

**U.S. Office of Personnel Management  
Compensation Claim Decision  
Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** Fayetteville Investigative Field Office  
Central Region Southern Atlantic Area  
Central Region Field Investigations  
Field Management  
Operations  
Federal Investigative Services  
U.S. Office of Personnel Management  
Whispering Pines North Carolina

**Claim:** Duty station for purposes of determining  
locality pay

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 12-0026

//Judith A. Davis for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Merit System Audit and Compliance

3/12/2013

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Date

The claimant, who is employed in an Investigator, GS-1810-12, position with the U.S. Office of Personnel Management (OPM), requests that OPM change her official duty station from her domicile in Whispering Pines, Moore County, North Carolina, to Fort Bragg, Cumberland County, North Carolina, for purposes of determining her locality pay. We received the claim request on June 5, 2012, and the agency administrative report (AAR) on June 29, 2012. The claimant did not respond to our July 19, 2012, request for comments on the AAR. For the reasons discussed herein, the claim is denied.

The claimant states she is a background investigator and conducts a majority of her interviews and record reviews (commonly referred to as leads) at Fort Bragg. She also states she conducts the remaining reviews in neighborhoods, employers, educational institutions, or contract agencies, most in Cumberland County, North Carolina. The claimant states that after conducting this field work, she types a report of investigation (ROI) into the PIPS (Personnel Investigations Processing System)-R (Field Work Reporting System) for transmission via PIPS. She further states that “[s]coping, typing, planning, etc., are conducted at the home of each agent [investigator]” but “[t]his work, while vital, does not constitute a majority of the time expended on each case,” and that “[w]orking at home is at the direction of OPM and for the convenience of the government.” The claimant also states the duty location for three “Supervisory Agents in Charge (SAC) is Fort Bragg, NC” but “[t]here are not enough phone/internet lines available for agents [nonsupervisory investigators] to work in the office on Ft. Bragg.”

She also states that while she is compensated for Internet service, she is not compensated for the space and electricity used and if she must or wants to fax something from her residence, there is no compensation for maintaining a telephone line to do so. In addition, she states that she has domicile parking for her Government vehicle but is not compensated for the parking space used: She states domicile parking allows agents the “flexibility to conduct leads at hours outside of normal work hours/days thereby increasing productivity and efficiency, often without incurring overtime charges to the government” and “is an asset to the government.”

The claimant states:

In Jan 06, a higher cost of living raise was given to Cumberland County and other surrounding counties.<sup>1</sup> At the time, my duty station was and always had been Ft. Bragg, NC (which is primarily located in Cumberland County). In Jun 2006, OPM notified me that my duty station would change from Ft. Bragg, NC to my home in Whispering Pines, Moore County, NC. In Sep 2006, I received a SF 50 designating my residence as my duty station.

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As a result of the change in Jun 06, agents working on Ft Bragg, but residing outside Cumberland County (in Moore and Lee Counties) receive less locality pay, although their duties and work areas are the same as agents living in Cumberland County and

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<sup>1</sup> Federal employee compensation under the General Schedule is not subject to cost of living adjustments; i.e., COLA. Instead, it is adjusted based on changes in the Employment Cost Index (ECI). See <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/fact-sheets/#url=BLS-Data>.

surrounding counties.<sup>2</sup> The locality pay was never an issue while working for Defense Security Service and Defense Investigative Services.

The claimant states that as a result of this change, agents who work on Fort Bragg and live in Cumberland and surrounding counties receive approximately \$2,300 a year more in locality pay than other agents who work on Fort Bragg but reside in another county, e.g., Moore and Lee Counties. The claimant states the affected agents all lived in their respective counties prior to the decision to change, and that “the loss in locality pay was solely the direct result in the agency’s decision to change the agent’s duty station determination.”

The claimant states:

Because the work being compensated for differs only in where it is composed, typed into a ROI and transmitted, I request the agency use its discretion to adjust my duty station to Ft. Bragg (as opposed to my home) to bring my pay into parity with that of my co-workers who live in Cumberland County and surrounding counties. I also request from the agency back locality pay, including interest as well as adjusting the amount for retirement purposes.

In the AAR, the agency states section 531.605(a)(2) of title 5, Code of Federal Regulations (CFR), gives an agency discretion to determine the location where an employee’s work activities are based, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work. The agency states the claimant begins her work day from her home, parks her Government-owned vehicle at home, and is provided Internet access to perform work in her home. The agency also describes the various work functions performed by the claimant at her home, and states such work occupies approximately 30-40 percent of her work hours. The agency states these factors support OPM’s determination that the claimant’s work activities are based at her home and that she regularly performs work at her home. Although she spends the remaining time outside her home, the agency states the investigative area she covers consists of 10 counties, only three of which are covered under the Raleigh-Durham-Cary, North Carolina, locality pay area.

Under 5 CFR 531.604(b)(1), an agency determines an employee’s locality pay rate by determining the employee’s official worksite consistent with the rules in 5 CFR 531.605, which states, in relevant part, that:

(a)(1) Except as otherwise provided in this section, the official worksite is the location of an employee’s position of record where the employee regularly performs his or her duties.

(2) If the employee’s work involves recurring travel or the employee’s work location varies on a recurring basis, the official worksite is the location where the work activities of the employee’s position of record are based, as determined by the employing agency,

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<sup>2</sup> The Raleigh-Durham-Cary, North Carolina, locality pay area covers North Carolina’s Chatham, Cumberland, Durham, Franklin, Harnett, Hoke, Johnston, Orange, Person, Wake, and Wayne Counties, and the Federal Correctional Complex-Granville County. See <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/locality-pay-area-definitions/>.

subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work.

Contrary to the claimant's reliance on where a majority of her work is performed; i.e., Ft. Bragg, the plain language of the regulation does not provide for official worksite determination based on where the Federal civilian employee performs a majority of his or her work for employees who, like the claimant, are covered by 5 CFR 531.605(a)(2). The regulatory language gives the agency discretion in determining where "the work activities of the employee's position of record are based" when the employee's work involves recurring travel or the work location varies on a recurring basis for purposes of 5 CFR 531.605, as long as it is in a locality pay area "in which the employee regularly performs work." Thus, when the regulatory language is permissive and gives the employing agency discretion in determining the employee's official worksite, the agency's action will not be questioned unless it is determined that the agency's action was arbitrary, capricious, or unreasonable. See OPM File Number. S9601174 (undated); and OPM File Number S001638, June 26, 1998. The record shows the claimant regularly performs work in her home. Thus, the designation of her home as her work location for purposes of determining her locality pay rate cannot be considered arbitrary, capricious, or unreasonable. Accordingly, the claim is denied.

The claims jurisdiction of OPM under section 3702(a)(2) of title 5, United States Code (U.S.C.), is limited to consideration of statutory and regulatory liability. OPM has no authority to authorize payment based solely on consideration of equity. Therefore, the claimant's assertion she has not been treated equitably has neither merit nor applicability to our claim settlement determination. Further, OPM's authority to adjudicate employee compensation matters does not extend to conditions of employment established by the employing agency other than when such determinations affect a statutory or regulatory entitlement to compensation. Thus, the fact the agency did not give the claimant the option of working out of an office at Fort Bragg rather than from her home, requires her to park her Government-furnished vehicle at her home, and other employee non-compensation expense issues she raises are not subject to review under OPM's compensation claims process.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States court.