12051 PLM-11 Mr. Mosher

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

B-188979 November 15, 1979

James M. Peirce, President
National Federation of Federal
Employees -CNG00143
1016 16th Street, N.W.
Washington, D.C. 20036

Dear Mr. Peirce:

Reference is made to your letter of August 30, 1979, file reference 1363-BH-52, concerning the claim ~~of Mr. Hiorshi Ichiki~~ for payment of separate maintenance allowance (SMA). PN

As stated in the letter of July 23, 1979, to which you refer, in both the statutory authorization and the implementing regulations, which were quoted at length in our decision B-188979, July 24, 1978, the word "may" is used rather than "shall." The use of the word "may" thus leaves with the heads of the agency broad discretion in the implementation of the SMA allowance. In the present case, the DOD and the Army have made a policy determination that an SMA will not be authorized for those employees who are assigned to a 24-month accompanied tour in Pusan, Korea, unless the employee is on a mandatory rotation program. When an employee elects to serve an unaccompanied tour because of personal reasons, e.g., medical situation of a dependent, the SMA is not allowed. This policy is based on the rationale that an overseas tour for civilian employees of DOD is voluntary and employees may decline assignment for personal reasons. AGC00005 AGC00020

Thus, because of the discretionary nature of SMA, the question of its proper application is a matter for administrative determination and we cannot question a determination made in the absence of evidence showing it clearly to be in error. Since the decision made in Mr. Ichiki's case was based upon a uniform policy applied by the Army, we must uphold the agency determination.

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In our decision of July 23, 1979, we said that the Army policy -- that payment of SMA is not appropriate when a dependent does not join an employee due to a unique medical condition -- is at variance with the Standardized Regulations and the Army Civilian Personnel Regulations. We intended to convey the thought that the Army policy was at variance with the "policy" of the regulations, not a violation thereof. We held that "we would not object" to an administrative determination to allow the SMA. That conclusion left it to agency discretion whether to grant the allowance. We regret that our decision was not as clear on those points as it could have been.

Also, at the time of the decision we had assumed the agency denial of SMA was because of the Army policy concerning medical conditions. Subsequently, the Army advised us that the denial was for an entirely different reason, as set forth in the second paragraph of this letter. We find no basis to overturn that determination.

We regret our decision in this matter is not favorable to your member.

Sincerely yours,

R.F.K. Hunt

Deputy Comptroller General
of the United States