

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

Claimant: [name]

Organization: [agency component]
Department of the Army
Kaiserslautern, Germany

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 10-0001

//Judith A. Davis for

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

9/2/10

Date

The claimant is a Federal civilian employee of the Department of the Army at the [agency component] in Kaiserslautern, Germany. 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 October 9, 2009, and the agency administrative report (AAR) on April 9, 2010. For the reasons discussed herein, the claim is denied.

The claimant was residing in the United States when he accepted a position in Kaiserslautern, Germany, with the private firm Titan Corporation. In its April 2, 2004, employment offer letter to the claimant, Titan Corporation provided the following repatriation benefit:

A repatriation allowance will be made to you to return to the United States after the successful completion of continued employment on the project. The repatriation allowance will be made upon our receipt of documentation that you have returned to the United States and that your employment termination is classified as "eligible for rehire". The repatriation allowance is intended to cover the cost of household good shipment, including a vehicle; airfare to the United States for yourself and your immediate family members in an amount not to exceed \$10,000.

During the claimant's tenure in this position, Titan Corporation was absorbed by another private firm, L3 Communications, later renamed L3 Communication Services Group. The circumstances of his move to L3 were clarified by letter dated February 13, 2009, from their HR Administrator:

[Claimant] has worked for L3 Communications (originally hired by Titan Corporation) continuously since April 17, 2004.

The only offer documentation that he received from this company is dated April 2, 2004.

The claimant was appointed to his current position of Logistics Management Specialist, YA-346-02, with the Department of the Army on May 26, 2009. The L3 HR Administrator, by letter dated March 6, 2009, provided the following information relative to his repatriation benefit with that firm:

Based on the current government contract #GS07T00BGD0023 that you are employed on dated July 2006 and because you have completed at least 36 months of continuous employment, you are entitled to the following benefit which is a change from your original offer letter:

- A relocation package for you and your family's return to the United States per the DOD Joint Travel Regulation (JTR). The relocation package consists of transportation for yourself and dependent family members, shipment of one Privately Owned Vehicle (POV), and excess baggage not to exceed (NTE) 100 lbs. NOTE: Both POV and excess baggage are NTE 18,000 lbs and may not be stored more than 30 days.

The agency's position in denying LQA to the claimant as stated in the AAR is as follows:

It is regrettable that no other documentation relative to [claimant's] employment exchanged between him and his former employers when Titan Corporation was assumed by L-3 Communication Services Group. We take the position that unilateral statements made after the fact by one organizational entity to recognize an entitlement previously granted by another organizational entity and furthermore to change an entitlement, cannot be accepted as sufficient documentation to support the requirements the DSSR Section 031.12b.

Section 031.12 of the Department of State Standardized Regulations (DSSR) states LQA 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

The claimant was recruited in the United States by Titan Corporation and prior to his appointment to the Federal Service was continuously employed by that entity, both as an independent firm and as a part of L3 Communication Services Group. Therefore, the issue is whether this "substantially continuous employment" was under conditions which provided for his return transportation to the United States or one of the other enumerated locations.

While employed by Titan Corporation, the claimant had a return transportation agreement to the United States that was contingent on one year of employment. When L3 absorbed Titan, it did not provide the claimant with documentation indicating if this agreement would be honored. Shortly before his departure from L3, the claimant was given a letter by them stating that, based on the "current government contract" under which he was employed, he had a return transportation agreement to the United States that was contingent on three years of employment, which condition he had already satisfied. It is unknown, however, when this benefit conferred by L3 actually accrued to the claimant, i.e., whether it was extant when his employment with L3 commenced such that he had been in "substantially continuous employment" under these conditions for the entire duration of his employment with that entity, or whether this benefit was

directly tied to his employment under a specific contract that commenced at some later point in his tenure. The letter provided to the claimant at the conclusion of his employment does not clearly establish that it represents the benefit package under which he was working at its commencement. Section 178.105 of Title 5, Code of Federal Regulations, specifies that claims are settled on the basis of the written record, and the burden of proof is on the claimants to establish the liability of the United States. Therefore, there is insufficient documentation to establish that the claimant meets the requirements of DSSR 031.12(b) and the claim is accordingly 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.