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

Claimant: [name]

Organization: N/A

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction and lack of standing

OPM file number: 09-0021

//Judith A. Davis for

_____

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

5/18/2009

_____

Date

In his February 9, 2009, claim request, which the U.S. Office of Personnel Management (OPM) received on February 19, 2009, the claimant seeks to challenge the Department of the Army's decision which found he was not eligible for living quarters allowance (LQA) for "Job Offer #RPA 826559…YA-0301-02-JTRE Requirements Specialist". His request included a copy of a February 5, 2009, agency-level claim denial from the Headquarters, U.S. Army, Office of the Deputy Chief of Staff, G1, Civilian Human Resources Agency, European Region, which states: "If you with [sic] to appeal the LQA decision, you may submit your claim to the Office of Personnel Management…." Based on this agency guidance and a lack of clarity as to the claimant's standing, we requested an agency administrative report (AAR) which we received on March 5, 2009, and claimant comments on the AAR on March 23, 2009. For the reasons discussed herein, the claim is denied for lack of jurisdiction and lack of standing.

Section 3702(a)(2) of title 31, United States Code (U.S.C.) states: "The Director of the Office of Personnel Management shall settle claims involving Federal civilian employees' compensation and leave." Therefore, the plain and unambiguous language of the statute makes clear a claim may be filed only by or on behalf of a current or former Federal civilian employee. The record shows claimant has always been and continues to be employed by private companies since arriving in Europe in 1999. Since the claimant was not and is not a Federal employee, he has no standing to file a claim and this claim must be denied for lack of jurisdiction.[1]

Although we may not render a decision on this claim, we note the documents submitted into the record suggest that the claimant is not eligible for LQA. The claimant asserts that, because his employment contract with L-3 Communications/Titan uses the word repatriation, which by claimant's definition "means: "to restore or return to the country of origin, allegiance, or citizenship,"" then L-3 Communications "had a contractual requirement for return transportation to the U.S." Thus, the claimant asserts he was employed under conditions which provide for his eventual return to the United States. In support of this assertion, the claimant refers to AE Form 715-9C, APR 03, pertaining to Articles 72 and 73 of the Supplementary Agreement to the NATO Status of Forces Agreement submitted by L-3 Communications and signed by the claimant. According to claimant the form states under the Remarks section:

> This person is a full-time employee of Titan Corporation and will work in Germany for the convenience of the company and the U.S. military. It is the intent of Titan Corporation to relocate the employee to a comparable position in the United States upon fulfillment of the current contract.

The claimant further states that:

> As a condition of certification [AE Form 715-9C] that the position and the individual filling this position can only be done by a U.S. Contractor [sic] and in compliance with the U.S./German Status of Forces Agreement, the Company [sic] did agree to provide for relocation (REPATRIATION) to the United States.

[1] It is unclear why the agency advised the claimant he could file a claim with OPM given our prior decisions on this matter sent to this agency (OPM file numbers 08-0009 and 08-0027, September 18, 2008).

The claimant further asserts that "[t]he "determination of the contractual requirement to relocate/repatriate must be made on the intent and meaning of the entire paragraph and cannot be based on the piecemeal dissection of the paragraph."

In contrast, the agency views the claimant as not meeting the requirements of being continuously employed under conditions providing a valid return transportation to the United States. In its February 5, 2009, LQA claim denial, the agency states the claimant was originally recruited from Oregon by Logicon effective April 1999. The agency also stated that the Logicon employment contract indicated that, upon completion of the assignment, relocation to Oregon would be authorized to include travel expenses and shipment of household goods. It further stipulated that the relocation had to be completed in 3 months. The agency states the claimant accepted an employment contract with L3-Titan on May 1, 2006, which authorized a repatriation payment if the claimant moved at least 400 miles from the claimant's last duty location with L3-Titan (also known as L3 Communications) and the employment termination was classified as "eligible to rehire." The agency cited previous OPM decisions in finding that contract language used by L3-Titan "is not considered to be a valid transportation agreement to CONUS" (i.e., the Continental United States). The agency concluded that, three months after the claimant's employment ended with Logicon, the claimant no longer had a valid return transportation and, therefore, did not "meet the requirements of being continuously employed under conditions providing a valid return transportation to CONUS."

In its AAR, the agency stated the L3-Titan contract did not legally establish an employer-obligated condition to provide for the claimant's return to the United States or any other specific location. The agency states the monetary payment could be used to offset the cost of moving to another location when such move occurs or for any other desired purpose. The AAR states the claimant left employment with L-3 Titan on November 5, 2006, and received another offer of employment through Lockheed Martin. Lockheed Martin "offered a relocation package of $25,000 to assist with expenses associated with the return from Germany." The agency states the offer letter further stipulated claimant had to stay with the company for at least one year unless the contract was renewed, noting claimant's employment with Lockheed Martin ended on September 3, 2007. The agency provided a copy of an August 7, 2007, employment offer from Camber Corporation to the claimant which states: "You will also receive reimbursement for relocation costs of up to $20,000.00 associated with your return to the United States upon satisfactory completion of three years of employment." The claimant is currently employed by Camber Corporation.

In response to the AAR, the claimant states he has been continuously employed as a contractor in Europe since 1999 and that he had a transportation agreement with each of the four contractors for whom he has worked. In his March 9, 2009, response to the AAR, the claimant states:

4. As stated in my original letter, the DSSR requires that a person is hired from the United States and has a "**substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States**,".[sic] The MOUs previously provided verified that I was hired from the United States and that I do have continuous employment with a valid transportation return agreement to the United States.

5. Based on my data and explanations, your Office, using a common sense approach to the interpretation of the DSSR will determine that I meet the eligibility requirements of the regulation. Anything less than this determination brings into doubt the Government's desire to have the most qualified individual hired to assume the position. As stated previously, the determination of the contractual requirement to relocate/repatriate must be made on the intent and meaning of the entire paragraph and cannot be based on a piecemeal dissection of the paragraph.

In adjudicating this, OPM's responsibility is to make our own independent determination as to whether the agency has properly determined the claimant's eligibility for LQA. LQA is a tool to be used at an agency's discretion for recruitment purposes; i.e., to induce an employee to accept a position overseas or to remain overseas. It is not related to determining the qualifications of job applicants. The employment status of the agency contact point on this claim (and other issues not pertinent to interpretation and application of the DSSR) are also not germane to the settlement of this claim.

DSSR 031.12 states:

031.12 Employees Recruited Outside the United States

Quarters allowances prescribed in Chapter 100 may be granted to employees recruited outside the United States, 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; or

c. as a condition of employment by a Government agency, the employee was required by that agency to move to another area, in cases specifically authorized by the head of agency.

> Subsection 031.12b may be waived by the head of agency upon determination that unusual circumstances in an individual case justify such action.

It is a cardinal principle of statutory construction that a statute should be construed such that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. *Duncan v. Walker,* 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001). This principle also applies in interpreting regulations, including the DSSR.

Contrary to the claimant's assertion, DSSR 031.12.b(4) requires conditions to be in place to specifically ensure return transportation to the United States or another enumerated location. Such conditions are not met by the promise of a repatriation payment which, in the case of L3-Titan, could be paid so long as the claimant moved at least 400 miles from his last L3-Titan duty station. The claimant could use this payment to relocate to another overseas location or for any other purpose. Thus, the language of the agreement does not ensure return transportation to the United States or the other enumerated locations stipulated in DSSR 031.12.b(4).

Furthermore, substantially continuous employment in DSSR 031.12b(4) must be with an employer (singular) which recruited the employee in the United States and induced the employee to accept overseas employment. The record shows the claimant's employment agreement with his initial employer in Germany, Logicon, specifically provided for return transportation to the United States; i.e., Oregon. The claimant's leaving Logicon to work for L3-Titan ended the required continuous employment with the original employer (Logicon) which recruited him in the United States, thus making the claimant ineligible for LQA under the provisions of , DSSR 031.12.b(4). The claimant's reliance on AE Form 715-9C, APR 03 for LQA eligibility purposes is similarly misplaced. The "intent" to return an employee to the United States is not equivalent to the commitment to do so under a transportation agreement. Therefore, even assuming arguendo that the claimant had been a Federal employee with standing to file a claim with OPM, the claim would have been denied on the merits.

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.