

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

Claimant: [name]

Organization: [agency component]
7th U.S. Army Directorate of Training
Hohenfels, Germany

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 09-0044

//Judith A. Davis for

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

3/4/2010

Date

In his July 13, 2009, claim request which the U.S. Office of Personnel Management (OPM) received on August 4, 2009, the claimant seeks to challenge the Department of the Army's February 5, 2009, decision which found he was not eligible for living quarters allowance (LQA) based on selection for a [position] at the [agency component], 7th U.S. Army Directorate of Training, in Hohenfels, Germany. His request included a copy of a February 5, 2009, agency-level claim denial from the Department of the Army, Office of the Deputy Chief of Staff, G-1, Civilian Human Resources Agency, Operations Center, Europe Region. We received the agency administrative report (AAR) on August 31, 2009. For the reasons discussed herein, the claim is denied.

The claimant states prior to accepting a Government position on October 20, 2008, he was employed by "L-3 Communication, Titan Group, a U.S. Government Contractor operating in Hohenfels, Germany." He states he accepted this position during "[t]ransition leave in conjunction with retiring from the United States Army on 30 November 2006." The claimant states Army's final LQA denial was based on the claimant's employing "company did not ensure return transportation to the United States or other enumerated locations stipulated in DSSR 031.12.b(4)."

The claimant asserts he met all requirements in the Department of State Standardized Regulations (DSSR) and Army in Europe Regulation (AER) 690-500.592, to qualify for LQA; i.e., he was "in continuous employment with a U.S. firm, organization or interest associated with the U.S. Government, have been provided LQA by that employer and the employer provided for the employee's return transportation to the United States." The claimant states these requirements are "documented with [his] DD 214, the L-3 Communications employment contract letter (Paragraphs 4 and 5) and [his] Notification of Personnel Action." The claimant states:

The DSSR and the AER 690-600.592 [sic] do not specify how the employer provides for return transportation of the employee to the United States, just that they provide for it. Paragraph 5 of my employment contract clearly states that a repatriation payment will be made when documentation is provided showing that I have moved at least 400 miles. Repatriation is defined as the return of a person(s) to their country of citizenship or origin, the United States meets both of these requirements for me and would be well outside the 400 mile minimum required.

The AAR states the claimant's former employer:

L3 Communication Services Group (Titan Group) offered a repatriation payment after successful completion of continued employment. The payment amounts are staggered relative to the length of employment with the firm and are contingent upon the employee presenting documentation that he has moved at least 400 miles from his last L3 Titan Group duty station and being classified as eligible for rehire. The wording in the employment contract legally establishes no employer-obligated condition to provide for the employer's [sic] return transportation, either to the United States or any other specific location. Rather, it provides a monetary payment which the employee can use to offset the cost of having moved to another location, when such move occurs, or for any other

purpose desired. It does not, of itself, provide for the employee's return; nor is it contingent exclusively upon a return to the United States. It merely requires relocation to a distance of 400 miles from the duty station to be eligible for payment. In addition, as the employee must already be relocated by his own efforts to receive the payment, an interpretation that the clause "provides for" is expansive.

As such, the employer has no role to play in returning the employee to any particular destination, and the employee is not obligated to use the allowance in any particular way. Therefore, Mr. Coon does not meet the requirement of having been continuously employed under conditions which provided for his return transportation to the United States, as stipulated by the DSSR Section 031.12b, and thus is not eligible for LQA.

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 governmentand 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.

Contrary to the claimant's assertion, use of the term "repatriation" in an employment agreement is not sufficient to establish LQA eligibility.¹ DSSR 031.12.b(4) requires conditions to be in place to specifically ensure return transportation to the United States or another of the enumerated locations. Such conditions are not met by the promise of a repatriation payment which, in the case of L3 Communication Titan Group, could be paid under the length of employment schedule in his L3 Communications Titan Group employment offer, so long as the claimant moved at least 400 miles from his last L3 Communications Titan Group duty location and his employment termination was classified as "eligible for rehire." 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 another of the enumerated locations stipulated in DSSR 031.12.b(4). OPM file numbers 08-0009 and 08-0027, September 18, 2008, and 09-0021, May 18, 2009.

Although we agree with the Army's determination the claimant was not eligible to receive LQA based on his employment with L3 Communications Titan Group, we do not fully agree with its views regarding the clause "provided for" in DSSR 031.12.b(4). The terms "under conditions which provided for his/her return transportation" are not so restrictive as to require the employer to "return" the employee by arranging and paying for return transportation before the fact. We see no reason why "provided for" cannot be construed as covering a situation in which the employee pays for his or her return to the United States or another of the enumerated locations when the employer is obligated to reimburse the employee for the cost of the return transportation.

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.

¹ Thefreedictionary.com defines "repatriated" as "To restore or return to the country of birth, citizenship, or origin." Thus, repatriation is properly construed to include returning an individual to the country of their last previous "origin"; i.e., residence. The L3 Communications Titan Group employment offer does not define "repatriation" or "repatriation payment." However, by using a 400 or more mile distance from last L3 Communications Titan Group duty station to meet "repatriation payment" eligibility, the company clearly intended "repatriation" to include relocation other than to the United States or other enumerated locations. Since the longest north to south distance in Germany is 876 KM (544 miles), repatriation for an L3 Communications Titan Group employee initially hired while living in Germany could be interpreted to include "repatriation" to a former residence in Germany if it was located 400 or more miles from the last L3 Communications Titan Group duty station.