

**U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: [agency component]
Department of the Army
Seaport of Debarkation, Kuwait

Claim: Request for involuntary separate
maintenance allowance (ISMA)

Agency decision: Denied

OPM decision: Denied

OPM file number: 10-0030

//Judith A. Davis for

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

2/14/2011

Date

The claimant is a Federal civilian employee of the Department of the Army with the [component] in Kuwait. She requests the U.S. Office of Personnel Management (OPM) reconsider her agency's denial of ISMA. We received the claim on April 20, 2010, and the claim administrative report on May 11, 2010. For the reasons discussed herein, the claim is denied.

The claimant was appointed to [position] in Kuwait on February 20, 2010, a post where accompanying family members are not authorized. Prior to this appointment, she was employed with the [agency] at [agency component & U.S. State]. During this employment, she maintained a residence in the commuting area of [agency component], where she stayed during the work week. Her husband resided in what she regards as her permanent and primary household approximately 160 miles away in [second U.S. State], to which she returned on weekends. The agency denied her request for ISMA on the basis that her assignment in Kuwait was not the proximate cause of having to maintain two separate households but rather was an extension of a preexisting condition in which she and her husband did not normally reside together in one household. The claimant counters that "normally my husband and I reside together" in [U.S. State], that "I received my mail, paid bills, and pay personal property taxes, this is my residence and this is where I reside with my husband," but that "it was more economical on us, for me to rent a room [in second U.S. State] than to commute daily."

Section 261.1.a of the Department of State Standardized Regulations (DSSR) states:

Separate maintenance allowance (SMA) is an allowance to assist an employee to meet the *additional expenses* of maintaining members of family elsewhere than at the employee's foreign post of assignment. [italics added]

ISMA is a type of SMA which, under section 261.1.a.(1), may be granted because of dangerous, notably unhealthful, or excessively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government.

Section 261.2 further emphasizes that:

SMA is intended to assist in offsetting the *additional expense* incurred by an employee who is *compelled by the circumstances described below* [in section 262, one of which being where ISMA is authorized] *to maintain a separate household* for the family or a member of the family. [italics added]

Section 263.1 further notes that "[w]hen a member of family would not normally reside with the employee, this individual does not meet the definition of member of family" and thus in these circumstances SMA is not warranted.

The intent of the regulations is clearly that SMA be granted only in those cases where the employee would otherwise be compelled to maintain a separate household for a family or family member and thus be burdened with assuming the additional expenses associated therewith, not to defray the costs of an existing housing arrangement. In this case, the claimant acknowledges that she and her husband were already maintaining two separate households when she accepted her assignment in Kuwait. The claimant's permanent change of duty station travel orders for her position in Kuwait support the fact that the claimant maintained two separate households prior to accepting the position in Kuwait because the travel orders authorized the split shipment of *household goods* from an address in [first U.S. State] and an address in [second U.S. State].

Therefore, the operative issue is not whether the claimant “normally” resides with her husband but whether her assignment in Kuwait imposed “additional expenses” of maintaining a separate household that would not otherwise have been incurred. B-192267.2, *Matter of Carl M. Bauer*, February 17, 1989. As the claimant did not incur an additional expense of maintaining two separate households as a result of her assignment in Kuwait because she already maintained two separate households prior to the assignment, the plain language of the DSSR is not met, and the claim for ISMA is accordingly 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.