

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

Claimant: [name]

Organization: [agency component]
Department of the Army
Camp As Sayliyah, Qatar

Claim: Incorrect Post Differential Rate

OPM decision: Denied

OPM file number: 08-0019

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

9/12/2008

Date

Introduction

The claimant was employed in [positions] with the [agency component], Department of the Army (DA), at Camp As Sayliyah, Qatar. In his claim request, he asks the U.S. Office of Personnel Management (OPM) to direct DA to pay him back pay and interest for not paying him “the proper Post Differential [PD] rate for [his] duty station in Qatar” upon his arrival in Camp As Sayliyah in October 2004 until April 2006. OPM received the undated claim on September 7, 2007.

The record shows the claimant preserved his May 12, 2006, claim with his agency on May 31, 2006, when it was received by the agency. The claimant asserts he was not paid the proper PD rate of 15 percent for Qatar “Other.” Instead, he was paid the lower Qatar “Doha” rate. The claimant provides his analysis of the provisions of the Department of State Standardized Regulations (DSSR) in discussing DA’s denial of his claim and states:

This denial clearly ignores the DSSR and the DSSR should be referenced, specifically under Section 040 Definitions, **Enclosure 3**. It clearly states a “post means the place designated as the official station of the employee, regardless of whether he/she is detailed elsewhere or resides at another place with the authorization of [sic] approval of the head on his/her agency.” Although I live in the city of Doha, my official station is Camp As Sayliyah as reflected in the **Enclosure 4**, SF50 [sic] which clearly reflects Camp As Sayliyah in Block 39. A previous SF50 [sic] dated January 9, 2005, under **Enclosure 4**, reflected Doha as the post when I was initially hired and it was corrected but should have always reflected Camp As Sayliyah which equates to the “Other” post differential rate in the DSSR. It is just what it implies, POST differential.

Furthermore, the required Differential Survey DS 267 for Camp As Sayliyah has never been performed. **Enclosure 5** is a DS [sic] 267 Post Differential Questionnaire for which only Doha is reflected. . . **Enclosure 5**, Page 20, Block 78 of the report even confirms that the report reflects life within the city of Doha and anything beyond Doha should be ranked differently. How Ms. Sieber who signed the agency denial determined the quality of life on Camp As Sayliyah is questionable and in fact it has never been accomplished. Instead Ms. Sieber’s and Ms. Wainright’s offices decided to contact the US [sic] State Department for guidance and not follow the DSSR which is very clear on survey and reporting requirements.

Also noted and should be referenced is the **Enclosure 7** letter dated 20 May 2003 with supporting documents, which clearly states. . . Camp As Sayliyah is outside the city boundaries of Doha and in the city boundaries of Al Rayyan . . . This was determined in coordination with city officials and US [sic] Government personnel. Mrs. Wainright’s letter dated June 20 2005. . . also states that Camp As Sayliyah is under a different municipality.

The claimant takes issue with interpretive guidance provide by the U.S. Department of State and attempts to summarize the language from the agency denial letter, stating: “although it is not outlined in the DSSR, the State Department uses boundaries, municipalities, and political

jurisdiction to determine the area of assignment....” (emphasis added). The claimant further states:

It seems to be convenient for the State Department and the Army to utilize such a use of terms...but the fact is there is no mention of these terms anywhere in the DSSR. Throughout this process, numerous references have reflected “political jurisdiction” and once again conveniently ignore there [sic] own strategy of possibly using municipalities as a determining factor and by their own admission but this is a mute [sic] point if the DSSR reporting requirements are utilized as required.

In support of his claim, the claimant pointed to the payment of other Department of Defense employees (DoD) at Al Udeid Air Force Base, which he states is three miles from Camp As Sayliyah and also outside the city boundaries of Doha; previous job announcements advertised at 20 percent PD, the PD rate of Qatar “Other;” and the payment of other DoD employees at Camp As Sayliyah receiving the Qatar “Other” PD rate. The claimant provided names of individuals who can provide information in support of his claim.

The May 20, 2003, memorandum to the record cited by the claimant from the Commanding Officer, U.S. Army Forces Central Command, Camp As Sayliyah, Qatar, lists seven references. These references include a translation of an April 13, 2003, communication from the Director of Planning Department, Ministry of Municipal Affairs & Agriculture, to the Chief of Civil-Military Operations Doha that “American Forces Camp at As-Sayliyah falls within the administrative limits of Al-Rayyan Municipality.” The translation of a May 18, 2003, communication between the same parties states “the American Forces Camp at As-Sayliyah falls outside the limits of the city of Doha, however, it falls within the administrative limits of Al Rayyan Municipality.” The May 20, 2003, memorandum states “Camp As Sayliyah is located several miles outside the city boundaries of the City of Doha....Doha is the only City [sic] which has a specified rate of Post Differential [promulgated by the State Department]....That regulation specifies “Other” for all areas of Qatar except Doha.”

The agency claim denial, identified as such in an August 28, 2007, email from the claimant’s then-employing DA component, is a January 12, 2006, memorandum on the subject of “Post Differential-Camp As Sayliyah” from the Director, ACA, which states:

My office coordinated extensively with the State Department regarding this issue and the following points support both enclosures:

- a. Post differential was established to compensate employees for living conditions not working conditions. The State Department determined that the living conditions at Camp As Sayliyah are similar to the living conditions of Doha, Qatar. In fact, the [agency component] employees assigned to Camp As Sayliyah live in Doha, Qatar.
- b. Part 060(2) of the DSSR states, “If a post is not listed individually in Section 920, but the country or area of assignment is listed, the appropriate classification for the country or area of assignment shall apply.” Although not outlined in the

DSSR the State Department uses boundaries, municipalities and political jurisdiction to determine the *area* of assignment. The DSSR does not list every individual worldwide location. To do so would create an unmanageable regulation. The example provided by the State Department was if New York City was listed [sic] DSSR not all areas encompassed within New York City would be listed individually, e.g., Bronx, Brooklyn, or Manhattan.

- c. To further clarify the determination the State Department amended the DSSR to include Camp As Sayliyah and Al Udeid Air Base as part of the area of Doha, Qatar.

The file includes a June 20, 2005, letter from DA's Deputy Assistant G-1 for Civilian Personnel to the Commanding Officer, U.S. Army Forces Central Command, Camp As Sayliyah, Qatar, stating:

2. The State Department was contacted for information to determine the correct post differential rate for Camp As Sayliyah [sic]. The State Department informed us that the determining factor is whether the assigned area is within the political jurisdiction of Doha.
3. In order to validate whether Camp As Sayliyah [sic] is under the normal political jurisdiction of Doha, the Embassy of the State of Qatar was contacted. We were informed that Camp As Sayliyah is located under the Al-Rayan [sic] Municipality and falls under the Doha political jurisdiction. Therefore, based on the above, the correct post differential rate for Camp As Sayliyah, Qatar, is "Doha."

The claimant's Enclosure 1, Qatar Civilian Pay Issue, comments on the June 20, 2005, letter and other agency submissions provides:

FACT: The USAEUR CPAC does not have the authority to refuse payment authorized by the DSSR. Refusal to pay all personnel IAW the DSSR is a violation of 5 USC 2301. Additional information is at enclosure 4.

FACT: The Department of the Army has produced a memorandum expressing their opinion of the classification of Camp As Sayliyah. This memorandum must be forwarded to the Department of State for consideration. A copy of this memorandum is at enclosure 5.

FACT: This memorandum from the Army appears to have confused "political violence" with "political jurisdiction." Political jurisdiction is not mentioned in the DSSR. Political violence has a direct influence on the pay levels. Additional information is at enclosure 6.

CONCLUSION: Since late 2001, there has been considerable confusion concerning post differential rates that should be paid at Camp As Sayliyah....The cause for this confusion

was that the SF 50's were incorrect. Once the SF 50's were corrected, the confusion at CPAC remained, resulting in inequitable payments...

Based on the information in the DSSR, and at the enclosures, it is clear that the Post Differential rates for Camp As Sayliyah are yet to be determined. Therefore, the civilian employees at this location are and have been authorized payment at the "Other" rate until the issue is resolved.

RECOMMENDATION:

- Initiate correct payment to include back pay for all denied employees. Continue this payment IAW the DSSR until the issue is resolved and the DSSR is appropriately changed.
- Initiate [sic] OF 267's for Camp As Sayliyah and Al Udid to facilitate the Department of State's determination of the correct post differential rates for these two duty posts.

Scope of the claim

OPM's authority under 31 U.S.C. § 3702 is narrow and limited to adjudications of compensation and leave claims. Section 3702 does not include the authority: to determine whether an agency's action or inaction on a compensation matter is a violation of merit system principles under 5 U.S.C. § 2301; to determine or comment on whether the U.S. Department of State (State Department) has properly executed its obligations in conducting surveys used in the granting of quarters allowances, cost-of-living allowances, post differentials, and danger pay allowances authorized by 5 U.S.C. §§ 5921-5925 and 5928; or to determine whether DA has fulfilled its reporting obligations to the State Department.

As stated in 5 CFR 178.105, the settlement of claims is based on the written record only. The claims settlement process does not provide for contact with other individuals whom the claimant avers have relevant information in support of his claim. In adjudicating this claim, our responsibility is to make our own independent decision on whether the claimant received the proper amount of PD during the claim period. We cannot compare the claimant's situation to others as a basis for deciding his claim since there is no assurance other individuals cited by the claimant received the proper amount of PD or that the job announcements under which they were hired contained the proper PD information.

Evaluation of the claim

The claimant's rationale rests upon the definition of "post" for purposes of determining PD. DSSR 40 Definitions, states: "Post means the place designated as the official station of the employee, regardless of whether he/she is detailed elsewhere or resides at another place with the authorization or approval of the head of his/her agency. (See also Section 061.)" Section 061 Post Classifications, states: "[t]he classifications (i.e. allowance rates) for living quarters, post, transfer, education allowance, danger pay, and post differential at any place in foreign areas where employees may be assigned are provided in the electronic Section 920..." As noted in

the March 29, 2001, version of the DSSR, Section 911.2, Column 1 of the Post Classification and Payment Tables, states:

Column 1 of Section 920 lists the individual post, country, or area of assignment for allowance, post differential and danger pay purposes. Where a town, city, or other post of assignment is not covered by the locality listing, the rates established for "other" areas of the country are applicable pending a determination that separate allowance, differential or danger pay rates are warranted.

Subchapter III, Overseas Allowances and Differentials, chapter 59, Allowances, of 5 U.S.C. does not define "post" for purposes of PD under 5 U.S.C. § 5925 or other enumerated allowances. The DSSR also does not define the terms "place" or "official station" for purposes of defining "post." Similarly, the terms "town" and "city" are not defined in the previously cited Section 911.2. Contrary to the claimant's assertion, the current DSSR, Section 911.2, effective May 1, 2005, does not materially change the previous language with regard to these terms:

911.2 Post Classification and Payment Tables

The electronic Section 920 lists the individual post, country, or area of assignment for allowance, post differential and danger pay purposes under the heading of "Location." Where a town, city, or other post of assignment is not covered by the locality listing, the rates established for "Other" areas of the country are applicable pending a determination that separate allowance, differential or danger pay rates are warranted. (eff. 5/01/05 TL:SR 650)

The DSSR does not refer to or define "post" by reference to "duty station" in block 39 on the Notification of Personnel Action, Standard Form 50 (SF 50) as the claimant appears to assert. The Post Differential Questionnaire, Optional Form 267, lists "post" as follows: "POST (*City or Place*)" without further definition. However, it also instructs: "If a post contains two distinct environments as, for example, an enclosed base or compound area in or near a native town, the reporting officer should phrase replies so as to make it clear to [sic] which environment is being referred to." This instruction is directly applicable to the instant case based on the guidance provided by State Department to DA as discussed below.

An August 29, 2005, email from State Department to Headquarters, DA discusses the treatment of Camp As Sayliyah:

The Economic and Trade Officer (ETO) from the Embassy of the State of Qatar responded by stating that Camp As Sayliyah falls under the Al-Rayan [sic] Municipality and falls under Doha political jurisdiction. With that said, Camp As Sayliyah would be included in Doha's allowances. Using a location in the United States to illustrate this is New York City, New York. NYC has five boroughs or five constituent political divisions (Manhattan, Brooklyn, Queens, the Bronx, and Richmond County)...I feel that the information that came from the ETO...is verification enough concerning the location of Camp As Sayliyah. Now that the location of Camp As Sayliyah has been determined to be within the political jurisdiction of Doha, we can publish Camp As Sayliyah as an "include" post of Doha....

A September 21, 2005, email from State Department to Headquarters, DA expands on and clarifies this discussion:

In effect, although there are two different interpretations of what the “Doha area” covers those interpretations are not mutually excludable. [It is] more of a policy than a technical issue as to whether we consider Camp As Sayliyah as part of Doha or not since it is considered part of the Doha area by local authorities whether municipal or political.

Therefore, we went back to the basic purpose of the post (hardship) differential. The differential level is set to provide additional compensation to employees...when the place has extraordinarily difficult living conditions ...We felt the starting point ...was to ascertain if there was any significant difference in the living conditions between USG employees formally assigned to the three Doha areas. According to what we have learned the majority of employees assigned to either Camp As Sayliyah or Al Udeid actually reside in the same housing complexes as those employees whose orders say Doha. They use the same schools, shopping centers, recreational facilities, and medical facilities. According to what we were told, civilian employees at the embassy in Doha, Camp As Sayliyah and Al Udeid live next door to each other in the same housing compound, the kids attend the exact same schools, the parents socialize with each other on a daily basis—swim together in the same pool, enjoy drinks in the same club bar, etc. and if ill, go to the same hospitals/doctors.

Although we understand there may be a difference in working conditions, there appears to be no difference in the living conditions which is what the differential is designed to compensate for. From everything we can find out, all three are in the same area and it is basically the same as an employee being assigned to Washington, but working in an office in Crystal City or Pentagon City. Based on the information available to us, we intend to proceed with our original plan and amend the DSSR listing for Doha to indicate that it includes both Camp As Sayliyah and Al Udeid. I have already been in contact with...our liaison in Air Force . . .He was aware that the impact for Air Force would be a reduction in the allowance rate but he, too, seemed to feel that if the living conditions for the majority of employees at all three locations in the Doha area were similar, the differential rates should be similar. The amendment to *clarify* [emphasis added] the listings will be effective October 2 with TL:SR 656A.

It is well established an agency’s power to administer a congressionally created program necessarily requires the making of rules to fill any “gap” left, implicitly or explicitly, by Congress. *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843. When an agency fills such a gap reasonably, and in accordance with other applicable (*e.g.*, procedural) requirements, that result is legally binding. *Id.*, at 843–844. *Long Island Care at Home, Ltd., et al., v. Evelyn Coke*, 127 S.Ct. 2339 (2007). Similar deference is due to an administrative agency’s interpretation of its own regulations “unless it is plainly erroneous or inconsistent with the regulation.” *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945). The record shows Camp As Sayliyah is approximately seven miles outside the formal Doha city boundary. However, as discussed in the OF 267, Camp As Sayliyah apparently was construed

by DA as equivalent to an “enclosed base or compound in or near a native town,” i.e., Doha, during the period of the claim, similar to a close-in suburb directly outside the city limits of Doha. This interpretation and application of PD was later recognized as proper by State Department as discussed previously. Therefore, the PD for the claimant was at the “Doha” rather than “Other” Qatar rate during the period of the claim, and other Department of Defense employees had their PD reduced to the correct “Doha” rate (i.e., the rate they should have received) based on State Department’s clarifying amendment to Section 920. Thus, we find DA’s failure to pay the claimant at the “Other” Qatar rate ensured the claimant was not overpaid at the incorrect “Other” Qatar rate during the period of this claim.

Decision

OPM does not conduct investigations or preside over adversary hearings in adjudicating claims, but relies on the written record submitted by the parties. *See Frank A. Barone*, B-229439, May 25, 1988. Where the record presents a factual dispute, the burden of proof is on the claimant to establish the liability of the United States, and where the agency's determination is reasonable, OPM will not substitute its judgment for that of the agency. *See, e.g., Jimmie D. Brewer*, B-205452, March 15, 1982, as cited in *Philip M. Brey*, B-261517, December 26, 1995. Where the written record presents an irreconcilable dispute of fact between a Government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. 5 CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. Therefore, we find DA did not err in determining the claimant was properly covered by the “Doha” PD rate during the claim period. Accordingly, the claim is denied.

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