

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: Department of the Air Force
Ramstein Air Base, Germany

Claim: Inclusion of post allowance in lump-sum leave payment

Agency decision: Denied

OPM decision: Granted

OPM file number: 07-0024

/s/ for

Jeffrey E. Sumberg
Deputy Associate Director
Center for Merit System Accountability

2/21/2008

Date

The claimant separated from Federal civilian service while stationed at Ramstein Air Base (AB) Germany on November 21, 2006. Prior to his departure from Ramstein AB, he vacated his permanent quarters and moved into temporary quarters on October 23, 2006. His post allowance, paid at the rate of \$404 for every 14-day period, was terminated at that time. Upon separation, he received a lump-sum payment for his remaining annual leave balance. The post allowance (PA) was not included in the lump-sum payment. The claimant requests the U.S. Office of Personnel Management (OPM) direct his former employing agency to include PA payment for the period of leave used to calculate his lump-sum annual leave payment. OPM received the claim request on March 9, 2007, and the agency administrative report (AAR) on July 26, 2007. For the reasons discussed herein, the claim is granted.

The agency conceded that under DoD Financial Management Regulation 030402B1, PA is included in the computation of lump-sum leave payments upon separation from Federal service if separated in the foreign area (Comp. Gen. B-178428, June 28, 1973.) However, the agency denied the claim based on the premise that the claimant's entitlement to PA terminated when he moved into temporary quarters and began receiving a temporary subsistence allowance. Thus, since he was not receiving PA when he actually separated from the Federal service, it could not be included in his lump-sum annual leave payment.

The agency relies upon the Department of State Standardized Regulations (DSSR), Chapter 200, Section 224.1 which state PA terminates as of the date the employee or family member occupies temporary quarters prior to departure and for which the temporary quarters subsistence allowance is payable. The agency further cites DSSR, Chapter 200, Section 224.3, which states PA terminates for an employee who is separated "as of the date of his/her departure from the post or the last day of employment, whichever is earlier." The agency also cites OPM claim decision # s9600926, which "denied the post allowance payment in his lump-sum annual leave payment for being ineligible for post allowance on the date of separation. The February 2, 2007, agency claim denial states:

Your e-mail stating "*On 24 Oct I received an e-mail from Barbara Esposito@cpms.osd.mil telling me my lump sum payment for leave should have included post allowance. This is IAW FMR 030402B1; post allowance is included in lump-sum payments upon separation from federal service if separated in a foreign area.*" That information is accurate as a stand alone. When other parameters are involved such as resignations and receiving Temporary Quarters Subsistence Allowance (TQSA) they must be considered in conjunction with other governing regulations such as the Department of State Standardized Regulations (DSSR) and Joint Travel Regulations (JTR).

The agency's reliance on OPM claim decision #s900926 covering a claim period ending January 8, 1993, is misplaced. That decision predates the controlling OPM regulation found at 5 CFR 550.1205(b)(9) and the relevant DSSR regulation 224.3 (Separation), which apply to the instant claim.

In proposed regulations published prior to promulgating 5 CFR 550.1205 in its current form, OPM recognized that agencies' policies regarding the inclusion of different types of pay in

calculating lump-sum payments for annual leave were inconsistent. As stated in the supplementary information of the proposed regulations:

The Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102-378, October 2, 1992) added section 5553 to title 5, United States Code, to give the Office of Personnel Management regulatory authority for the administration of lump-sum payments for accumulated and accrued annual leave....OPM recognizes that agencies currently calculate lump-sum payments for annual leave and refunds based on their interpretation of broad statutory language in 5 U.S.C. 5551, 5552, and 6306; OPM's regulations on lump-sum payments for employees who receive nonforeign area cost-of-living allowances, post differentials, or availability pay; and additional guidance provided by the former Federal Personnel Manual, Comptroller General opinions, court decisions and the Federal Wage System Operating Manual. Consequently, agencies may not have consistent policies for including some types of pay in lump-sum payments for annual leave.

62 FR 40476 (July 29, 1997)

The final regulation included PA's in the lump-sum payment for annual leave as follows:

A post allowance in a foreign area under 5 U.S.C. 5924(1) and the Standardized Regulations (Government Civilians, Foreign Areas) if the employee's official duty station is in the foreign area when he or she becomes eligible for a lump-sum payment under Sec. 550.1203.

64 FR 36763 (July 8, 1999)(codified at 5 CFR 550.1205(b)(9))

OPM's regulations regarding lump-sum annual leave payments are controlling and, having gone through the review and comment process, are due *Chevron* deference and have the force of law. See *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984). The DSSR provisions cited by the agency are controlling with regard to the payment of PA and TQSA during the period of overseas employment. However, they are not controlling with regard to the calculation of lump-sum payment for annual leave under 5 U.S.C. 5551-5553 as implemented by 5 CFR 550.1203 and 550.1205(b)(9). This issue has been clarified in the current DSSR:

224.3 Separation

The post allowance grant to an employee who is separated (Section 040r) shall terminate as of the date of his/her departure from the post or the last day of employment, whichever is earlier.

The Office of Personnel Management advises that upon separation from Federal service, a post allowance in a foreign area under 5 U.S.C. 5924(1) and these Standardized Regulations (DSSR) is included in an employee's lump-sum payment for annual leave if the employee's official duty station is in the foreign

area when he or she becomes eligible for a lump-sum payment under 5 U.S.C. 5551, 5 CFR 550.1203, and 5 CFR 550.1205(b)(9). The receipt of a temporary subsistence allowance under 5 U.S.C. 5923 prior to departure from the post and the projection of the lump-sum payment period does not prohibit the inclusion of a post allowance in the employee's lump-sum payment for annual leave. (eff. 7/22/07 TL:SR 679)

The agency must pay the claimant a lump-sum payment for the PA in the computation of his lump-sum annual leave payment with interest as described in 5 CFR 550.805 and 5 CFR 550.806. If the claimant believes that the agency has computed the amount incorrectly, he may file a new claim with this office.

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.