

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

Claimant: [name]

Organization: Department of the Air Force
[agency component]
Okinawa, Japan

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 08-0114

//Judith A. Davis

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

5/12/2009

Date

The claimant is a Federal civilian employee of the Department of the Air Force at [agency component] in Okinawa, Japan. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of living quarters allowance (LQA). We received the claim on July 17, 2008, the agency administrative report (AAR) on February 3, 2009, and the claimant's comments on the AAR on March 5, 2009. For the reasons discussed herein, the claim is denied.

The claimant was stationed overseas as an active duty military member at [agency component], Japan. Prior to his retirement, while still on active duty, he applied for and was subsequently selected for the position of Supervisory Inventory Management Specialist, YC-02, at [agency component] on May 21, 2008. The vacancy announcement included a statement that travel and relocation expenses would be paid but did not specify whether LQA would be offered. On June 9, 2008, the agency asked the claimant to complete an LQA questionnaire to determine his LQA eligibility, and on July 1, 2008, notified the claimant he would not be granted LQA. The agency stated although the claimant met basic LQA eligibility requirements, the position did not meet the additional requirement of recruitment need.

The claimant asserts he was not a local hire since he was on terminal leave from the military when he applied for the position, his home of record is Philadelphia, Pennsylvania, and he was not "living on the economy off base." He also asserts he should be granted LQA "because the law states if you are overseas and receiving quarters allowance then you should continue that allowance" and since he was receiving this "entitlement" with the Air Force through the military, he should receive it as a civilian. In addition, he states "the job was advertised with PCS [permanent change of station] costs paid which infers LQA" and believes the agency should "honor what was stated in the advertisement." He states repeatedly that he "negotiated the position with full benefits to include LQA" and when he "processed [his] pay negotiation for NSPS employment all documents stated travel relocation will be paid, to include LQA and health benefits."

The Department of State Standardized Regulations (DSSR) set forth the conditions under which employees recruited either in or outside the U.S. may be granted LQA. Section 031.11 states, for employees recruited in the U.S.:

Quarters allowances prescribed in Chapter 100 may be granted to employees who were recruited by the employing government agency in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the possessions of the United States.

Section 031.12 states LQA may be granted to employees recruited outside the U.S. provided that:

- a. the employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his/her employment by the United States Government; and
- b. prior to appointment, the employee was recruited in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States, by:
 - (1) the United States Government, including its Armed Forces;

- (2) a United States firm, organization, or interest;
- (3) an international organization in which the United States Government participates; or
- (4) a foreign government

and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States...

Department of Defense (DoD) Civilian Personnel Manual 1400.25-M provides the following definitions:

SC1250.3.4. Locally Hired. For the purpose of this Subchapter, locally hired refers to the country in which the foreign post is located.

SC1250.3.7. U.S. Hire. A person who resided permanently in the United States, or the Northern Mariana Islands, from the time he or she applied for employment until and including the date he or she accepted a formal offer of employment.

Further, DoD Manual 1400.25-M states that under the provisions of DSSR section 031.12b, former military and civilian members shall be considered to have “substantially continuous employment” for up to one year from the date of separation or when transportation is lost, or until the retired and/or separated member uses any portion of the entitlement for Government transportation back to the United States.

Thus, the only relevant factor in determining whether an employee is a local hire or a U.S. hire is place of residence; i.e., where the employee was actually living at the time he or she applied for and accepted the job offer. The claimant was a local hire because he was physically residing in Japan at the time he applied for and was selected for the position in question. The claimant met LQA basic eligibility as a former military member with substantially continuous employment who had not used any portion of his Government transportation back to the United States.

Section 031.12b of the DSSR, in its discussion of LQA eligibility criteria for employees recruited outside the United States, specifically references employees who, prior to appointment, were recruited in the United States by the U.S. Government, *including its Armed Forces*. DoD Manual 1400.25-M, in its corresponding discussion of LQA eligibility criteria for employees recruited outside the United States, specifically references *former military members*. Thus, the stated LQA eligibility requirements apply to both former military members and civilian employees. There is no provision that military members applying for civilian employment be automatically granted LQA as a continuation of their military housing allowance.

DoD Manual 1400.25-M specifies overseas allowances are not automatic salary supplements, nor are they entitlements. They are specifically intended as recruitment incentives for U.S. citizen civilian employees living in the United States to accept Federal employment in a foreign area. If a person is already living in the foreign area, that inducement is normally unnecessary. The manual states individuals shall not automatically be granted these benefits simply because they meet eligibility requirements. Individuals authorized to grant overseas allowances and

differentials shall consider the recruitment need, along with the expense the activity or employing agency will incur, prior to approval.

The process for authorizing LQA for applicants locally hired by the Department of the Air Force, Pacific Air Forces, under the provisions of DSSR 031.12a and b and DoD Manual 1400.25-M is clarified in Benefits and Entitlements (B&E) Memo 00-1, dated April 13, 2000:

The CPF [Civilian Personnel Flight] determines whether the granting of LQA is necessary as a recruitment or retention incentive for the position being filled. If this incentive is not necessary, no further determination is made. If the CPF determines that the granting of LQA is necessary, it must then determine whether the applicant satisfies the eligibility requirements of the DSSR and DoD 1400.25-M, Subch 1250.

The agency states that no recruitment incentive was necessary for the position in question. The position was not identified on the vacancy announcement as hard-to-fill. The position had been previously advertised for internal applicants Air Force-wide, which produced 29 qualified candidates, three of whom appeared to be local applicants. There were a total of 19 candidates on the external certificate from which the claimant was selected, including four local applicants. Since there were thus several local candidates for the position, the agency determined no recruitment incentive was necessary and declined to offer LQA to the selectee.

Documentation submitted by the claimant indicates the job announcement stated "travel and relocation expenses will be paid," and the email he received offering him the position likewise stated "travel and relocation (PCS) expenses will be covered by the Air Force." The authority to provide travel, transportation, and subsistence expenses is derived from Chapter 57 of title 5, United States Code (U.S.C.). Travel and relocation, or permanent change of station (PCS) expenses, are detailed in the Joint Travel Regulations, Volume 2, which governs civilian travel in DoD. PCS expenses consist of such expenses as employee and dependent transportation and per diem, shipment and storage of household goods, househunting trips, temporary quarters subsistence, real estate transactions and lease termination, and other miscellaneous expenses directly associated with the relocation of a residence in connection with a permanent change of station. In contrast, the authority to provide LQA is derived from Subchapter III of Chapter 59 of 5 U.S.C. which governs the granting of overseas differentials and allowances. Thus LQA, by statute, is not considered a PCS expense. LQA is governed by the Department of State Standardized Regulations and implementing guidance issued by DoD. That the claimant misconstrued travel and relocation expenses to include LQA does not establish an entitlement to and has no bearing on the whether the agency's decision not to grant him LQA was appropriate.

B & E Memo 00-1 states the documentation required before an LQA determination is made:

Eligible employees are required to submit an SF 1190 and the PACAF form titled, "Information to Determine Eligibility for Transportation Agreement and Allowances." These documents will be used by the CPF to determine whether an employee satisfies the requirements of DSSR, para 031.12. The CPF must clearly document in Part II, para 3, why the entitlement is necessary as a recruitment or retention incentive.

Although the claimant maintains he "negotiated" LQA with the agency, he submitted no documentation indicating LQA had been offered or granted. The claimant was officially offered the position via email on May 27, 2008. That email states travel and relocation expenses would

be paid but does not address LQA. The claimant was subsequently asked to complete the above-referenced LQA questionnaire on June 9, 2008, at which time it would have been clear that no LQA determination had yet been made. The claimant was notified in writing that LQA had been denied on July 1, 2008, well in advance of the projected reporting/effective date of August 17, 2008. The claimant submitted copies of an email wherein he accepted the salary offer for the position, and a form titled "NSPS Salary Determination Documentation" which states only that total remuneration for the position such as health benefits, leave, LQA, and post allowance had been discussed, and which also specifically includes the following documentation:

If this salary offer includes recruitment or relocation incentive, indicate the amount(s).
Recruitment \$: 0 Relocation \$: PCS Move Expenses Total \$ PCS Move Expenses

This does not support the claimant's contention that LQA was offered to him, as the only incentive specifically addressed in this document, as in the vacancy announcement and job offer, is PCS expenses.

The claimant cited other employees who had reportedly received LQA under circumstances similar to his. However, our review of LQA determinations must be based on controlling regulations and policies and case facts since there is no assurance other cases which may be cited by a claimant have been decided properly.

When the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. See e.g., *Jimmie D. Brewer*, B-205452, March 15, 1982. In this case, the claimant was residing in Okinawa, Japan, when he applied and was hired for the position. No LQA recruitment incentive was necessary as there were sufficient local candidates. The agency's action conforms to its established LQA policy and is not arbitrary, capricious, or unreasonable. Accordingly, the claim for an LQA is denied.

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.