

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

Claimant: [name]

Organization: [agency component]
Department of the Air Force
Ramstein Air Base, Germany

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 09-0030

//for

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

12/23/2009

Date

The claimant is a Federal civilian employee of the Department of the Air Force at Ramstein Air Base, Germany. She requests the U.S. Office of Personnel Management (OPM) reconsider her agency's denial of living quarters allowance (LQA). We received the claim on April 20, 2009, and the claim administrative report submitted on May 18, 2009. For the reasons discussed herein, the claim is denied.

The claimant was living in Incirlik, Turkey, as the dependent of an active duty military member when she was hired for a [position] at Incirlik Air Base effective August 6, 2000. She was selected for this position from a Central Skills Bank, wherein employees could register for particular types of positions at specified locations. Effective May 19, 2002, she accepted a reassignment to a [position] at Ramstein Air Base, Germany, to be collocated with her spouse who was transferring there with the military. The claimant requested LQA for this position from her agency in writing on August 17, 2004, but this and subsequent requests were denied by the agency.

The appellant maintains she was eligible for LQA for both the Incirlik and Ramstein positions. She posits that because she was hired for the Incirlik position from a Central Skills Bank, this was tantamount to being "recruited" from outside the United States. She states if she "had been made aware of the fact that I was considered a local hire, we could have easily completed the administrative actions to return me to Delaware and then return to Incirlik under my own orders." She also states the subsequent reassignment to Ramstein Air Base was a "management generated action" which she was required to accept as a "condition of employment;" i.e., "Otherwise, my employment would have ceased and I would have had to apply for a new position."

The agency counters that the claimant originally traveled to Incirlik on her husband's orders as a military dependent and was hired there locally without LQA. They also state the claimant's subsequent "management reassignment" from Incirlik to Ramstein did not meet the criteria for management-generated reassignments as a basis for LQA as outlined in the written guidance in effect at the time.

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

- 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 the agency.

The claimant did not meet the criteria under DSSR, Section 031.12a or b, for the Incirlik position in that her actual place of residence in the place to which the quarters allowance applied (Incirlik) was attributable to her husband's posting rather than to her own employment by the U.S. Government, as she was on leave without pay from her previous position with [U.S. installation]. She was not recruited in the United States but was locally hired while residing in Incirlik with her spouse.

DoD Manual 1400.25-M provides the following definitions relevant to this determination:

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

SC1250.3.6. 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.

As such, the only relevant consideration in determining whether an employee is a U.S. hire or locally hired (i.e., "recruited outside the United States") is physical residence from application to acceptance of employment. The claimant's hiring from a Central Skills Bank is not germane to this determination as she was already physically residing in Incirlik when she accepted the position there. Her argument that she could have returned to the U.S. if she had been informed of her status as a local hire is similarly not relevant. That the claimant may have been granted LQA under a set of hypothetical circumstances does not confer eligibility for LQA under controlling policy and regulations based on her actual circumstances.¹

The claimant likewise did not meet the criteria under DSSR, Section 031.12c, for the Ramstein position in that her acceptance of that position was not a condition of employment, and she was not required to move there by the agency.

DoD Manual 1400.25-M provides the following implementing guidance regarding these criteria:

SC1250.5.1.7. The designated official will determine whether or not an employee requires an LQA under Section 031.12c of Reference (b) [DSSR] when the assignment is within or between countries. Section 031.12c of Reference (b) provides that an LQA may be given to an employee recruited outside the United States if, "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 the Agency. "A

¹ It is unclear how her return to the U.S. from Turkey would have affected her status as a local hire since she would not have resided in the U.S. from the time of application to acceptance of employment and thus could not have been treated as a U.S. hire.

condition of employment,” if not fulfilled, results in failure to gain or retain employment. Section 031.12c of Reference (b) shall be applied when an employee is relocated to another area by a management-generated action. It also shall be applied when management requests that an employee not now eligible for LQA relocate to another area. A management request that an employee relocate is considered a management-generated action. A move through a voluntary reassignment program is not considered a management-generated action. To make a determination under Section 031.12c of Reference (b), the following tests must be applied:

SC1250.5.1.7.1. Will employment be ended if the employee fails to accept relocation?

SC1250.5.1.7.2. Is the relocation caused by a management-generated action?

SC1250.5.1.7.3. Must management request an employee not now in receipt of LQA to relocate to another area?

SC1250.5.1.8. To grant an allowance under section 031.12c of Reference (b) and its implementing guidance, the answer must be affirmative to questions SC1250.5.1.7.1, SC1250.5.1.7.2., and SC1250.5.1.7.3. Selecting a person to be relocated is based on regulatory guidance, leaving management little option to recruit a new employee or select an employee receiving an LQA ...

Department of the Air Force policy on granting LQA in effect at the time of the claimant’s reassignment, set forth in Memorandum 97-02 dated July 11, 1997, expands upon these criteria as follows:

d. Under the provisions of DSSR, Section 031.12c, LQA may be granted to an employee who is not otherwise eligible if management requires the employee to move to another area as a “condition of employment.” Authority to make this decision has been delegated to the official with appointing authority. The following conditions apply:

(1) When management specifically requests the PCS [permanent change of station] of an employee affected by a transfer of function, reduction-in-force, or base closure, LQA may be granted at the new location even though that employee originally did not meet eligibility criteria. The position must meet the criteria for payment of LQA.

(2) If an employee is merely referred for a position under Central Skills Bank or Delegated Examining Unit procedures, the relocation is considered to be at the employee’s request and LQA will not be granted under this provision. A career program referral is not considered at the employee’s request.

The claimant maintains she “agreed to leaderships’ request for a managerial reassignment to Ramstein” and that if she had not accepted the managerial reassignment, she would have lost her eligibility to remain employed at Incirlik with the departure of her husband. She provided a copy of an undated and unsigned memorandum from the Commander, 86 Services Squadron, Ramstein Air Base, to “request management reassignment of Dorothy P. Choate” from Incirlik to Ramstein. She also provided a copy of an email from the Deputy Commander, 48th Services Squadron, an apparent former supervisor over the Ramstein position at the time of the claimant’s

reassignment, who stated the claimant “applied for our vacant youth services center director position at Ramstein in March/April 2002. We wanted her for the position and requested a management reassignment with 86 SVS (at the time) ...”

The agency states the claimant applied for a vacant position at Ramstein to be collocated with her husband and was selected as a reassignment candidate. Although the agency cannot locate the staffing file for this recruitment action, they provided a copy of the Standard Form 52, Request for Personnel Action, showing the claimant being moved from Incirlik to Ramstein on a “Reassignment.” They noted in their LQA denial that management did not require the claimant to move, “rather you [claimant] actively pursued the move to be collocated with your military sponsor.” They also point out the claimant would not have been forced to resign her position at Incirlik immediately after her husband’s retirement but could have stayed overseas and continued working for up to 24 months afterwards.

The claimant’s reassignment to Ramstein was not a “management-generated action” acceptance of which was a “condition of employment” as those terms are defined in the applicable regulations and implementing guidance. Her move from Incirlik to Ramstein was processed as a “management reassignment” because she was transferring at the same grade level, but this does not establish the reassignment as a “management-generated action.” Although the claimant asserts “that any ‘active pursuit’ of the transfer as alleged cannot be substantiated by the records,” we note she does not explicitly deny she applied for the position through a vacancy announcement, apparently just that it cannot be substantiated by the records presumably because the staffing file is not locatable. Even if, *arguendo*, she did not apply for the Ramstein position, she provided no other documentation to explain what circumstances may have instigated a unilateral management decision to direct her reassignment, or any correspondence or other notification from management informing her that acceptance of the reassignment was a condition of employment. The regulations are clear that a “management-generated action” is a base closure, reduction-in-force, or transfer of function which compels management to select a particular person “based on regulatory guidance” and which results in a termination of employment if the relocation is not accepted. The documentation extant indicates no such conditions existed to cause the claimant’s relocation, the relocation was the result of her applying for the Ramstein position, and the relocation was not a “condition of employment” such that her employment would have immediately ended had she not accepted the reassignment. She would have been eligible to remain in the position for one 24-month overseas tour extension. This would have been a consequence of the loss of her family member status upon the retirement of her spouse from the military (thereby subjecting her to the Department of Defense five-year overseas rotation policy), not of the loss of her position through base closure, reduction-in-force, or transfer of function. A change in family member status is not included in the regulations as a “management-generated action” conferring eligibility for LQA.

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. LQA is specifically not designed or intended as a retention incentive.

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, as the claimant was residing in Incirlik when she was hired for that position, no recruitment incentive

was necessary; and LQA was not authorized because the position was recruited locally. The claimant subsequently applied and was selected for the Ramstein position, and LQA again was not authorized because acceptance of the position was not a condition of employment. The agency's action 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.