

Foreign Service Grievance Board

June 13, 1972

TO: Grievant
 Public Safety Advisor, USAID
 American Embassy/ Saigon

SUBJECT: Record of Proceedings Number 71-3Q-AID-F 12

REF: 3 FAM SS7,1,b.

A grievance filed by you with AID on September 15, 1971 was referred to the Foreign Service Grievance Board after completion of the informal procedures. In it you stated that while you were assigned to redacted and the redacted, you were entitled to a separate maintenance allowance (SMA) for your ill wife who was under medical care at your home in California. You further stated that due to a series of interpretations and opinions not consistent with regulations, you were denied this allowance and were required to repay \$5760 which AID ruled had been erroneously paid you for SMA while you B&CV&& in redacted. &* a remedy, you requested reversal of the decision disallowing you SMA during your redacted and redacted assignments and return of the start you were obliged to repay.

The Board's inquiry into your grievance included an examination of your administrative and performance files, as well as pertinent section of United States Code Title 5 and Standardized Regulations for Government Civilians Serving in Foreign Areas on the subject of SKA, Scmr case #rats discussed with an assistant general counsel, AID, a medical officer in the State Department Medical Division (SSHD) with, personnel and accounting officers in &X&, and with an officer in the State Department allowances office. A pre-hearing conference at which you and fc&» Agency's representative were present was held on May 26, 1972. A formal panel hearing was conducted on June 1* 1972 and a , '?&iHltran»crij»t of the proceedings was made, a copy of which has been sent:

The recommendations of the Panel in this case have been reviewed by the full Board and the action taken is an action of the Board. The record in this case has in essence established the following facts. You joined AID in 1962 and in September of that year went to redacted, your first post of assignment. Although your wife had been medically cleared by the SDKD to accompany you, she remained in the United States. In early 1963 you applied for SMA, attaching to your application a letter from your wife's physician stating that as a result of major surgery that she underwent in October, 1962, her "state of mind and morale" made it inadvisable for her to reside in redacted. On the basis of this letter and follow-up correspondence with the physician, the SIES3 annulled her clearance and declared her "not cleared for foreign service," pending further information. Accordingly, you were granted SXA while you served in redacted. This authorization was renewed while you served in redacted in 1954 and early 1955. On arrival at your next post, redacted, in mid-1965, you again applied for SMA. The application, - which should have been routed through the SDMD for a determination of your eligibility, was improperly sent direct to the AID accounting and payroll office, which commenced SKA payments to you. A routine audit in August, 1966, disclosed that the application had not been cleared through the SDI-S. At this point, acting on an opinion requested from the SDKD, AID disapproved your application on the grounds that your wife's medical problem "was not related to the conditions at the post and was not the direct result of service overseas, basic criteria that must be met where medical is involved to qualify for SMA -under Section 252.1 of Standardised Segutions." An appeal by you was unsuccessful and you were required to repay the sum, of about \$5760 received in SMA during the approximate period July 1, 1955 to August 27, 1966. Thereafter, you went on to serve in the redacted and redacted, your wife continued to reside in the United States- In September, 1971, she received a medical clearance based on a psychiatric examination taken earlier that year. "The psychiatrist reported that "Mrs, Scott's only real problem relates to multiple allergies."¹¹

The Board has taken into consideration your expectations that you were entitled to continue receiving SMA while serving in redacted. You had been granted this allowance previously in redacted and redacted ; AID and Embassy officials had advised you that you could apply for continued

when you arrived in redacted; and you had stated on your application prepared in redacted that your wife was under medical treatment and that her medical records were on file with the SDMD, the same records which you apparently understood provided the basis for SKA in the two preceding posts. Moreover, the "series of interpretations and opinions" appear in some instances to be conflicting.

However, the reasoning of the SDMD and AID in ruling on your eligibility is fully documented in the records— including reports of conversations you had with AID and SDMD officers on the subject. The Board has not found a valid basis for your contention* that the decision disapproving SMA while you were in redacted is inconsistent with regulations. The decision was based on provisions of United States Code Title 5 Section 5924 (3) and Standardised Regulations for Government Civilians Serving in Foreign Areas, Section 262.1, which provide for payment of SMA "to assist an employee who is compelled by reasons of dangerous, notably unhealthful, or excessively adverse living conditions at his post of assignment in a foreign area, or for convenience of the Government, to meet the additional expenses of maintaining dependents elsewhere than at such post." The reason your wife could not reside in redacted, according to the record, was unrelated to conditions existing at the post. There was no prohibition for her to travel to redacted at the time you were assigned there; and, as stated by the SDMD: [grievant's spouse] has never gone overseas to any post with her husband ... and has not had a medical evaluation since 1962. It may be that she could be medically cleared, but the family for personal reasons has not seen fit to have the necessary examinations.¹⁵ Moreover, the record discloses repeated efforts by AID and SDMD to obtain sufficient information for making a medical evaluation up to her clearance in 1971. Specifically, in a letter dated August 23, 1955, Dr. Byron Bugle, Director of the AID Office of Public Safety wrote you: "The basis for a different decision may be possible if the SDMD can obtain certain medical and psychiatric information regarding your wife which has not previously been obtained."

Taking into account all the information gathered, therefore, the Board upholds the Agency's decision as consistent with the regulations governing the granting of SMA for medical reasons, with reference to the improper processing of your

SMS. application by the Embassy is. redacted, the Board deplores this grievous administrative error which worked an obvious hardship to you, but the requirement, for repayment of the *sxm* erroneously paid you is supported by provisions of United States Code Title 5 Section S514, as follows:

"When...an employee..-is indebted to the United States because of an erroneous payment made by the Agency, to or on behalf of the individual, the amount of the indebtedness asay be collected in monthly installments, or at officially established regular pay intervals, by deduction" in reasonable amounts from the current pay account of the individual-,."

The Board calls your attention to your right, irrespective of the foregoing, to submit a claim to the General Accounting Office for a review of your Agency's decision.

William E. Simkin Chairman,
Foreign Service Grievance Board

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