because his temporary duty station was for part of the time the old permanent station of the squadron. 51 Comp. Gen. 215 (1971).

Travel away from permanent station less than 10 hours

A Navy officer who was unable to fulfill his temporary duty assignment because he was recalled to his permanent station for emergency duties a few hours after arrival at the temporary duty station and incurred an advance payment for the rental of a hotel room in addition to taxi fare and trips for handling baggage at the air terminal may be reimbursed even though the payment of per diem is precluded by the Joint Travel Regulations because the officer's absence from his permanent duty station was less than 10 hours since the officer under proper orders rented the hotel room due to the unavailability of Government quarters, and the reimbursable hotel charge is considered an administrative expense that is chargeable to the appropriation for Operation and Maintenance Navy. 51 Comp. Gen. 12 (1971).

A member of the Army whose regular duties involve performing flights as an aircrew member which are more than 6 but less than 10 hours is not entitled to partial per diem allowance for meals which he cannot take at his permanent station, since he is not incurring any additional expense for meals taken away from his station. B-211424, October 31, 1983.

No permanent station designated

PCS changed to TDY - further travel not directed--A Marine Corps officer, whose orders directing him to proceed overseas on a permanent change of station were amended to provide that the travel was "for temporary additional duty for training" rather than a permanent change of station - with no indication that a return to his old duty station was required or that a further assignment to a new permanent duty station was contemplated - is not performing "temporary duty" away from his permanent station to per diem for such duty. 32 Comp. Gen. 330 (1953).

Initial TDY school assignment - no permanent station designated--In an action to recover per diem allowances allegedly due plaintiffs while in attendance at the United States Naval School for indoctrination and Naval Justice courses, on the ground that plaintiffs were then in "travel

status" within the meaning of applicable provisions of the Joint Travel Regulations, it is held that plaintiffs, having gone immediately to Officers Candidate School from their homes upon enlistment, were not, under the terms of their orders, "away from their permanent duty station" and therefore were not in such "travel status" as would warrant payment of per diem allowances; it is further held that plaintiffs were not on "temporary duty" within the meaning of applicable regulations because they had no permanent duty station other than Officers Candidate School which was their first duty station. Califano v. United States, 145 Ct. Cl. 245 (1959). See also B-202822, May 21, 1981; and B-202319, May 4, 1981.

Newly enlisted airman in training--Travel per diem authorized for service members under 37 U.S.C. § 404 is payable to a member only "when away from his designated post of duty," so that per diem is not payable to a newly enlisted airman undergoing preliminary training under orders that do not designate the first permanent duty station to which he is to proceed upon the completion of his training assignment, since the training station where he is then located is the only "designated post" that he has. B-211545, November 1, 1983.

Initial TDY assignment - permanent station designated--The holding in the case of Califano v. United States, that a travel status does not exist for a member of the uniformed services in the absence of a designated post of duty away from which travel is performed and that orders which direct a member to proceed from his home to a station for four months' indoctrination and further assignment upon completion did not place the member in a travel status for entitlement to per diem, will be followed; however, the decision will not be construed as prohibiting per diem where a member is ordered to active duty from home, assignment to temporary duty, and the orders designate a duty station to which travel is required upon completion of temporary duty. 38 Comp. Gen. 849 (1959).

Rule in all cases where no permanent station designated--The holding in Califano v. United States, is not limited to cases involving newly inducted or enlisted members, but is for application in any case where a member is ordered from his home and is assigned to a station for temporary duty under orders which contemplate a further assignment to duty upon completion of the temporary duty, and the orders do not designate a specific permanent duty station to which the member is to travel and report for duty upon completion of temporary duty. 39 Comp. Gen. 507 (1960).

Several consecutive TDY assignments with no permanent station--A member of the uniformed services who is ordered to active duty from his home, assigned to a station for tem-

porary duty upon completion of which he is to report to another location for temporary duty and further assignment may not have the place at which the second or subsequent periods of temporary duty are performed considered as other than the member's only post of duty to place the member in a travel status for per diem purposes. 39 Comp. Gen. 511 (1960).

Permanent assignment canceled while on TDY--A Navy officer whose orders to temporary duty under instruction and subsequent assignment to a designated vessel were canceled before he was required to report to the vessel because of

of corps operating out of Cam Ranh Bay, Vietnam. Member performed such duty between October 12, 1969, and March 6, 1970, mainly at Tigertown, Vietnam, 18 miles from headquarters posts at Cam Ranh Bay. Member was not entitled to per diem for duty at Tigertown, since that place was within sphere of his basic duty assignment, the corps operational area. B-176109, October 31,1972.

Basic assignment covers entire theater of operations--Air Force member was assigned from Cam Ranh Bay,Vietnam, to Korat, Thailand, on January 11, 1971, under orders designating such duty as "permanent change of station without permanent change of assignment." Thereafter, until June 9, 1971, member performed duty throughout Southeast Asia under variety of orders one of which transferred him to Quang Tri, Vietnam, on "permanent change of station." On June 9, 1971, member traveled to United States on emergency leave orders issued at Korat and directing return to Korat within 30 days. However, orders then issued at Cam Ranh Bay permanently reassigned him from Cam Ranh Bay to air base in California. Member was entitled to per diem for period January 11-June 9, 1971, notwithstanding language in orders, since in fact Cam Ranh Bay was his permanent station and he was performing temporary duty away from that station. B-177855, April 23, 1974.

B. Limitation on Length of TDY

Six month rule

A duty assignment of members of the uniformed services for a period in excess of 6 months may not reasonably be considered as temporary duty for payment of per diem. The assignment of members of the uniformed services to Antarctica incident to Operation "Deepfreeze II" for an 18-month period is far in excess of the duration which reasonably may be considered temporary for payment of per diem. 36 Comp. Gen. 757 (1957). See also 63 Comp. Gen. 4 (1983).

Six month assignment - orders amended to call duty TDY

After members of the uniformed services have actually reported to a new station for duty under instruction for a period of 6 months pursuant to permanent change of station orders, the amendment of the orders to refer to the duty as temporary is ineffective to authorize the payment of per diem. 36 Comp. Gen. 569 (1957). See also 63 Comp. Gen. 4 (1983).

Multiple TDY's at same station

The assignment of a member of the uniformed services to a school of instruction for 6 weeks and, upon the successful completion of the course, the further assignment to another training course at the same station for an additional

15 weeks constitutes a permanent rather than temporary change of station for 21 consecutive weeks to preclude the receipt of per diem, and the contingency that the member may fail to meet the scholastic requirements for successful completion of the first course may not defeat the administrative intent to continue the member under instruction for both training periods. 37 Comp. Gen. 637 (1958).

Extension of TDY beyond 6 months authorized

Although a time limitation of 6 months for temporary duty assignments for members of the uniformed services appears reasonable under ordinary circumstances, if the services promulgate uniform regulations applicable to all services, with appropriate administrative criteria for approval, in exceptional cases, of temporary duty assignments which are not of short duration, payment of per diem in such cases for periods of duty in excess of 6 months could be authorized. 38 Comp. Gen. 853 (1959).

Failure to obtain approval of TDY extension

Army member who after a period of 171 days of duty as a "Referral Recruiter," which is considered to be temporary duty, received several temporary duty orders continuing the duty at same location for 5 additional months, in absence of approval for temporary duty in excess of 180 days, in accord with the Joint Travel Regulations, and Army Regulations, is limited to per diem allowances not in excess of 180 days at that location. 54 Comp. Gen. 368 (1974).

PCS vs. TDY - time limit on per diem

Temporary or permanent duty is a question of fact to be determined from the orders and, where necessary, from the character of the assignment--considering duration, nature of duty enjoined, etc. Thus, Army officer ordered as a member of a unit on temporary duty to another station for a period of 5 months (later extended to 8 months) while quarters at permanent station were being renovated was entitled to the per diem prescribed for unit temporary duty, not to exceed 180 days without headquarters prior approval and excluding periods of group travel, leave and field duty. B-185987, November 3, 1976.

C. Travel Time Allowable

General rule

No per diem allowance is payable for any day of leave, proceed time, or delay en route when such day is classified as leave. B-178329, April 18, 1974.

In general

Initial training-Government provides quarters and meals--When orders are issued designating the first permanent duty station of a newly enlisted airman who is at a training station taking a preliminary course of instruction, the airman may then be regarded as being "away from his designated post of duty" and in travel status. However, if Government quarters and dining halls are available to him at the training station, so that he has no actual need to incur additional living expenses while in that travel status, he remains ineligible for per diem under the Joint Travel Regulations. This is consistent with the underlying statutory purpose of per diem, which is solely "to meet the actual and necessary" additional expenses of living during periods of travel. B-211545, November 1, 1983.

Survival training - member provides own food and shelter--A Naval officer ordered to temporary duty to participate in survival training which requires personnel to forage for subsistence and to improvise their own shelter is considered to have been furnished rations and quarters, and therefore per diem may not be paid for the period of temporary training duty. 35 Comp. Gen. 555 (1956).

Space travel - quarters and food provided by Government contractor--Member assigned to plant of Government contractor to participate in space flight experiments under TDY orders stating that Government quarters and messing facilities were not available, but who was furnished experimental diet in lieu of subsistence and quartered aboard space vehicle at no personal expense, was not entitled to increase per diem on basis that Government quarters and mess were unavailable. 44 Comp. Gen. 326 (1964).

Direct Government contracts for commercial lodgings or meals--The holding in 60 Comp. Gen. 181 (1981) regarding the limitation on use of appropriated funds to pay per diem or actual expenses where an agency contracts with a commercial concern for lodgings or meals applies to members of the uniformed services as well as to civilian employees of the Government. However, because 60 Comp. Gen. 181 was addressed specifically to the per diem entitlement of civilian employees under 5 U.S.C. 5702, the Comptroller General will not object to per diem or subsistence expense payments already made to military members that exceed the applicable statutory or regulatory maximums as the result of an agency's having contracted for lodgings or meals. 62 Comp. Gen. 308 (1983).

Air travel - quarters and food provided by commercial airline--The per diem payable to a member of the uniformed services who is furnished quarters by a commercial airline

for a scheduled overnight delay in transit while traveling under a Government transportation request need not be reduced, the accommodations furnished neither constituting Government quarters, nor constituting quarters furnished by a Government contractor incident to the performance of temporary duty, as the delay was not occasioned by the performance of temporary duty, but caused by the mode of transportation utilized. 46 Comp. Gen. 795 (1967).

Private rental of Government quarters--A member of the uniformed services who, while in a travel status at isolated posts, is required to occupy Government quarters which are assigned or occupied by other military or civilian personnel is regarded as occupying Government furnished quarters so that a reduction in per diem is required. Military personnel or civilian personnel who are required to provide lodging in their Government furnished quarters at isolated posts to other military or civilian personnel who are in a travel status may not charge for such accommodations. 36 Comp. Gen. 459 (1956).

Use of Government VIP quarters--A member who, while on temporary duty, voluntarily moves into Government VIP bachelor officer quarters for which there is a service charge may not, under current regulations, receive increased per diem equal to such service charge. This limitation is applicable even though moving into the Government quarters may result in a savings of per diem to the Government over that which would have been payable had the member occupied commercial quarters. B-183755, July 23, 1976.

Area not designated high cost

Where travel is to an area that is not designated as a high cost geographical area but where the choice of accommodations are limited or the costs of accommodations are inflated because of conventions, sports events, natural disasters, or other causes which reduce the number of units available, such events may be considered as unusual circumstances of the travel assignment which would permit payment of expenses to an employee or member on an actual expense basis depending upon the circumstances of each case and the necessity and nature of the travel. 59 Comp. Gen. 560 (1980).

Designation of high rate area retroactively

General designation of high rate geographical area may not be made retroactively even though the existence of normal high costs sufficient to warrant such a designation was unknown to the Per Diem, Travel and Transportation Allowance Committee prior to the performance of travel in any individual case and such facts are thereafter made known. 32 Comp. Gen. 315 (1953). 59 Comp. Gen. 560 (1980).

III. TRANSPORTATION EXPENSES

A. Government Conveyance Directed

Government conveyance available but not used

Under the Joint Travel Regulations which provide that where travel is directed to be performed by Government conveyance and such conveyance is available, but travel is performed by another mode of transportation, payment of the monetary allowance in lieu of transportation is prohibited, a serviceman whose orders required travel by Government air transportation which was available for a portion of the trip, is entitled to reimbursement for cost of travel by commercial air only for that part of the trip where Government air transportation was not available. 31 Comp. Gen. 572 (1952). See also B-199731, May 8, 1981; and B-202477, December 23, 1981.

An Air Force enlisted member's temporary duty travel orders directed travel by Government air and referred to a "dedicated airlift" which would be available for his use in returning directly to his permanent duty station. Since the orders did not clearly state that the dedicated airlift was the only flight for him to use, he need not reimburse the Government for the cost of his travel for a portion of the trip for which he used a different Government flight to return to his permanent duty station. B-210197, June 6, 1983.

Transportation officer erroneously authorizes commercial transport

An Army officer returning to his new permanent duty station in Hawaii from a temporary duty assignment in the United States who is erroneously furnished transportation by commercial vessel to accompany his dependents authorized this mode of transportation to travel to the new station prior to issuance of the temporary duty orders, is indebted for the cost of the commercial vessel transportation, less

appropriated funds for telephone service in a private residence, the statute is not to be applied here where neither the outgoing nor incoming Air Deputy occupied the premises during the period covered by the charges. 60 Comp Gen. 490 (1981). Compare 59 Comp. Gen. 723 (1980).

V. SPECIAL CATEGORIES AND CIRCUMSTANCES

A. Reserve, and National Guard, and Retired Members On Active Duty

Reservists on active duty - length of active duty period

Per diem allowed if tour of duty less than 20 weeks--Members of Reserve components who are called to active duty or active duty for training, as distinguished from annual active duty for training under orders which required a return home upon completion of duty, are entitled to per diem if called to duty from their homes for tours of less than 20 weeks duration, 37 U.S.C. 404(a)(4) permitting the payment of per diem to reservists ordered from their homes for short periods of less than 20 weeks of duty, irrespective of the type of duty performed, if they are not furnished quarters and mess at a training duty station. 48 Comp. Gen. 517 (1969).

Per diem not allowable if tour of duty more than 20 weeks--When members of Reserve components are ordered to active duty or active duty for training for 20 weeks or more, the rules and regulations relating to temporary duty travel do not apply and the entitlement of reservists to per diem is for determination pursuant to 37 U.S.C. 404(a)(1) and not section 404(a)(4), which provides for the equalization of reservists' benefits with that of Regular members. 48 Comp. Gen. 517 (1969). See also B-207840, January 10, 1983.

Tour of duty extended beyond 20 week period--Where due to unforeseen circumstances, it is impossible for a reservist to complete ordered duty within a scheduled 20-week period, per diem payments may be continued for short additional periods and regulations amended accordingly. 49 Comp. Gen. 621.(1970). Compare B-203525, March 15, 1982 (extension not due to unforeseen circumstances).

Two tours of duty exceeding 20 weeks, at same location, with 1-day break in service--A naval reservist who travels from and to his home under orders providing for a 63-day recruiting assignment at a temporary duty station and then under subsequent orders after a 1-day break in service returns to the temporary duty station for a 150-day similar assignment is considered to have had one continuous period of service for determining entitlement to a temporary duty allowance - per diem and monetary allowance in lieu of transportation - and under 37 U.S.C. 404(a) permitting

Regulations, no exception will be taken to payments under the involved orders, or similar orders, but if Government meals were furnished and no deduction made from the per diem authorized, the value of the meals should be recovered. 49 Comp. Gen. 692 (1970).

Individual travel not authorized in orders

Under orders which directed a unit to move from Fort Campbell, Ky., to military reservation in Pennsylvania for TDY of approximately 90 days, and which specifically directed travel by commercial air except for certain designated members authorized travel by privately owned vehicle, unit member not so designated but who chose to use his automobile to perform travel was not entitled to mileage allowance. B-173064, June 30, 1971.

Orders retroactively amended to authorize individual travel

The retroactive amendment of orders authorizing travel by privately owned vehicle and directing group travel pursuant to the Joint Travel Regulations after the performance of temporary duty to delete the group travel requirement entitles members traveling by privately owned vehicles to the allowance prescribed by the regulations since the general rule that travel orders may not be revoked or modified retroactively to increase or decrease accrued or fixed rights after the performance of travel does not apply when orders are modified within a reasonable time to correct an administrative error or complete orders to show original intent, and the deletion of the group travel requirement reflects the intent that members who were permitted to travel by privately owned conveyances were exempt from group travel. 51 Comp. Gen. 736 (1972).

F. Participation in Maneuvers-Field Duty

In General

General rule - no per diem--A right to per diem does not accrue to member engaged in combat duty, simulated war games, survival training, and similar field duty, since member does not ordinarily incur more than normal expenses for subsistence in situation that exists at such times. 35 Comp. Gen. 555 (1956).

Under the statute authorizing per diem and other travel allowances for service members on official travel assignments, no per diem at all is ordinarily payable for periods of an assignment that are properly classified as "field duty," since ordinarily service members have no additional living expenses during such periods. Superseded provisions in the Joint Travel Regulations are not interpreted as making sleeping and subsistence conditions

the sole criteria for determining whether field duty is involved because the statutory authority for payments of per diem does not authorize denial without reference to the type of duty being performed. 63 Comp. Gen. 37 (1983).

Exception to general rule--Service members assigned to temporary duty with the Multinational Force and Observers in the Sinai are on field duty are prohibited by regulation from receiving per diem, the Joint Travel Regulations were amended to provide a $3.50 per diem rate for these members. Since this amendment may be considered an exception to the general prohibition in the regulations, and since there is no specific statutory prohibition, paying per diem to such members is authorized. B-209342, July 11, 1983.

Firefighting--As members of the uniformed services ordered to proceed on temporary duty in Government vehicles to assist the Forest Service in firefighting, whether they sleep in Government or personal sleeping bags, in the vehicles, on the ground without sleeping bags, on the floors of warehouses and similar structures, or do not sleep on certain nights because of duty performance, are not performing the type duty identified as maneuvers, joint field

and, therefore, the member who had the desertion mark removed upon conviction for an unauthorized absence is entitled to mileage computed on the official distance from the old to the new station, less the distance of indirect intermediate travel by transportation request and Government means, plus any per diem to which he may be entitled for the travel performed. 44 Comp. Gen. 140 (1964).

Member on ordinary or emergency leave orders without funds--Where Army member was issued transportation request upon showing he was without funds to purchase necessary transportation for return to his overseas duty station at end of period of leave, member was not entitled to reimbursement of cost of commercial transportation used in connection with emergency leave, paragraph 31 of Army Regulation expressly prohibiting such reimbursement for travel by commercial means, and reimbursement also being prohibited in connection with ordinary leave since it is not on public business. B-180810, October 9, 1974.

Discharge under other than honorable conditions

Distinction between former members released from civilian prisons and from military confinement facilities--The term "discharged prisoners" in section 303(e) of the Career Compensation Act, which defines the classes of military personnel entitled to travel and transportation at Government expense, has reference to prisoners discharged from United States military confinement facilities rather than to former members discharged under other than honorable conditions upon release from confinement in civilian prisons; therefore, the travel and transportation authority in section 303 of the Career Compensation Act of 1949 may not be used as authority for furnishing transportation and subsistence at Government expense for former members released from civilian prisons. 39 Comp. Gen. 206 (1959).

No confinement involved - discharge subsequently upgraded--Air Force member was discharged in 1956 under other than honorable conditions. In 1965 Discharge Review Board issued him discharge certificate "under honorable conditions." Member then became entitled to mileage allowance for travel performed by privately owned vehicle to home of record following discharge, where it appeared he did not utilize transportation request for transportation in kind as authorized by regulation for members discharged under other than honorable conditions, but rather actually performed such travel by privately owned vehicle at personal expense. B-159140, June 30, 1966.

Transportation home pending appellate review--The Military Justice Amendments of 1981, Public Law 97-81, added article 76a to the Uniform Code of Military Justice, which provides that court-martialed personnel sentenced to

receive punitive discharges or dismissals may be compelled to take leaves of absence pending the completion of the appellate review of their cases, in contemplation of their eventual separation from service in absentia under less than honorable conditions. When they are placed on leave they may be provided personal transportation home at Government expense by the least costly means available, in the same manner as is generally authorized for persons separated under conditions other than honorable. B-211797, December 23, 1983; 63 Comp. Gen. _____.

Prisoners

Former members erroneously apprehended--Former members of the uniformed services who, after termination of military

the United States and he may be reimbursed for the commercial air transportation as provided in the Joint Travel Regulations, the reimbursement not to exceed the cost to the Navy to transport him by Government air from Philippines to the continental United States subsequent to discharge. 52 Comp. Gen. 297 (1972).

Travel upon separation paid by civilian employer

Member, who on retirement traveled to his home of selection in Iran, was reimbursed for travel expenses by member's civilian employer. Member is not entitled to reimbursement for travel expenses thereto since such travel was not performed at personal expense as required by applicable regulations. B-185732, March 23, 1976. See also B-182900, February 26, 1976; B-193167, March 2, 1979.

Travel to home of selection upon retirement - failure to establish residence within 1-year period

Retired service member did not qualify for a travel allowance under regulations authorizing travel to home of selection within 1-year of retirement, since although he visited his eventual retirement homesite in the year following his retirement, he did not establish a home there within the 1-year period, but instead lived elsewhere for 4 years. B-165476, July 23, 1976. See also B-203135, October 6, 1981; and B-207144, October 5, 1982.

Approval is given a proposed revision of Volume 1 of the Joint Travel Regulations to extend the one-year time limit for selecting a home upon retirement in deserving cases under circumstances in which the reason for the delay is in the best interest of the service concerned or the delay will not be to the financial or other detriment of the service concerned, provided it is clearly stated that travel must be incident to separation. B-207157, February 2, 1983.

Travel to home of selection - extension of eligibility period

A retired Army member requested extension of time to complete travel to his home of selection upon retirement over 2 years after the initial 1-year period to complete the travel had expired. The Army denied the request for extension because the record did not meet the regulatory requirements for an extension. Consequently, the member's claim for travel allowances for himself and his dependents for travel performed 3 years after the member's retirement is denied. B-204864, March 15, 1982.

Retired members not entitled to travel to home of selection - allowance for travel to home of record

Members of the uniformed services who, on termination of active service otherwise qualify for travel and transportation to home of record or place of entry on active duty under 37 U.S.C. 404(a) and 406(a), are to be afforded such entitlements regardless of denial of travel and transportation to home of selection under 37 U.S.C. 404(c) and 406(g), in the absence of a statutory requirement that denial of travel and transportation to home of record or place of entry on active duty be made in such

circumstances. 53 Comp. Gen. 963 (1974); 54 Comp. Gen. 1042 (1975). See also B-210526, July 14, 1983.

Retired member called to active duty - travel to home of selection on subsequent retirement

A member who does not make a selection of a home incident to retirement within 1 year of retirement, but has assurance prior to expiration of 1-year limitation that recall to active duty is imminent, may have household goods shipped to home of selection on subsequent retirement following a period of active service. B-194599, May 22, 1979.

Home of selection must be bona fide residence

A member's claim for personal and dependent's travel from his last duty station to a place contended to be his bona fide home of selection for retirement, Kansas City, Missouri, is disallowed, since he has shown no evidence of actual and continuous residence at that place and that fact that his family from whom he is separated have established a residence there does not provide basis for payment. B-191550, August 11, 1978.

Service member's claim for travel by privately owned vessel from Panama City, Panama, where he retired from active duty to a place he claims as his home of selection upon retirement, Panacea, Florida, is disallowed since he returned to Panama, and has shown no evidence of actual and continuous residence in Panama. The fact that he might ultimately move to that location does not provide basis for payment. B-209044, March 1, 1983.

Travel from overseas for retirement processing

Army member who was transferred from Dhahran, Saudi Arabia, to Fort Dix, New Jersey, under orders for purposes of retirement separation processing, and who then traveled on to his home of selection for retirement in Athens, Greece, is entitled to travel allowances for all personal travel performed. However, since his travel from the United States to Greece was at personal expense via commercial airline, and it is not indicated that Government transportation was unavailable, his reimbursement for that travel is limited to the cost for military airlift established by regulations. B-192949, June 6, 1979.

Per diem at processing station

A service member was transferred from overseas to a temporary assignment for retirement processing at Albany, Georgia, which was also his home of selection. He owned a residence there prior to the transfer and lived there for part of the time while awaiting retirement and commuted

from his home to his duty station. In these circumstances he was not entitled to per diem after his arrival at Albany since that was his permanent residence. B-206299, November 15, 1982.

Home of slection overseas

A service member was transferred from Greece to McGuire AFB, N.J., for retirement processing, and he selected

same allowances and other benefits provided for enlisted members in pay grade E-4, with 4 years' service or less, the right to reimbursement for transportation accrues only after he is commissioned. 44 Comp. Gen. 67 (1964).

Aviation cadet - eligible grade--Member who enlisted in pay grade E-2 and was promoted to E-5 upon arrival at temporary duty station is entitled to dependent's transportation under orders that designate temporary duty station as first permanent duty station as an officer upon his being commissioned. 47 Comp. Gen. 641 (1968).

Promotion to eligible grade while overseas--Members who while assigned to restricted areas, are promoted to grades entitling them to transportation of dependents may be accorded the same transportation benefits upon subsequent PCS to unrestricted areas as personnel who were already serving in eligible grades before leaving the United States; therefore, such promoted members may be reimbursed for dependent travel upon PCS to unrestricted areas even though their dependents begin travel from a place to which they had not been transported at Government expense. 40 Comp. Gen. 577 (1961).

PCS orders cancelled and pay grade reduced after travel--To be entitled to dependent transportation costs, a uniformed service member must be in an eligible pay grade when the transportation is performed. Therefore, where a member received permanent change-of-station orders and his dependents traveled to the new permanent station in anticipation of the change, a subsequent cancellation of those orders and reduction in his pay grade to one ineligible for dependent transportation costs precludes the member's recovery of transportation costs for the return of his dependents to his home of record incident to his discharge from the service. B-211059, September 26, 1983.

Junior enlisted travel - effective date of entitlement

Although the Department of Defense Appropriation Act, 1979, appropriated funds which could be used for extention of travel and transportation entitlements to junior enlisted service members, the regulations authorizing the entitlements were issued under the existing authority of 37 U.S.C. chapter 7 (1967) and 10 U.S.C. 2634 (1976). Therefore, the effective date of the junior enlisted travel entitlements is the effective date of the regulations, which may not be amended retroactively, and not the earlier effective date of the Appropriation Act. B-193879, October 18, 1979.

Cadets and midshipmen

Dependents acquired at academy upon commissioning--Travel performed by a dependent incident to orders received by a

graduate of the United States Military Academy upon receipt of commission as an officer, which orders assign the member to an initial permanent duty station, with temporary duty en route, and which entitled the member to a travel allowance for his own travel on the basis of the distance actually traveled not to exceed that from home or from West Point to the new station by way of any temporary duty station, would entitle the member to reimbursement for dependent travel not to exceed the farther point, home or West Point, to the new station, irrespective of whether the officer's travel is directed from West Point or from home. 38 Comp. Gen. 790 (1959).

Dependent acquired after date travel from academy required--A graduate of the United States Military Academy who, upon receipt of a commission as an officer, is assigned to a new permanent duty station, with temporary duty en route, and who acquires a dependent before the date he is required to commence travel to report to the temporary duty station, is entitled to reimbursement for travel of the dependent to the new station not to exceed travel from farthest point under the officer's orders to the new station; however, if the dependent is acquired after the date of required travel to the temporary station, reimbursement may not exceed entitlement from the temporary to the permanent station irrespective of the place where the dependent is acquired. 38 Comp. Gen. 790 (1959).

Dependent acquired while on temporary duty after commissioning--A graduate of the United States Military Academy who, after receipt of a commission and orders to a new permanent duty station with temporary duty en route, acquires a dependent following arrival at, but on or before the date he is required to depart from the temporary duty point, is entitled to reimbursement for travel performed by the dependent to the permanent duty station, not to exceed entitlement from the temporary to the permanent duty station, irrespective of the place where the dependent is acquired. 38 Comp. Gen. 790 (1959).

Members on active duty for instruction

A member assigned to a school or institution as a student, if the course is to be less than 20 weeks duration, is not entitled to transportation of dependents. B-150203, November 26, 1962; B-144000, November 10, 1960.

Reservists in basic training

An enlisted member of the reserve component called to active duty for the purpose of engaging in basic training of less than 6 months, and a member called to active duty for less than 20 weeks or active duty for training for less than 20 weeks is not entitled to transportation of dependents. See generally, 43 Comp. Gen. 650 (1964).

C. Issurance Of Orders Requirement

Travel without orders

Where dependents of a member of a uniformed service move from an overseas duty station without orders and without authorization from the Secretary concerned, a claim for reimbursement by the member for the dependents' transportation costs on a subsequent permanent change of station of the member must be denied. B-195941, October 18, 1979. See also B-212149, December 16, 1983.

dependents for a distance no greater than from the designated location to which they had been furnished transportation at Government expense from the member's overseas station prior to his relief from that station to the location of the ultimate permanent duty station in the United States to which the travel was actually performed. 33 Comp. Gen. 43 (1953).

Preparatory expenses, order canceled--Passport application expenses incurred by an Army, incident to PCS orders to an overseas assignment which are revoked prior to the commencement of travel by the member and his dependents are preparatory expenses that are not reimbursable under 37 U.S.C. 406a, providing for reimbursement of expenses for travel commenced prior to the effective date of PCS orders that are modified, canceled or revoked, and the transfer orders of the member having been revoked before the member and his dependents departed the old station, absent specific statutory authority in the statute for the reimbursement of preparatory expenses, the claim for passport costs may not be allowed. 45 Comp. Gen. 34 (1965). But see 63 Comp. Gen. 4 (1983).

Amendment or revocation of retirement orders--A member whose dependents traveled to a selected retirement home prior to the issuance of retirement orders that were canceled at his request prior to effective date and then traveled to the member's new permanent duty station is located in the corporate limits of his old station entitled to a monetary allowance for both moves. When orders that direct a PCS, including orders directing release form active duty or retirement are canceled or modified before their effective date for the convenience of the Government and/or in circumstances over which a member has no control, the benefits prescibed by 37 U.S.C. 406a accrue, and the fact the member withdrew his retirement request is immaterial since the Government was under no obligation to accept the request and apparently did so primarily for the convenience of the Government. 53 Comp. Gen. 55 (1973).

Administrative error in orders necessitating PCS and extra expenses--Due to administrative error, a service member's eligibility for a deferral of permanent change of station due to lack of facilities necessary for one of his dependents was not discovered until after his arrival, with dependents, at the new station. He was then reassigned to another station. There is no legal authority to reimburse the member for extra expenses relating to the two changes of station in excess of travel and relocation allowances set by statute and regulation, allowances already received by the member. B-205403, January 8, 1982.

Ship overhaul cancelled--Where member's permanent change-of-station orders are not timely issued when a ship is scheduled for overhaul and the regulations are amended to

Approval of presence by commander

Travel to U.S.--Travel to the United States at Government expense when the presence of the dependents at the overseas station was not authorized or approved by the appropriate overseas commander is not authorized. 51 Comp. Gen. 362, supra; and 51 Comp. Gen. 485 (1972).

Travel within U.S.--Entitlement to expenses of travel of member's wife from overseas station where member's orders made no provision for her travel, depends on whether her presence overseas was command sponsored. If so, reimbursement may be made for the cost of Government air travel from overseas station to home of record incident to member's separation. If not command sponsored, there is no entitlement to overseas transportation and transportation within continental U.S. is limited to a monetary allowance for the distance between the aerial port of debarkation and the home of record. 53 Comp. Gen. 105 (1973).

Designated location travel

From U.S. designated location to overseas-Transportation of a dependent of a member to the member's overseas station from a place to which the dependent had gone at Government expense under earlier change of station orders within the United States and where the dependent remained after the member was transferred overseas without concurrent travel of dependent being authorized may be regarded as travel from a designated location to the overseas station for reimbursement of the full cost of transportation and the limitation in the JTRs which precludes payment of transportation in excess of the cost from the old to the new station when travel is performed from a place other than the member's old station, is not applicable to transfers to overseas areas. 38 Comp. Gen. 453 (1958).

To location in U.S. certified as bona fide residence-Marine officer transferred from unrestricted duty station in North Carolina to restricted duty station at Okinawa, Japan, certified that dependents' travel to New Hampshire was travel to a designated place for purposes of establishing a bona fide residence. Subsequently, he alleges certification was done because of erroneous advice and that dependents intended to establish residence in Okinawa. Member claims dependents' travel from North Carolina to Los Angeles, California, the port of embarkation for Okinawa. Since member's entitlement vested upon his certification of New Hampshire and dependents' actual travel there, member may only receive dependents' travel allowances to New Hampshire. B-195420, January 9, 1980.

Marine was transferred from an unrestricted duty station in North Carolina to a restricted duty station in Okinawa. He

moved his dependent from North Carolina to his home of record in Dallas, Texas. Subsequently, two of his dependents joined him at personal expense in Okinawa. Upon completion of the Okinawa tour, he was assigned on a permanent change of station to Hawaii. Instead of designating Dallas as his dependent's residence and requesting dependent travel at Government expense from North Carolina to Dallas, at the instruction of travel personnel in Okinawa he filed a claim for and received dependent travel allowances from North Carolina to Seattle, Washington, the dependents' point of debarkation to Okinawa. He should have received dependent travel allowances only from his old duty station to the home in Dallas and then directly from Dallas to his new duty station in Hawaii. B-210205, August 24, 1983.

Dependents visiting member when PCS orders issued-Uniformed service members' dependents were moved at Government expense to designated places in the United States when the

from the United States to overseas, not to exceed that payable for the distance from the old home port to the port of embarkation, and also paid an allowance incident to the change of home port from overseas to the United States, not to exceed that payable for the distance from the port of embarkation to the new home port, even though no land miles are involved in either change of home ports. 32 Comp. Gen. 485 (1953).

Transfer between ships

Home port same, different home yard--A Navy member who upon reenlistment and prior to a transfer to a new permanent station aboard a vessel home-ported in the United States, returns on leave to his home of record, the Philippine Islands, where he is married, and who a year later is transferred to another vessel at the same home port is entitled to the transportation of his dependents from the Philippines to the home port of the vessels pursuant to the JTR's incident to his first permanent duty station assignment upon reenlistment. 45 Comp. Gen. 477. (1966).

G. Separation Under Less Than Honorable Conditions

Dishonorable discharge--Transportation of dependents of members discharged from the service under other than honorable circumstances may not be authorized at Government expense in the absence of express statutory authority therefor. 37 Comp. Gen. 21 (1957).

Separation or confinement overseas--An amendment to the JTR's to authorize the return transportation of dependents of members who while serving overseas are involved in circumstances requiring separation under other than honorable conditions or confinement is within the purview of Public Law 88-431, which amended 37 U.S.C. 406(h) to permit advance transportation in such circumstances, whether separation is effected overseas or in the United States, and in cases of confinement of the members when there is a determination that the best interest of the dependents and the United States require the return transportation of the dependents and effects. 44 Comp. Gen. 724 (1965). Compare 55 Comp. Gen. 1183 (1976).

Separation in the U.S.--Regulations may not be promulgated under 37 U.S.C. 406(h) (1970) or any other statutory provision to authorize transportation of dependents and household effects of a member of the uniformed services with dependents and shipment of household goods for a member without dependents serving within the United States, incident to the member's discharge under conditions other than honorable similar to the transportation authorized members with or without dependents discharged in such circumstances while serving overseas. B-131632, November 30, 1977.

Under the statutes and regulations currently in effect, service members stationed outside the United States who are separated under less than honorable conditions are authorized return transportation of their dependents and household goods under 37 U.S.C. 406(h), but such authority does not extend to those stationed within the United States. However, under the recently enacted provisions of 37 U.S.C. 406(a)(2)(A), members stationed in the United States who are separated under those conditions are authorized transportation of dependents by the least expensive transportation available, but not household goods. Court-martialed personnel sentenced to receive punitive discharges who are stationed outside the United States and who are placed on appellate leave to await final separation may be allowed transportation of dependents and household goods on that same basis. Such personnel stationed inside the United States and placed on appellate leave may be authorized dependents' transportation but not household goods transportation. B-211797, December 23, 1983; 63 Comp. Gen. _____.

expense may be paid the allowance directly only if the member authorizes such payment. B-193430, February 21, 1979.

After acquired spouse--In the absence of statutory authority, the Joint Travel Regulations may not be amended to allow reimbursement to a member for transportation of dependents acquired subsequent to the effective date of orders assigning the member to a new duty station. 35 Comp. Gen. 673 (1956).

Separation of spouse--A member under permanent change-of-station orders traveled concurrently with his wife, who was traveling under separation orders. He is not entitled to dependent transportation allowance on account of his wife as his dependent since she was paid travel and transportation expenses to her home of record in connection with her separation from active service in the Air Force. However, he may be paid a dislocation allowance at the with-dependent rate on account of his wife since she is considered his dependent on the effective date of his transfer. 63 Comp. Gen. 55 (1983).

Parents

Member of household requirement--A dependent parent of an Army officer who did not accompany the officer to his overseas station but, upon his subsequent transfer to a duty station in the United States, traveled to the new duty station may not be regarded as a member of the officer's household actually residing at or in the vicinity of the overseas station to entitle the officer to reimbursement for the dependent's travel and in the absence of specific authorization for the dependent parent's travel from a place other than the old station to the new station as required under paragraph 7000 of the Joint Travel Regulations, no reimbursement may be made. See also 39 Comp. Gen. 335 (1959), B-183542, December 29, 1975.

Financial dependency requirement--In order to be entitled to reimbursement for the transportation of a dependent mother on change of station member must submit evidence that the mother resides with him as a member of his household and also evidence of dependency of the mother to the same extent as required when claiming rental of subsistence allowances by reason of a dependent mother. 3 Comp. Gen. 109 (1923).

Transportation as related to dislocation allowance--The payment of dislocation allowance to a member without dependents who is receiving BAQ as a member with dependents for her mother who will not join her at her new duty station where she was not assigned Government quarters depends on whether or not the mother resided with the member at the

old station. If she did not, the member is entitled to a dislocation allowance in an amount equal to the applicable monthly rate, but if the mother did reside with the member at the time of transfer, her entitlement to transportation for the mother precludes payment of the allowance even though the mother may not have changed her residence. 52 Comp. Gen. 405 (1973).

Children - Status

Adopted children generally--Where children are placed with a member of the uniformed services for adoption in the

Child in uniformed services--The fact that the spouse of a member who was transferred is a military nurse does not deprive the member to entitlement for her transportation since the wife traveled during a period that she was in excess leave status, a period during which she was not entitled in her own right to basic pay and allowances prescribed for active duty. 53 Comp. Gen. 289 (1973).

Child a cadet or midshipman--A cadet who is the son of a member is entitled to transportation allowance in his own right and, therefore, such cadet may not be regarded as a dependent for travel purposes incident to a PCS of the member when the PCS is made after the son entered the academy. 39 Comp. Gen. 786 (1960).

Child born after orders--An unborn child on the effective date of the PCS orders of the father may not be considered his dependent for the purposes of transportation at Government expense of persons dependent upon a member on the effective date of PCS orders. However, regulations may be issued to authorize reimbursement for the cost of travel to a member's new station of his child born after the effective date of his PCS orders if his wife's travel prior to the birth of the child is precluded by departmental regulations due to the advanced state of her pregnancy. 50 Comp. Gen. 220 (1970).

Legal custody questions--Dependent children who are not under the legal custody and control of the member on the effective date of his PCS orders are not entitled to be transported at Government expense. Where at the time of member's PCS, divorce action was pending in the courts, and the children were in the legal custody of the wife under temporary court order, member is not entitled to travel expenses of his dependent children. 53 Comp. Gen. 787 (1974) and 51 Comp. Gen. 716 (1972). See also B-1311421, June 3 1957; B-186308, July 22, 1976; and B-178229, September 14, 1973; and B-197144, July 22, 1980.

Member granted retroactive temporary custody--Divorced member whose former wife was given legal custody, care, and control of their children under court order and who subsequently takes actual custody of children and then obtains court order granting him retroactive and prospective temporary legal custody, care and control is entitled to reimbursement for dependent travel since his permanent duty station was changed while he had temporary legal custody. B-197384, August 12, 1980.

Custody on date of assignment--Military member is not entitled to the transportation expenses incurred by his dependent daughter when she traveled to his permanent duty station to assume residence with his because she was not in his custody and control on the effective date of his assignment to that post. B-209105, April 22, 1983.

Children-Age limitations

Majority attained while stationed overseas--An unmarried child of a member transported outside the United States or to Hawaii, or Alaska at Government expense, who attains 21

years of age while the member is serving in such place is not limited to returning the dependent to the U.S. upon assignment of the member to duty in the U.S. The JTR's may be amended to expand dependent travel entitlement to include travel between unrestricted overseas areas incident to PCS orders, or to return such dependents to the United States at Government expense when the member is assigned from an unrestricted to a restricted overseas station. 45 Comp. Gen. 82 (1965).

Majority attained in the United States--The dependent of a service member was authorized travel from Tacoma, Washington, to Maxwell Air Force Base, Alabama, in connection with the member's permanent change of station from West Germany, to Maxwell. Since the dependent was already in the United States, and had attained the age of 21 while in the United States, the orders may not be considered as authorizing travel as a dependent at Government expense. B-212149, December 16, 1983.

After acquired dependent attaining majority while stationed overseas--The joint Travel Regulations may not be amended to authorize transportation at Government expense for the return transportation to the United States of a uniform service member's child acquired overseas when the dependent was less than 21 years of age who was subsequently command sponsored and then became 21 years of age before the member's next permanent change of station. 37 U.S.C. * 406(h), which authorizes return transportation of dependent children from overseas after reaching age 21, applies only to dependents transported overseas at Government expense. B-199424, October 7, 1980.

21st birthday during travel--When a dependent of a member who became 21 years of age after the date a delayed travel authorization for transportation of the dependent to the member's overseas station was issued, but before the time the dependent arrived at the port of aerial embarkation for overseas travel, the member may not be reimbursed for the transportation of the dependent to the overseas station. Entitlement is determined on the basis of the attained age of the dependent on the date of embarkation. 44 Comp. Gen. 98 (1964).

Children remaining overseas after reassignment--The fact that an unmarried dependent transferred overseas at Government expense incident to the assignment of a member remained overseas after reaching 21, and the member's assignment to the United States, only returning to U.S. after the member's reassignment to another permanent duty station within the U.S. does not defeat entitlement to dependent's transportation. Therefore, the member is entitled to the transportation of the dependent from the place at which located overseas to the duty station, at which the member

is located at the time the travel is performed, not to exceed the distance from the old station overseas to the current duty station in the U.S. or from the last station in the U.S. to the current station, whichever is greater. 47 Comp. Gen. 691 (1968).

The reimbursement he recieved for his personal travel is all that he was entitled to. B-202050, October 9, 1981.

After acquired goods - replacement items--The prohibition in the JTR's that household goods acquired by a member after the effective date of PCS orders may not be transported at Government expense, except houshold goods purchased in the United States when shipped to an overseas station, may be waived for equipment serviceable on the effective date of orders and replaced because of breaking down, wearing out,or otherwise becoming useless after such date and before the date the goods are turned over to the transportation officer or carrier for shipment, and the JTRs may be amended to authorize shipment, within authorized weight allowances, of bona fide replacements of articles in the possession of a member on the effective date of his orders, but the exception may not be extended to retirement or separation from the service cases, the authority in 37 U.S.C. 406(b) and (e), based on the concept of a change of station allowance, not covering items acquired up to a year later that do not relate to the member's service. 43 Comp. Gen. 514 (1964).

Weight limitations

Weight determination primarily administrative matter--The question whether and to what extent authorized weights have been exceeded in the shipment of household effects by members of the uniformed services is considered to be a matter primarily for administrative determination and ordinarily will not be questioned in the absence of evidence showing it to be clearly in error. B-196994, May 9, 1980, See also B-198264, May 6, 1980, B-197984, April 3, 1980, B-197948, December 29, 1980, and B-206951, July 12, 1982.

The General Accounting Office will not disturb the agency's determination of the net weight of a service member's household goods shipment in the absence of clear error or fraud. Where the cumulative effect of circumstantial evidence is insufficient to establish clear error or fraud, the claiment has not met his burden of proof so as to have his claim for excess weight charges collected from him allowed. B-213543, December 7, 1983.

Rebuttal of weight certificates--A weight certificate and weight tickets, which were regular on their face, produced by a certified weighmaster to determine the weight of a household goods shipment and which indicated that the shipment's weight greatly exceeded the authorized shipping weight, can be rebutted. An Air Force member who produced substantial evidence including professional weight estimates made by Air Force employees showed that mover's weight certificate and tickets were clearly in error and invalid. B-206951, July 12, 1982. Compare B-207806, August 24, 1982.

The carrier's mere opportunity to fraudulently increase the weight of a household goods shipment and the carrier's suspension from traffic for reasons of poor service do not constitute sufficient evidence to establish that weight the carrier charged for on a particular shipment was erroneous or fraudulent when that weight is based on the required weight tickets. B-213543, December 7, 1983.

Weight of subsequent move not acceptable--Rebuttal evidence of the weight of household effects shipped in a subsequent permanent change-of-station (PCS) move is not sufficient to show that the properly determined weight of household effects shipped in a previous PCS move was incorrect. B-198264, May 6, 1980. See also B-194315, October 24, 1979, B-207806, August 24. 1982.

officer is chargeable for excess costs prorated on the basis the excess net weight bears to the total net weight, and computed on all costs of transportation. 44 Comp. Gen. 652 (1965). See also B-203036 (1), February 9, 1982.

Goods not reweighed--An Air Force member's claim for refund of shipping charges collected from him for the excess weight of his household goods on the basis that the administrative regulations directing that his household goods be reweighed were not followed may not be allowed in the absence of some other evidence that the weight was in error since such regulations are procedural in nature and do not apply to administration or interpretation of entitlements. Since the weight of the household goods was established at origin by the certificate of a public weighmaster and since no error in such weight is alleged or shown, that weight must be used in determining the member's liability. B-190687, March 22,1978. See also, B-194733, March 10, 1980, B-189888, March 22, 1978, B-194961, July 23, 1979, and B-192618, November 9, 1978.

Navy's assessment of excess weight charges based on weight tickets issued by a certified weighmaster is a valid basis for computing net weight of a member's household goods. That assessment cannot be cchanged based on the member's allegations that the scales were operated by the carrier's parent company; the driver refused to reweigh tare weight on independent scales; the carrier, subsequent to the move, was suspended from military traffic; and illegally increasing weight has been practiced by some in the moving industry. B-213543, December 7, 1983.

Service member claims refund of the shipping charges collected from him for the excess weight of his household goods on the basis that the administrative regulations directing that his household goods be reweighed were not followed. His claim may not be allowed in the absence of some other evidence that the weight of the goods was in error since regulations requiring reweigh are procedural in nature and do not govern entitlements. Since the weight of the household goods was established at origin and since no error in such weight is alleged or shown, that weight must be used in determining the member's liability. B-207950, February 8, 1983.

No advance notice of excess weight--A service member is charged the cost of shipping household goods in excess of his weight allowance, but asserts that because the transportation officer failed to notify him of the excess weight in accordance with Army regulations, he should not be charged for the costs. The regulations authorized by 37 U.S.C. 405 providing entitlement to transportation of household goods are contained in Volume 1, Joint Travel Regulations (1 JTR), not the Army regulations, Para.

M8007-2, 1 JTR, provides that cost of shipping household goods in excess of authorized weight will be borne by the member. Failure of a transportation officer to notify member of excess weight is not a criteria for exempting a member from paying these costs. B-199109, August 15, 1980. See also B-195606, March 5, 1980.

Audit on excess weight--A proposed procedure to establish a minimum weight of 300 pounds for the examination of shipping documents of household goods shipped to determine if there are excess costs on account of members exceeding their authorized weight allowances would not satisfy the audit requirements of the U.S. General Accounting Office and may not be approved as there is no legal basis for disregarding shipments weighing less that 300 lb. in determining whether excess costs are involved when to do so could serve to permit shipment at Government expense of weights in excess of those prescribed by the JTR's implementing 37 U.S.C. 406 authorizing shipment. Moreover, departments have the responsibility to maintain adequate controls in order to determine when shipments involving excess costs have been made and to take appropriate action to recover the amount of any access costs. 50 Comp. Gen. 705 (1971).

Orders requirements

No orders issued--An Air Force member who was required to vacate family type Government quarters because his dependent departed the quarters permanently to accept employment some distance away is not entitled to be reimbursed moving expenses he incurred when he personally moved his household goods to the place where his dependent was working. In the absence of permanent change of station of retirement orders, the member could only be reimbursed expenses if the move was ordered due to some unusual situation related to military necessity. B-208815, January 10,1983.

Shipment prior to orders - military necessity--Although household effects of members may be moved at Government expense within prescribed weight allowances under the authority of 37 U.S.C. 406(b) incident to a PCS, the JTR's preclude shipment at Government expense when shipment occurs prior to the issuance of orders, except upon certification by proper authority that shipment was due to an emergency, exigency of the service, or required by service necessity. The authority for the transportation of dependents, baggage and household effects between points in the U.S. in unusual or emergency circumstances when incident to military operations or need may not be extended to authorize transportation long prior to issuance of PCS orders solely on the basis of dependent's need. 52 Comp. Gen. 769 (1973).

Shipment prior to orders - evidence of shipment--A former Navy member who claims reimbursement for shipping his household effects and supports his claim with receipts indicating that the shipment was made 11 months prior to the issuance of permanent change-of-station orders may not be reimbursed since generally shipment of household effectrs prior to orders is not authorized. His statement that the shipment was made after his orders were issued, not on the date of the receipts, is insufficiently supported to overcome the strong presumption that the shipment was made about the time of the receipt of dates. B-194556, June 13, 1979.

Shipment prior to orders-personal reason--Military member is not entitled to transportation of household goods in advance of orders, since shipment without orders was for personal, not military reason. Military member indicated he was informed that he had 72 hours to clear post and that in 48 hours orders would be issued, but he shipped goods without waiting for orders. Further, orders were not immediately forthcoming because of member's actions delaying separation from active duty until a medical determination could be made in his case. B-197522, November 24, 1980.

Changed orders--When a member of the uniformed services incident to his transfer overseas is authorized the movement of dependents and household effects, but after shipment of the effects, his dependents are unable to join him because of illness or other personal reasons, and his tour is changed to an unaccompanied tour, the return of the member's household effects at Government expense from the overseas duty station to a designated place in the U.S., Puerto Rico, or a territory or possession of the U.S., may not be authorized. The transportation of household effects of a member at Government expense may be authorized pursuant to 37 U.S.C. 406(b) only in connection with a duty station change, except in unusual or emergency

No entitlement in connection with intracity drayage--An Army officer transferred on permanent change of station orders from San Francisco, California, to Fort McPherson, Georgia, authorized his household goods to be placed in temporary storage by his wife. The goods were stored in Oakland, California, for 4 months and then, on instructions from the member and his wife, delivered to an address in San Francisco. Member is liable for the temporary storage charges since the intracity drayage may not be considered shipment and temporary storage in connection with intracity drayage is not authorized. B-199110, March 30, 1981.

Misshipment after expiration of entitlement--Member who was released from active duty placed his household goods in storage in Pensacola, Florida. After expiration of 180-day period for Government paid temporary storage, he requested shipment of household goods to his home in Sherman, Connecticut. Due to Navy error carrier did not have street address and map to find employee's home so household goods were placed in storage in Brookfield, Connecticut. Member may be reimbursed storage and transportation costs incurred in reshipment from Brookfield to his home in Sherman since paragraph M8012 of Volume 1 of the Joint Travel Regulations allows service to forward improperly shipped goods at Government expense. B-204621, December 22, 1981.

C. Mobile Homes

Status as mobile home

Railroad car--A Pullman rail car converted and used as a residence by a member qualifies as a mobile dwelling and the member is entitled to the trailer allowance prescribed by 37 U.S.C. 409, which contemplates payment on a mileage basis for overland travel, since there is no indication in section 409 that the allowance is not applicable to a privately owned Pullman car transported overland by rail, and subject to tariff charges, as well as to highway movements. 51 Comp. Gen. 806 (1972).

Houseboat--Transferred member of the Air Force may be reimbursed the cost of tranporting the houseboat he uses as his dwelling under 37 U.S.C. § 409, which permits the transportation at Government expense of a mobile home dwelling, because it is determined that a boat may qualify as a "mobile home dwelling" under the law. 48 Comp. Gen. 147 (1968) is overruled and regulations issued to implement that decision need not be applied so as to exclude payment for transporting boats which are used as residences. 62 Comp. Gen. 292 (1983).

Election of mobile home transportation

Delivery impossible due to breakdown--When a member elects the trailer allowance authorized by 37 U.S.C. 409 in lieu of household effects shipment and dislocation allowance, and delivery of the trailer is precluded by breakdown or damage en route in circumstances beyond the control of the member, his entitlement to reimbursement on a trailer allowance basis continues even though the household effects are shipped to the new station. The total cost of such shipment may not exceed the trailer allowance payable had the trailer reached destination, and where the trailer is shipped under a Government bill of lading, household effects reimbursement is limited to the amount of the trailer

Cost reimbursement

Government shipment requirement--Where a member entitled under 10 U.S.C. 2634 and 37 U.S.C. 406(h) to Government arranged free ocean transportation of a POV upon a PCS overseas, personally arranges and pays for the commercial shipment of a POV, the cost of the ocean transportation, absent specific statutory authority, may not be reimbursed to the member, and the law authorizing the ocean transportation of POV conferring no shipping entitlement on member personally, nor providing for the reimbursement of personal expense incurred for the commercial transportation arranged by him, the JTRs may not be amended to authorize reimbursement of transportation costs to members personally arranging for the shipment of motor vehicles to their permanently assigned overseas station. 45 Comp. Gen. 39 (1965). But see 51 Comp. Gen. 838 (1972).

Government erroneously refuses to ship--A member eligible to have his automobile shipped at Government expense pursuant to 10 U.S.C. 2634 incident to his transfer overseas, who when erroneously denied such transportation arranged and paid for shipping the vehicle by commercial means, is entitled to partial reimbursement in the amount the Government would have been charged by the Military Sealift Command (MSC) under its applicable schedule of rates if Government had arranged for the shipment. Regulations denying an eligible member reimbursement for the cost of shipping his privately owned vehicle overseas by commercial means when he personally arranges for the cost of shipping his POV overseas service because the Government erroneously refused to do so may be amended to provide for partial reimbursement based on MSC costs. 45 Comp. Gen. 39 and other similar decisions modified. 51 comp. Gen. 838 (1972).

Government delays shipment--Army member seeks reimbursement for 23 days of car rental expenses he incurred because of delay in shipment of his privately owned vehicle incident to his change of station. Although the delay was unnecessary, the member may not be reimbursed car rental expenses since there is no authority in statute or regulation which would allow reimbursement. B-205113, February 12, 1982.

Foreign-made automobile--A member stationed overseas who had purchased a foreign-made vehicle overseas prior to entry on active duty may not be reimbursed the expenses of shipping the privately owned vehicle when he received permanent change-of-station order to the United States since 1 Joint Travel Regulations, para. M11002-3, specifically prohibits the shipment of foreign-made privately owned vehicles at Government expense. B-210528, August 25, 1983.

Replacement vehicle overseas--Volume 1 of the Joint Travel Regulations may be amended to authorize shipment of a replacement vehicle for a member of a uniformed service stationed overseas for a protracted period when his vehicle becomes impractical to repair because of normal deterioration and wear. The law requires only that replacement became necessary for a reason beyond the control of the member and that replacement is in the interest of the United States. B-212338, December 27, 1983.

III. REIMBURSEMENTS AND LIMITATIONS

A. Denial of Travel To Dependents Otherwise Qualified

Dependent on active duty

Cadet or midshipman--A cadet who is the son of a member is entitled to transportation allowance in his own right and, therefore, such cadet may not be regarded as a dependent

B. Readjustment Pay

Repealed in 1981

10 U.S.C. 687, which had authorized a readjustment payment for certain reservists separated from active duty after completing at least 5 years of continuous active duty, was repealed effective September 15, 1981, by section 701 of the Defense Officer Personnel Management Act, Public Law 96-513.

Service which determines eligibility for and amount of readjustment pay

Temporary disability retirement with over 5 years service--Reserve officer who is placed on temporary disability retired list with entitlement to retired pay after serving over 5 years of continuous active duty is not entitled to readjustment pay. Readjustment pay does not accrue to a Reserve officer who serves over 5 years of continuous active duty if upon release from active duty the member is immediately eligible for retired pay based entirely on his military service which includes retired pay for a member on the temporary disability retired list. B-206133, February 1, 1983.

More than 4-1/2 years but less than 5 full years of service--Under 10 U.S.C. 687(a) readjustment pay is provided for an Armed Forces reservist who is involuntarily released from active duty and has completed, immediately before his release, "at least five years of continuous active duty" computed by multiplying his years of active service by two months' basic pay of his grade at the time of release. That statute further provides that "/for/ or the purposes of the subsection--. . . (2 a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded . . . ." The "rounding" provision, as is clear from the statute's legislative history, applies only in computing the amount of readjustment pay, and not in determining eligibility therefor; hence, a reservist must serve a minimum of five full years of continuous active duty before his involuntary release in order to qualify for readjustment benefits. Cass v. United States, 417 U.S. 72 (1974), citing views expressed by the Comptroller General.

Period of active duty in different services--The 5-year continuous active service requirement for entitlement to the lump-sum readjustment payment provided by statute does not specify that the active duty must be performed in the same military service; therefore, active duty as a Reserve in one service may be combined with active duty in another service. 37 Comp. Gen. 357 (1957).

Combination of Regular and Reserve service--The holding in Washburn v. United States, 161 Ct. Cl. 46 (1963), that a member of a Reserve component involuntarily released from active duty may combine Regular and Reserve service in determining eligibility for readjustment pay provided under section 265(a) of the Armed Forces Reserve Act of 1952, as added by the act of July 9, 1956, will be followed. The court holding and legislative history establishing no specific portion of the 5-year period of continuous service immediately prior to separation required for eligibility for readjustment pay, as a minimum period of duty in a Reserve component,

uniformed services after the expiration of the 5-year period prescribed in 10 U.S.C. 1210(b) may be included in determining the rate of basic pay for purposes of computing disability severance pay coming within the scope of 10 U.S.C. 1212(a)(A), the member's status on the temporary disability retired list not automatically terminating at the expiration of the 5-year period prescribed for the payment of temporary disability retired pay, but continuing until removal of his name as prescribed in 10 U.S.C. 1210(c) or (f), or until terminated in some other manner, such as by resignation or death. 42 Comp. Gen. 52 (1962). See also 37 Comp. Gen. 823 (1958).

More than 12 years' service - second payment of severance pay--A Navy enlisted man who, after discharge for physical disability and receipt of a severance payment based on 11 years, 3 months and 20 days' service, reenlisted and was subsequently discharged for disability with a total of 13 years, 2 months and 1 day of active service is precluded by the 12-year service limitation in 10 U.S.C. 1212--which is a limitation on the amount to a particular individual rather than a limitation as to the amount which may be paid for each separation--from receiving another severance payment based on total service, but the member may receive an additional severance payment on the basis of the remaining period of active service not to exceed a total of 12 years. 37 Comp. Gen. 289 (1957).

Receipt of retired pay or veterans' benefits for same disability

Compensation from Veterans' Administration--The action of a Naval Retiring Board in ordering a lieutenant in the Nurse Corps discharged for physical disability with severance pay 2 years after she had been released from active duty and transferred to the retired list without pay relates to the time of her active release and, inasmuch as she has been accruing compensation from the Veterans Administration for the same disability in an amount which exceeds the amount which would have been paid as severance pay at the time of original release, she is not now entitled to severence pay. 35 Comp. Gen. 300 (1955).

Disability compensation paid by the Veterans Administration must be withheld by that agency from a former member in an amount equal to any disability severance pay received by the member under 10 U.S.C. § 1212 for the same disability. Pay for inactive duty training performed may not be paid in such cases unless the Veterans Administration interrupts benefits entitlement and holds in abeyance the collection of disability severance pay. In such a case inactive duty training pay may be paid if a waiver is executed as required by 10 U.S.C. § 684. B-207913, April 15, 1983.

Records correction - placement on permanent disability retired list--Although the disability severance pay recoupment provisions in 10 U.S.C. 1212(c), which require deduction of severance pay when a former member of the uniformed services becomes entitled to other compensation for the same disability, relate to benefits awarded by Veterans' Administration, 10 U.S.C. 1212(c) and 1213, concerning the effect of separation on benefits, evidence an intent that a member is entitled to only one benefit arising from the same disability; therefore, a member in receipt of disability severance pay when his military records are corrected

II. DEATH PAYMENTS

A. Death Gratuity

Distinguished from pay and allowances

Where claimant obtained Mexican divorce from prior spouse and subsequently married deceased member, fact that Coast Guard paid her the deceased member's unpaid pay and allowances as designated beneficiary under clause (1) of 10 U.S.C. 2771(a) does not stop Government from challenging validity of marriage as such payment was neither determinative of question of her marital status nor was such question even in issue, since by statute the designated beneficiary has primary entitlement to the unpaid pay and allowances under 10 U.S.C. 2771, but surviving spouse has primary entitlement to the death gratuity under 10 U.S.C. 1477. 55 Comp. Gen. 533 (1975).

Entitlement of surviving spouse

Conflicting claims, generally--Where neither of two conflicting claimants to a death gratuity payable under 10 U.S.C. 1475-1480 can clearly establish entitlement to payment as the surviving spouse of the deceased service member, the gratuity may not be paid to anyone unless and until more conclusive evidence is submitted in the matter, or a certified copy of a decree of a court of competent jurisdiction establishing entitlement is presented. B-207214, November 4, 1982.

Conflicting claims, Good-faith putative spouse--Where several women, each purporting to be the widow of a deceased member of an Armed Force, submit conflicting claims for entitlement to the death gratuity due under 10 U.S.C. §§ 1475-1480 (1976), and there is a sufficient basis in the record to support a finding that only one claimant is the surviving spouse, her claim will be allowed to the preclusion of all others. Although Louisiana law permits a good-faith putative spouse to take an equal share in the civil effects of a putative marriage, she is not entitled under the Federal statute to a portion of the death gratuity as a surviving spouse. B-209076, August 25, 1983.

Spouse cannot be located or identified--The gratuity provided in 10 U.S.C. 1475-1480 that is payable upon the death of a service member may be paid to survivors only according to the priority list contained in 10 U.S.C. 1477. Since surviving children are lower in priority on that list than a surviving spouse, the children may not be paid when there is an eligible spouse, even though the current address of the spouse is unknown or the spouse cannot currently be identified because of conflicting claims. B-187581, January 6, 1977, and B-207214, November 4, 1982.

Spouse's claim barred by statute of limitations--A member of the Army was killed in 1945, and his wife's claim for the six month's death gratuity was presented to the Army in 1945, but apparently was not paid due to a lack of supporting documents, and the claim apparently was not received by GAO until 1973. Since the pertinent records have been destroyed, and in view of the time limit for presenting claims provided by 31 U.S.C. §§ 71a and 237 (1970), the claim may not be paid. B-189889, September 29, 1977.

including arrears of retired pay of the deceased husband which the Navy declined to pay on the basis she was not the surviving spouse. While common-law remarriage after divorce is possible in Colorado, on the record presented the existence of a common-law marriage is too doubtful to authorize payment. B-194457, May 9, 1979.

Designated beneficiary predeceases member--Where the brother named by a member of the uniformed services to share with a sister the retired pay due him at time of death predeceases the member and only the sister and two other brothers survive the member, the sister does not take the undistributed one-half share since the beneficiary designations made pursuant to 10 U.S.C. 2772(a)(1) became effective upon the member's death and, therefore, the order of precedence prescribed by section 2771(a) applies to the undistributed share of retired pay due. As the member was not survived by a widow, child, grandchild, or parent, and no legal representative was appointed, distribution in accordance with section 2771(a)(6) should be made to the persons, including a corporate entity, entitled to take under the law of the domicile of the deceased, which accords preference to creditors, or persons paying creditors, for funeral and last illness expenses. 52 Comp. Gen. 113 (1972).

Designated beneficiary kills member--Claim of widow of deceased service member for unpaid pay and allowances as member's designated beneficiary (10 U.S.C. 2771), where she admitted killing him and was indicted for murder, is denied, even though she claimed self-defense and nolle prosequi was entered on indictment, since due to certain information of record, the lack of felonious intent cannot be established. 55 Comp. Gen. 1033 (1976). See also B-208101, April 22, 1983, concerning claims arising under other statutes in like circumstances.

Spouse accessory to member's murder--Murdered Navy member's wife, who was found guilty of being an accessory after the fact to his murder, is not entitled to receive arrears of pay due the member in the absence of evidence that she was not involved in the murder or that she did not participate in the murder with felonious or wrongful intent, since it is a fundamental rule of law that no person shall be permitted to profit by his own wrongful act. B-187743, July 7, 1977.

Legal entity as designated beneficiary--The word "person" as used in 10 U.S.C. 2771(a) should be construed similarly to that word as used in 5 U.S.C. § 5582(b) and, thus, may include a legal entity other than a natural person. Therefore, an Army member's designation as beneficiary of his unpaid retired pay upon his death of the United States Soldiers' Home, a Government instrumentality with the power to accept donations of money or property, was a valid designation under 10 U.S.C. 2771(a)(1) and the Home's claim may be allowed. B-187037, October 22, 1976.

retired in the grade of lieutenant general or general under 10 U.S.C. 3962 or 8962, the time-ingrade restrictions in 10 U.S.C. 3963 or 8963 do not apply in selecting an earlier hypothetical retirement date for retired pay computation pursuant to 10 U.S.C. 1401a(f). B-189029, September 9, 1980.

Mandatory retirement and advancement on active list on same day--Several rear admirals, both upper and lower half, are to be mandatorily retired under provisions of 10 U.S.C. 6394 on July 1, 1975, and as a result of retirement of rear admirals (upper half) on that date, some retiring rear admirals (lower half) would be entitled to basic pay as a rear admiral (upper half) in accordance with 37 U.S.C. 202, if considered to be serving on active list subsequent to the retirement of the rear admirals (upper half). These rear admirals are not entitled to compute retired pay on basis of rear admiral (upper half) since they also are to be mandatorily retired on July 1, 1975, and as a result will not be serving in that grade on the active list on that date. 54 Comp. Gen. 1090 (1975).

Member reduced after becoming eligible for retirement--Under 10 U.S.C. 1401a(f) (Supp. V, 1975) the retainer pay of a former Navy or Marine Corps member who initially became entitled to that pay on or after January 1, 1971, may not be less than the retainer pay to which he would be entitled if transferred to the Fleet Reserve or Fleet Marine Corps Reserve at an earlier date, adjusted to reflect applicable increases in such pay under that section even though transferred to Fleet Reserve or Fleet Marine Corps Reserve at a lower pay grade because of unsatisfactory performance of duty or as result of disciplinary action. 56 Comp. Gen. 740 (1977).

Grade prior to terminal leave or at time of retirement--The retired pay of a member who was Chief Master Sergeant of the Air Force prior to entering terminal leave status, at which time his status reverted to chief master sergeant, and who retired under 10 U.S.C. § 8917 effective November 1, 1981, may be computed based on the special rate for Chief Master Sergeant of the Air Force in effect prior to his commencing terminal leave or on the basis of the grade in which he was serving at the time of his retirement as a chief master sergeant. B-210789, July 6, 1983.

Advancement on retired list to highest grade satisfactorily held

In general--Where an existing statute authorizes computation of the retired pay of a member or former member on the basis of the pay of the grade in which the individual had served satisfactorily and which is higher than the pay of the grade on which he otherwise is entitled to compute his

retired pay, we will authorize payment, or pass to credit in the disbursing officer's accounts, a payment of retired pay computed on the pay of the higher grade, without regard to whether that grade was a temporary or permanent grade, even though the armed service in which the individual held that higher grade is not the service in which he retired. However, such action in any particular case will depend upon an appropriate administrative determination as to satisfactory service where such determination is required by applicable statutes. 49 Comp. Gen. 618 (1970). See also 50 Comp. Gen. 607 (1971); 50 Comp. Gen. 586 (1971); 49

Fractional year

Less than six months - day of retirement-- An officer retired effective September 1 1963, with a combined total of 21 years, 5 months and 20 days creditable service under 10 U.S.C. 1405, in the computation of his retired pay, may not have the date his active service was terminated, August 31, 1963 included as a day of creditable service to increase his total service to 21 years and 6 months, thereby counting his service as 22 years in determining the applicable percentage multiple. 45 Comp. Gen. 69 (1965).

Exception to prohibition of "rounding up" of 6 months service--Section 772 of the 1982 Department of Defense Appropriations Act restricted funds appropriated by that Act so that 6 months or more of service would no longer be "rounded up" to a full year in computing retired pay. An exception was provided for those "applying for retirement" prior to January 1, 1982. An Air Force officer did not have enough officer service to retire as an officer. However, he had previous enlisted service and, under a procedure prescribed by Air Force regulations, he applied for separation as an officer, reenlistment, and then retirement as an enlisted member in April 1982. His filing of forms under that procedure on September 15, 1981, constituted an application for retirement within the meaning of the exception in section 772 of the 1982 act. B-212034, November 17, 1983.

Discrepancy in records--Discrepancies in a Navy officer's service records which make it unclear as to whether he is entitled to retirement credit for 11 days' additional active service is a matter for consideraton by the Chief of Naval Personnel or the Board for the Correction of Naval Records. 60 Comp. Gen. 537 (1981).

More than 6 months - constructive service--The constructive service credit for minority and short term enlistments prescribed by 10 U.S.C. 6330(d) may be counted for percentage multiple purposes in computing retired pay under 10 U.S.C. 6151(c) for members advanced on the retired list under 10 U.S.C. 6151(a) to the highest temporary officer grade satisfactorily held. 43 Comp. Gen. 826 (1964).

Awaiting call to active duty - constructive service--Member of the Commissioned Officer Corps of the Public Health Service (PHS) was appointed a Reserve officer of the PHS in 1957 and recruited by the PHS for civilian employment with the International Cooperation Administration in 1958 in contemplation of her eventual call to active duty for a long term career in the PHS Commissioned Corps. The call to active duty was delayed until 1964. In the particular circumstances presented, the last 5 years of employment prior to 1964 may be treated as "active service with the

PHS" for establishing retirement eligibility under 42 U.S.C. 212. B-191501, March 8, 1979, modified. B-191501, February 19, 1980.

C. Retirement Date

Uniform retirement date act

Voluntary retirement - in general--Since voluntary retirements are not subject to the limitations of the Uniform Retirement Date Act, 5 U.S.C. 8301, retired pay entitlements thereunder are based on the monthly pay rates in effect on the first day that a member is on the retired roll. 56 Comp. Gen. 98 (1976).

Fleet Marine Corps Reserve was approved October 27, 1965, authorizing transfer effective November 30, 1965, after the first authorization was revoked, and the second order directing reinstatement of the transfer effective August 31, 1965, failed because it was never received by the commanding officer or the member must be regarded as having been effectively transferred to the Fleet Marine Corps Reserve on November 30, 1965, and, therefore, the higher rates of pay prescribed in the pay increase act effective after September 1, 1965, are for use in the computation of the member's retainer pay rather than the lower rates which were in effect prior to September 1, 1965. 45 Comp. Gen. 548 (1966).

D. Retired Pay Computation

Methods of computation

Generally--Under 10 U.S.C. 1401a(e) (1970), a member's retired pay may be computed by two methods: (1) based on the active duty pay rate in effect at the time of his retirement, and (2) based on the immediately prior active duty pay rate, plus any appropriate Consumer Price Index increases which became effective subsequent to the active duty pay rate and before the actual date of the member's retirement; whichever method produces the greater amount of retired pay under the formulas applicable to the statute authorizing the member's retirement. 53 Comp. Gen. 698 and 701 (1974); B-179191, July 15, 1975.

Correction of retired pay inversion - consumer price index changes - "Tower Amendment"

Generally--Military retired pay is adjusted to reflect changes in the Consumer Price Index rather than changes in active duty pay rates, and as a result a "retired pay inversion" problem arose: service members who remained on active duty after becoming eligible for retirement were receiving less retired pay when they eventually retired than they would have received if they had retired earlier. Subsection 1401a(f), title 10, United States Code, was adopted in 1975 to alleviate that problem, and it authorizes an alternative method of calculating retired pay based not on a service member's actual retirement but rather on his earlier eligibility for retirement. 56 Comp. Gen. 740 (1977); 59 Comp. Gen. 691 (1980); B-204120, March 25, 1982. See also 62 Comp. Gen. 406 (1983), concerning a retired officer's resignation and subsequent reinstatement.

Retirement date - general rule--In computing retired pay under 10 U.S.C. 1401a(f), the date immediately preceding an active duty basic pay rate change should generally be used as the earlier date of voluntary retirement eligibility, since this will normally result in a computation most favorable to the service member concerned. Under the

required to be transferred or discharged; hence, service performed by a Reserve officer who is retained, through administrative oversight, in an active Reserve status beyond the time he should have been removed for age for length of service, may not be credited in determining the member's retirement eligibility under 10 U.S.C. 1332; however, if the officer is retained under a specific statutory provision exempting officers from the mandatory elimination provisions of the 1954 act, credit is not precluded. 41 Comp. Gen. 375 (1961).

Member retired through administrative oversight

When erroneous notice of completed service is binding--The written communication required by 10 U.S.C. 1331(d) to a member of Reserve component of armed force advising that he has completed the years of service requirement for retired pay at age 60, need not be in any specific format. If the notice is from an authorized official of his military service and advises him that he has completed the service requirements for such retired pay at age 60, the notice satisfies the requirement of 10 U.S.C. 1331(d) so as to invoke 10 U.S.C. 1406, thereby preventing denial of retired pay due to administrative denial of retired pay due to administrative error. The exceptions to 10 U.S.C. 1406 preventing denial of retired pay entitlement due to erroneous written notice of entitlement, are limited to cases of direct fraud or misrepresentation on the part of the person to whom the notice is sent. 58 Comp. Gen. 390 (1979).

When erroneous notice is ineffective--At various times between 1940 and 1959 an individual served on full-time active duty, and participated satisfactorily in part-time Reserve programs, with both the Army and the Navy. However, he completed a total of only 7 of the 20 years' creditable service required to establish entitlement to Reserve retired pay at age 60. Years later in 1979 and Army personnel officer informally and erroneoulsy advised the individual that he would be eligible for retired pay when he reach age 60. The individual is not entitled to retired pay on the basis of the erroneous advice, notwithstanding that by statute the Armed Forces are required to notify reservists when they have completed 20 years' creditable service and that such notification is irrevocable, since the informal erroneous advice plainly did not constitute an official statutory notice of completed service. B-211778, December 5, 1983; 63 Comp. Gen._____.

De facto service

A lieutenant colonel of the Air Force who upon completion of 20 years of service and placement on the Reserve retired

list as eligible for retired pay under 10 U.S.C. 1331, except for attainment of 60 years of age, alleges and proves his correct date of birth as February 3, 1903, instead of 1907 as established in his records, is entitled on the basis of reaching the age of 60 on February 3, 1963, to receive retired pay beginning March 1, 1963, computed on the basic pay of his grade, including credit for all periods during which he held membership in a Reserve component, multiplied by the years of authorized active Reserve service as provided in section 1331, but excluding unauthorized service, regarded as de facto service, in the Ready Reserve, an assignment the officer received on the basis of his erroneous date of birth. AFR 45-5, dated April 21, 1955, prescribing 52 years of age, in the absence of a waiver, as the maximum age-in-grade for appointment of a lieutenant colonel under the Armed Forces Reserve Act of 1952; however, the officer may retain the pay benefits received in the de facto status. 44 Comp. Gen. 284 (1964).

Regular Army Reserve service

Service prior to July 1, 1949, in the Regular Army Reserve, which is not one of the organizations included nor excluded for creditable service purposes in subsections (c) or (e) of section 306 of the Army and Air Force Vitalization and Retirement Equalization Act of 1948, as amended, for qualifying members of the uniformed services for retired pay under 10 U.S.C. 1331-1337, may be credited as Reserve service for eligibility for retirement pay under title III of the 1948 act in view of a congressional intent which indicates that the phrase "each year of service as a member of a Reserve component prior to July 1, 1949," in section 302(c) was not intended to be limited or restricted to the organizations listed in subsection 306(c). 44 Comp. Gen. 61 (1964).

Retention on active duty after transfer to Retired Reserve

A reservist who was not eligible for retired pay for non-Regular service because he had not attained the age of 60 was transferred to the Retired Reserve but retained on active duty under 10 U.S.C. 672(d) and 265 (1970). Upon his qualification for retired pay when he became 60, he was entitled to credit for the active service he performed after his transfer to the Retired Reserve, in the computation of his retired pay. 10 U.S.C. 1333(1) (1970). B-190830, February 13, 1978.

D. Receipt of Severance Pay and Subsequent Retirement for Non-Regular Service

Where certain provisions of law governing separation from the active list authorize severance pay, and require refund of such pay upon retirement, but where other provisions such as 10 U.S.C. 3786 and 8786 do not state such requirement, in the absence of such a limiting statutory provision or a clear indication of congressional intent to the contrary refund of severance pay is not required as a condition precedent to the receipt of retired pay under 10 U.S.C. 1331. 53 Comp. Gen. 921 (1974).

E. Date of Accrual for Retired Pay

Where a member who is otherwise entitled to retired pay under 10 U.S.C. 1331, but who does not file application for such pay until well after meeting age requirement such pay accrues from date of qualification or on first day of any subsequent month stipulated in application for such pay to begin, without regard to date such application is filed. 53 Comp. Gen. 921 (1974). See also 48 Comp. Gen. 652 (1969).

Claims accrue when service makes determination of required service--A service member filed an application for non-regular retired pay under 10 U.S.C. § 1331 almost 6 years after meeting the age requirement, but retired pay was not granted because records did not show he had sufficient years of service. Upon his submission of additional proof, it was determined that he had sufficient service. Although more than 6 years elapsed between his meeting the age requirement and the determination that he was eligible for retired pay none of his retroactive retired pay is barred by 31 U.S.C. § 71a, in view of Garcia v. United States, 617 F.2d 218 (Ct. Cl. 1980), since such claims will now be deemed to accrue only after the service's determination that the claiment has the required service. 62 Comp. Gen. 227 (1983).

Accounting Office. 31 U.S.C. 71a. A voucher submitted to the General Accounting Office by an Air Force Finance Officer without the appropriate signature of the claimant or his knowledge is not a claim for the purposes of 31 U.S.C. 71a. Payment may be made only for the period of 6 years before the date of payment. B-197603, August 21, 1980.

Member's Death

A retired service member who disappeared and is believed drowned accrued no retired pay after the date he disappeared. Although his designated beneficiaries obtained a court decree declaring him dead, the decree did not establish the date of death. Since retired pay accrues only while the service member lives and the facts here indicate he drowned on or about the day he disappeared, the beneficiaries' claims for retired pay accrued subsequent to the date of his disappearance may not be allowed. B-207841, July 20, 1982. See also 62 Comp. Gen. 211 (1983).

VI. PERSONS WHO WERE NOT MEMBERS BEFORE SEPTEMBER 1980.

Statutory Amendments

In 1980 Public Law 96-342 added section 1407 to title 10 of the United Stated Code, and amended several other retirment statutes, to authorize a new method of computing retired pay for persons who first became members of the uniformed services after September 7, 1980. The retired pay of those members is to be based on a percentage of a "retired pay base," which is the average monthly basic pay received by the member over 36 months, or in certain cases a lesser period of time. B-206107, February 1, 1983.

Erroneous payments of basic pay not included

Erroneous payments of basic pay should not be included in the computation of a service member's retired pay base for purposes of computing his retired pay entitlement under 10 U.S.C. § 1407. Although that statute provides that retired pay base will be computed on basic pay "received" over a period of months of active duty, that is construed to mean only basic pay the member was legally entitled to receive. 62 Comp. Gen. 157 (1983).

Period of unauthorized absence

A period of unauthorized absence, for which a service member forfeits pay, generally should not be included in computing the member's retired pay base unless such period may also be included in the member's years of service and thus the percentage multiplier (2-1/2 percent per year) used in computing retired pay. 62 Comp. Gen. 157 (1983).

Demotions

A service member's retired pay base, upon which his retired pay is computed, is an average of basic pay he "received" on active duty over a period of months. Reductions in the basic pay received because of forfeitures and demotions must be included in computing the pay "received" to determine the retired pay base.

Cost-of-living adjustments

Cost-of-living adjustments to military retired pay under 10 U.S.C. § 1401a(b) which are based on the periodic cost-of-living adjustments made in Civil Service annuities also apply to military retired pay computed on the new retired pay base system provided for by 10 U.S.C. 1407. 62 Comp. Gen. 157 (1983). Partial cost-of-living adjustments under 10 U.S.C. 1401a(c) and (d) made in military retired pay when the member first becomes entitled to retired pay should be applied to military retired pay based on averaging of pay received under 10 U.S.C. 1407 as long as it is reasonably possible to do so. The partial cost-of-living adjustment provisions were enacted to apply to retired pay computed under the old system in which reitred pay is based on a single specific rate of basic pay; however, there is no indication of legislative intent that they should not also be applied to retired pay computed under the new retired pay base system. 62 Comp. Gen. 157 (1983).

The provisions of 10 U.S.C. 1407a(e), applicable to computation of retired pay, allow the use of basic pay rates in effect on the day before the effective date of the rates of basic pay on which the member's retired pay would otherwise be based plus appropriate cost-of-living increases. This provision was enacted at a time when retired pay was computed only under the old system where it is based on a single specific rate of basic pay. However, there is no indication of legislative intent that it should not also apply to the new system of basing retired pay on average of pay received over a period of months. Therefore, as long as it may reasonably be applied under the new system, it should be applied when advantageous to the retired member. 62 Comp. Gen. 157 (1983).

employment would not be in a "position" within meaning of that secton. B-172318.19, Feb. 13, 1976.

Fee-basis physicians

A retired Regular Army officer placed on a roster of fee basis physicians to examine Armed Forces personnel does not occupy a "civilian" officer and his retired pay is not subject to reduction after the first 30-day period for which he received fees, such physicians serving under contract and not by appointment to a civilian office or position and the fact that a limitation is placed upon the total fees any physician may receive for any day does not change the contractual relationship to that or employer-employee. 45 Comp. Gen. 81 (1965).

Contract concessionaire

A retired Regular officer who is an active partner in enterprises which hold concession contracts with the Government is not, as a contract concessionaire, regarded as an officer of the United States or as holding a civilian position under the Government so as to be precluded by the 1894 dual office act, 5 U.S.C. 62, or the 1932 dual compensation law, 5 U.S.C. 59a, from receiving retired pay. 39 Comp. Gen. 751 (1960).

C. Government Employment

Full-time employment

Federal Reserve Board--The Board of Governors of the Federal Reserve System is authorized to appoint its employees and fix their compensation without regard to the civil service laws, and those employees are paid from sources other than appropriated funds. Nevertheless, the Board performs a governmental function and is an establishment of the Federal Government. Hence, a retired Army officer who obtained civilian employement with the Board was subject to reductions in his military retired pay under the dual compensation restrictions which are currently prescribed by statute and which apply to all military retirees who hold civilian positions in the Goverment. B-212226, December 16, 1983, 63 Comp. Gen.____.

"TAPER" appointment--A retired Regular officer who was given a "TAPER" appointment (temporary appointment pending establishment of a register) to a full-time civilian position without time limit, under which he was eligible for within-grade increases and could be reassigned to any position to which his original appointment could have been made, is not a temporary employee so as to entitle him to the 30-day exemption from reduction in retired pay applicable to temporary employment. 46 Comp. Gen. 366 (1966).

Director, CIA--The compensation provisions applicable to a retired Regular officer, appointed Director of the Central Intelligence Agency under 50 U.S.C. 403(b)(2), which permits the officer to receive both retired pay, and the provisions of 5 U.S.C. 5532(b) requiring reduction in retired pay are clearly inconsistent, therefore, under section 402(b) of the Dual Compensation Act, the provisions of 50 U.S.C. 403(b)(2) are no longer in effect and the retired pay benefits for the Director are subject to the dual compensation restrictions. 44 Comp. Gen. 708 (1965).

Referee in bankruptcy--The employment of a retired Reserve officer as a full-time referee in bankruptcy is not

Refund of compensation--A Regular member of the uniformed services retired as a temporary warrant officer and employed as a civilian who at the time of filing notice of election under the Dual Compensation Act of 1964, is discovered to have been appointed in contravention of the prohibition in section 2 of the dual office act of 1894, is not entitled to retain the compensation received for services performed under the illegal civilian appointment prior to December 1, 1964, the effective date of the repeal of section 2 of the 1894 act by the 1964 act. 45 Comp. Gen. 330 (1965).

Pre-1964 limitation of refund--When the civilian appointment of a retired officer is found to have violated the prohibition in section 2 of the dual office act of 1894, the appointment having been made prior to the repeal of the section by the Dual Compensation Act of 1964, the compensation received prior to December 1, 1964, is required to be refunded. 45 Comp. Gen. 330 (1965).

Retroactive exemption by Private Relief Bill--Legislation enacted to relieve an employee of liability to repay compensation received prior to December 1, 1964, under an appointment that contravened the prohibition in section 2 of the dual office act of 1894, repealed by the Dual Compensation Act, would not have the effect of retroactively exempting the employee from the restriction in section 2, or otherwise validating the appointment. 45 Comp. Gen. 330 (1965).

Dual Compensation Act of 1964

CPI Base Figure--Section 5532(b) of title 5, United States Code, which prescribes that the percentage increases to reflect changes in the Consumer Price Index shall apply to the $2,000 of retired pay not subject to reduction contemplates only one base figure for any given period to which cost of living percentage increases will apply cumulatively, thus, the 3.7 percent increase effective December 1, 1966, establishes the new basic figure of $2,074 as the amount of retired pay exempted from reduction. Therefore, 45 Comp. Gen. 164, is overruled. 46 Comp. Gen. 549 (1966).

VA compensation - pay reduction adjustment--A member whose retired pay is reduced while he is employed in a civilian Government capacity, and who later becomes entitled to Veterans' Administration compensation because of service-connected disability waives that portion of retired pay necessary to qualify for VA compensation since veterans' benefits are not subject to the dual compensation law. Adjustments must also be made in amounts computed for reduction purposes during the period between the date of waiver submission and the determination to allow the member the full monetary benefit of the waiver. 55 Comp. Gen. 1402 (1976). See also B-212226, December 16, 1983, 63 Comp. Gen. _____.

CHAPTER 9

SURVIVOR BENEFIT PLAN (SBP)

I. LAW GENERALLY

The Survivor Benefit Plan, 10 U.S.C. 1447-1455, was established by Public Law 92-425, approved September 21, 1972, 86 Stat. 706. The Plan has been modified from time to time since then by amending legislation.

II. COVERAGE GENERALLY

A. Beneficiaries

Children coverage

Election requirement--When an eligible widow with dependent children is receiving an annuity under 10 U.S.C. 1448(a) which is reduced under 10 U.S.C. 1450(c) because of DIC entitlement and the widow loses eligibility because of death or remarriage dependent child is not entitled to an annuity unless coverage is elected and the additional costs for such coverage assessed. 54 Comp. Gen. 709 (1975).

Effect of election--The Survivor Benefit Plan, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the surviving dependents of deceased service members. If a member elects to have dependent child annuity coverage when he becomes a participant in the Plan, that coverage is not limited to children he has at the time of the election, but extends automatically and involuntarily to any child he thereafter acquires. Hence, annuity coverage automatically extended to the son acquired by birth in 1981 following a remarriage by a retired Army officer who had elected to have dependent child coverage when he became a Plan participant in 1973. 62 Comp. Gen. 553 (1983).

Irrevocability of election--The election made by a retired service member who is married and has dependent children to participate in the Survivor Benefit Plan with full spouse and dependent child annuity coverage is binding and may not be unilaterally revoked by him, so that a retired Army officer who elected to have such coverage in 1973 could not, after divorce and remarriage, withhold dependent child annuity coverage from a son he acquired in 1981 even though by that time the only dependent child he had in 1973 was no longer eligible for an annuity. 62 Comp. Gen. 553 (1983).

Dependency and Indemnity Compensation (DIC) effect--Where children coverage is elected, the dependent children are entitled to the full annuity selected even though the annuity of the surviving spouse had been permanently reduced by

Children of prior marriage--A service member who elected spouse and children coverage under the Survivor Benefit Plan at retirement was thereafter divorced and remarried but died prior to the first anniversary of the remarriage. While his surviving spouse did not qualify for annuity purposes as his eligible widow at his death, she was pregnant. In view of the 10 U.S.C. 1450(a) provision that payment of the annuity will begin "the first day after the death", an annuity may be paid to his surviving dependent children of the prior marriage but must terminate on the date that the surviving spouse qualifies under 10 U.S.C. 1447(3)(B) for an annuity by the birth of his posthumous child. 60 Comp. Gen. 240 (1981).

Posthumous children--A service member who was married and had children, elected spouse and children coverage under the Survivor Benefit Plan at retirement. He was thereafter divorced and remarried, but died prior to the first anniversary of the remarriage. His surviving spouse who was pregnant when he died, later gave birth to his posthumous child. Not only does the birth of a posthumous child qualify the surviving spouse as the eligible widow for annuity purposes, but such child immediately joins his other

children the class stipulated in 10 U.S.C. 1450(a)(2) as potential eligible beneficiaries to share the annuity should the eligible widow thereafter lose eligibility by remarriage before age 60 or death. 60 Comp. Gen. 240 (1981).

Foster child--A minor grandchild of a service member can qualify as a foster child, subject to support requirement and limitations on dependency contained in 10 U.S.C. 1447(5) (A) and (B). 53 Comp. Gen. 461 (1974).

Military personnel-status--A child under 18 years of age and serving on active duty, or under 22 and attending a service academy, or enrolled in an institute of higher learning under a military subsistence scholarship program, is considered an eligible dependent within the meaning of 10 U.S.C. 1447(5), even though he is provided quarters and subsistence by the Government. 53 Comp. Gen. 420 (1973).

Disabled adult child-when disability arises--Under the Survivor Benefit Plan, 10 U.S.C. 1447 et seq., eligible beneficiaries include a deceased service member's "dependent child," a term defined by statute as including one who is incapable of supporting himself because of mental or physical incapacity incurred before his twenty-second birthday while pursuing a full-time course of study. Given this definition, a military officer's daughter who suffered a mental breakdown at the age of 19 during the summer vacation following the successful completion of her first year of college, and who was thus rendered incapable of self-support, may properly be considered a "dependent child" eligible for an annuity under the Plan. 62 Comp. Gen. 302 (1983).

Same-child secures employment--The adult daughter of a deceased Navy officer received a Survivor Benefit Plan annuity under 10 U.S.C. 1447(5)(B)(iii) based on a determination that she was incapable of self-support because of physical incapacity. She was quadraplegic as the result of childhood polio. Despite this disability, she later secured full-time Government employment in a grade GS-5 position. This does not warrant suspension of the annuity on the basis that she is no longer incapable of self-support, even though a grade GS-5 salary would normally be sufficient to cover the living expenses of a physically fit person, since that salary is not sufficient for her own personal needs. 62 Comp. Gen. 193 (1983).

Same-recurring loss of self-sufficiency--A deceased military officer's daughter, considered eligible for a Survivor Benefit Plan annuity on the basis of mental illness making her incapable of self-support, then recovered from her illness to the extent that she was able to support herself for 6 months through gainful employment. She subsequently suffered a relapse

requiring rehospitalization. The annuity may properly be suspended during the 6-month period of employment. It may be reinstated during the following period when she was again incapable of self-support because of the original disabling condition, since the applicable laws governing military syrvivor annuity plans do not preclude reinstatment in appropriate circumstances. 44 Comp. Gen. 302 (1983).

Same-mental patient's power of attorney--Under the rules of agency, a known mental incapacity of the principal may operate to vitiate the agent's authority even in the absence of a formal adjudication of incompetency. Hence, Survivor Benefit Plan annuity payments may not be made to an agent designated in a power of attorney which was signed by an annuitant known to be suffering from mental illness but not adjudged incompetent, since in the circumstances the validity of the power of attorney is too doubtful to serve as a proper basis for a payment from appropriated funds. 62 Comp. Gen. 302 (1983).

Same-payments to mental patient--Survivor Benefit Plan annuity payments in the case of an adult beneficiary known to be suffering from mental illness, but not adjudged incompetent, may be made directly to the beneficiary if by psychiatric opinion the beneficiary is considered sufficiently competent to manage the amounts due and to use the annuity properly for personal maintenance. Otherwise, the amounts due should remain unpaid and credited on account until a guardian authorized to receive payment is appointed by a court. 62 Comp. Gen. 302 (1983).

Spouse coverage

Eligible spouse beneficiary defined--The meaning of the phrase "eligible spouse beneficiary" as used in 10 U.S.C. 1452(a), as amended by section 1(5)(A)(ii) of Public Law 94-496, is to be defined in terms of the definition of "widow" or "widower" contained in 10 U.S.C. 1447; that is, in order for a widow or widower to receive a survivor annuity on the death of the member in retirement, they must be an eligible spouse beneficiary immediately before the death. 56 Comp. Gen. 1022 (1977).

Undissolved First Marriage-Status--Where member marries a second wife without dissolving his first marriage, second wife is not legally married to him and does not qualify as the beneficiary of his SBP annuity. Since the first wife was legally married to him at the time of his death, she is his "widow" and is the proper beneficiary of the SBP annuity in spite of the second ceremonial marriage. B-194469, May 14, 1979. Compare B-195250, January 23, 1980, and B-207592, June 23, 1982.

Mexican Divorce--A member of the Reserve component of the Air Force was a participant in the Survivor Benefit Plan, 10 U.S.C. 1447-1455, as amended by Public Law 95-397. Two women claim the annuity as widow. The member's first marriage was allegedly terminated by a Mexican divorce which the first wife has challenged. Since such divorces are not generally recognized by State courts a ruling by a court of competent jurisdiction as to the validity of the relationships involved is usually required (55 Comp. Gen. 533 (1975)). Since the first wife's suit asserting the continued validity of the first marriage was dismissed with prejudice she cannot question the validity of the second marriage. Accordingly, the claim of the second wife may be allowed. B-202149, December 30, 1981.

Spouse coverage - first month following eligibility attainment--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, after spouse coverage is terminated due to loss of eligible spouse beneficiary and the member remarries, since reduction in retired pay for spouse coverage purposes is charged on an indivisible monthly basis, such reduction in retired pay would not resume until the first month following the date such spouse attains eligible spouse beneficiary status, unless such date is on the first of a month, then appropriate charges are to be made for that month. 57 Comp. Gen. 847 (1978). See also B-195349, January 10, 1980.

Recomputation

Child coverage - loss of spouse beneficiary--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, where the member had elected both spouse and children coverage and there is termination of reduction of retired pay for spouse coverage because of loss of an eligible spouse beneficiary, the previously elected child coverage is to be recomputed since the law governing the SBP requires such coverage to be determined on an actuarial basis and the loss of the eligible spouse beneficiary has increased the probability that an annuity would be payable to an elected dependent child. 57 Comp. Gen. 847 (1978).

Member's and child's age--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, since dependent children coverage, either alone or in combination with spouse coverage is to be determined on actuarial basis, in order to maintain such basis, recomputation of children coverage is to be based on the member's age and that of the youngest child beneficiary as of the day following loss of an eligible spouse beneficiary. 57 Comp. Gen. 847 (1978).

New-born child beneficiary--Statutory provisions of the Survivor Benefit Plan direct that costs of dependent child annuity coverage be assessed "by an amount prescribed under regulations of the Secretary of Defense." Consistent with express Congressional intent, the regulations prescribe computation of those costs on an actuarial basis in which the ages of the Plan participant and his eligible dependents are used. When a Plan participant acquires a dependent child and he has no other children remaining who are eligible for an annuity, those costs are to be reinstated, computed under that prescribed method based on the age of the newly acquired child. 62 Comp. Gen. 553 (1983).

Eligible spouse beneficiary reacquisition--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, where the cost of children coverage had been recomputed and charged following the loss of eligible spouse beneficiary,

since children coverage is to remain on an actuarial basis, and since the gain of an eligible spouse beneficiary has reduced the probability that an annuity would be payable to an elected dependent child, the cost of such coverage should be further recomputed, based on the age of the youngest child and the ages of the member and remarriage spouse on the date the spouse qualified as an eligible spouse beneficiary. 57 Comp. Gen. 847 (1978). See also B-195349, January 10, 1980.

E. Record Correction

Persons whose military record is corrected on date subsequent to September 20, 1972, to show entitlement to

elected spouse coverage under that retirement system, is entitled to payment of the elected SBP annuity as well as the Foreign Service survivor annuity. See B-188932, December 22, 1977.

D. Social Security Setoff

Reductions in benefits before age 65

Computation of setoffs from Survivor Benefit Plan annuities which are required to be made in an amount equal to the retiree's social security benefit based solely on military service must take into account the reduction in social security benefits when the retiree received benefits before reaching age 65. Thus, where a widow's social security benefit is reduced because of the reduction in the retiree's benefit, the services may not calculate the offset against the Survivor Benefit Plan annuity as if the beneficiary were receiving an unreduced social security payment. 62 Comp. Gen. 471 (1983).

No claim made for social security benefits

An offset against the Survivor Benefit Plan annuity, computed solely on the military service of deceased spouse, is imposed when the annuitant reaches age 62. This offset may be reduced if the annuitant would have social security survivor benefits reduced because of work even though no claim has been made for social security benefits. B-202625, December 31, 1981.

Effect of reduction in social security benefits for work

SBP annuity offsets, under 10 U.S.C. 1451 because of social security entitlement, are computed when the annuitant reaches age 62. This offset may be reduced if the annuitant's social security entitlement is reduced because of work. If the SBP offset is reduced or eliminated because of work and the annuitant discontinues working and becomes entitled to social security benefits the SBP offset is reinstated computed at age 62. B-202625 December 31, 1981.

Military service only

Setoff of amount from annuity representing social security benefit payable to widow at age 62 and widow with one dependent child must be calculated on the basis of wages attributable to member's military service only and the formula used to calculate wages attributable to the military service may not include wages from nonmilitary employment. 53 Comp. Gen. 733 (1974). See also 58 Comp. Gen. 795 (1979); B-196569, July 8, 1980; and B-202625, December 31, 1981.

Widow's vs. widower's benefit

For purposes of social security setoff widower's benefit is not subject to same reduction as widow's benefit when there is one dependent child since widower receives no benefit comparable to "mothers benefit" under social security laws. 53 Comp. Gen. 758 (1974).

Social security benefits for own work

A widow's Survivor Benefit Plan annuity payments were offset to the extent of the Social Security mother's benefit to which she would have been entitled based on the deceased

service member's military Social Security coverage. However, she was actually receiving Social Security benefits based on her own work record and, therefore, received a reduced mother's benefit due to the benefits payable based on her own record. She is not entitled to reimbursement of the Survivor Benefit Plan annuity withheld for the difference between the mother's benefit to which she would have been entitled had the mother's benefit not been reduced in her case and the reduced mother's benefit which she actually received. 60 Comp. Gen. 129 (1980).

E. Cost of Living Adjustments

Less than maximum coverage

Base amounts designated less than maximum coverage are not subject to modified cost-of-living adjustments to retired pay computation at time of retirement. 55 Comp. Gen. 1432 (1976). See also B-190908, April 26, 1978, and June 26, 1980.

Maximum coverage

All base amounts designated under 10 U.S.C. 1447(2) upon which SBP annuities are based are subject to cost-of-living adjustments under 10 U.S.C. 1401a(b). 55 Comp. Gen. 1432 (1976).

F. Remarriages

Annulment

Where a surviving spouse beneficiary loses annuity entitlement because of subsequent remarriage, but where that remarriage is annulled, annuity payments may be reinstated effective the first day of the month in which annulment decree was rendered. B-197601, September 12, 1980. See also B-210542, August 23, 1983.

V. PRE-EFFECTIVE DATE RETIREES

A. Spouse Coverage

Newly acquired - limitation

Member who was retired prior to the effective date of the SBP and who marries prior to the first anniversary of the Plan (September 21, 1973), may provide immediate coverage for his spouse regardless of the 2-year limitation under 10 U.S.C. 1447(a)(A), provided such an election is made within the time limitation stated in subsection 3(b) of the act, as amended by section 804 of Public Law 93-155. 54 Comp. Gen. 266 (1974). See also B-190908, April 26, 1978, and B-190908, June 26, 1980.

Divorce set aside after election period

A Navy warrant officer who retired prior to the effective date of the Survivor Benefit Plan was in a divorced status during the 18-month period to elect to participate in the Plan, but his divorce was later set aside by a court of competent jurisdiction. In those circumstances an election made by the retiree shall be considered valid if made within a reasonable period from the time that the voidance of the divorce decree properly established the previous existence of the marriage. For purposes of computing reduction of retired pay, the effective date of the election is the first day of the first calendar month following the month in which the election is received by the Secretary of the Navy. The member's wife shall be considered an eligible spouse beneficiary from the time of the election. B-205173, June 9, 1982.

Effect of election

Member, retired prior to effective date of SBP, who as single person elects coverage for dependent child through subsection 3(b) of that act, at that point participation in Plan to the same degree as posteffective date retirees and subject to the postparticipation election restrictions contained in 10 U.S.C. 1448(a). 54 Comp. Gen. 732 (1975).

Void election-invalid marriage

A service member retired prior to the effective date of the Survivor Benefit Plan contracted a second marriage apparently without having dissolved his prior marriage. He thereafter elected spouse coverage as authorized by section 3(b) of Public Law 92-425 in the name of the second spouse. Upon his death payment of an annuity to the second spouse may not be made unless it is established in a court of competent jurisdiction that his marriage to her was valid. Otherwise the election to participate in the Plan is void as having been made with the intention of providing an annuity to an ineligible beneficiary. If that be the case, the amount deducted from member's retired pay for coverage costs are to be paid to the eligible beneficiary under 10 U.S.C. 2771. B-207625, September 22, 1982. See also 57 Comp. Gen. 426 (1978); 63 Comp. Gen. 63 (1983).

Fourth sentence of 10 U.S.C. 1448(a) elections

A pre-SBP effective date retiree who is unmarried with a dependent child on the first anniversary date of the Survivor Benefit Plan, may elect spouse coverage under the fourth sentence of 10 U.S.C. 1448(a) upon marriage after the close of the 18-month election period authorized under subsection 3(b) of Public Law 92-425, as amended, notwithstanding fact that he could have elected coverage for his

under 5 U.S.C. 5584; 10 U.S.C. 2774 and 32 U.S.C. 716, and therefore, although waiver may not be granted unless collection would be contrary to the purpose of the plan and against equity and good conscience proof of financial hardship will not be required if waiver is otherwise in order. 54 Comp. Gen. 249 and 55 id. 401, overruled. 55 Comp. Gen. 1238 (1976).

B. Debts of Deceased Member

In view of limitations in 10 U.S.C. 1450(i), since general debts of a deceased retired member are not the responsibility of his widow, such debts may not be setoff against an SBP annuity payable to such widow. 54 Comp. Gen. 493 (1974). See also B-209306, March 24, 1983.

Insufficient SBP cost charge

Where debt of a deceased retired member arises from insufficient reduction of retired pay to cover cost of annuities, annuities payments may be reduced to cover added cost. 54 Comp. Gen. 493 (1974).

C. Underpayment of Annuities/Over Reduction of retired pay

Amounts due members or beneficiaries for over reduction of retired pay or underpayment of annuities due to computation of SBP based amounts should be paid to persons entitled thereto. 55 Comp. Gen. 1432 (1976).

D. Collection of Overpayment of Annuity

Collection of overpayment of an SBP annuity due to retroactive payment of DIC may be effected by withholding the amount of overpayment from the premium refund due upon recalculation of the SBP annuity as authorized by 10 U.S. 1453 (1976). B-192223, December 19, 1978.

VII. SECTION 4, PUBLIC LAW 92-425

A. Effective Date of Entitlement

The effective date of entitlement to annuity under section 4, Public Law 92-425, is the date on which the requirements of the law are met or on the effective date of the law, which ever is later. 54 Comp. Gen. 493 (1974).

B. Termination of Entitlement

Amounts of annuity payments due a beneficiary under section 4, Public Law 94-425, but unpaid at the beneficiary's death either because annuity checks were not negotiated or because payments had not been established, may be paid to the estate of the deceased beneficiary. 54 Comp. Gen. 493 (1974).

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