

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

Claimant: [name]

Organization: Defense Intelligence Agency
Seoul, Korea

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 13-0036

/s/ Linda Kazinetz for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

1/23/14

Date

The claimant requests the U.S. Office of Personnel Management (OPM) reconsider her agency's retroactive denial of living quarters allowance (LQA) for the period of employment from March 2, 2009, to the present, as a Federal civilian employee of the Defense Intelligence Agency (DIA) in Seoul, Korea. We received the claim on May 8, 2013, and the agency's administrative report (AAR) on June 20, 2013. The claimant requests immediate reinstatement of her LQA which the agency determined she erroneously received as a result of Department of Defense (DoD)-wide audit of LQA eligibility, and requests that OPM waive the requirements of Subsection 031.12b of the Department of State Standardized Regulations (DSSR) as specified under Section 031.12c (Employees Recruited Outside the United States) of the DSSR. As a minimum, she requests that DIA grant her one additional year of LQA from the date notified of her denial; i.e., May 1, 2013. For the reasons discussed herein, the claim is denied.

While residing in Korea, the claimant was recruited for and accepted employment with the U.S. firm of Northrop Grumman (a U.S. government contractor) in February 2007. As part of her employment with that firm, the claimant was granted "living quarters allowance and a transportation agreement that guaranteed return rights to the U.S." She was employed with the firm in Korea until she was hired for a position with DIA effective March 2, 2009, at which time she was granted LQA. As a result of a memorandum dated January 3, 2013, from the Office of the Under Secretary of Defense, DIA conducted an audit of the pay accounts of all locally hired overseas employees who were currently receiving LQA. During this audit, the claimant was identified as an employee who was ineligible for LQA because she was not recruited in the United States by the employer (i.e., Northrop Grumman) that originally employed her in the overseas area prior to her appointment as a Federal civilian employee per the requirements of Subsection 031.12b of the DSSR. In a memorandum of May 1, 2013, to the claimant from DIA's Employee Services Division, Office of Human Resources, she was so notified and advised that the previous determination she was eligible to receive LQA upon her employment with DIA was erroneous, and her receipt of LQA payments would terminate effective April 25, 2013.

Although agreeing she is a local hire, the claimant requests a waiver of Subsection 031.12b of the DSSR and that she be authorized to continue to receive LQA until completion of her tour of duty in Korea with DIA, or as a minimum receive it for one more year from the date of notification based on "humanitarian grounds."

The DSSR sets forth basic eligibility criteria for the granting of LQA. DSSR Section 031.12 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 agency.

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

Immediately prior to appointment to her first Federal civilian position on March 2, 2009, the claimant was employed in Korea by only one United States firm, i.e., Northrop Grumman. Her employment agreement with that firm provided for her return transportation to the United States. However, Northrop Grumman did not recruit her in the United States. Rather, she was recruited locally in Korea. Thus, she does not meet basic eligibility criteria under DSSR Subsection 031.12b because she was physically residing in Korea when recruited and hired by Northrop Grumman in February 2007. Therefore, she was not recruited by Northrop Grumman in the United States or one of its territories or possessions. This determination is based on place of physical residency at the time of recruitment. DoD Instruction 1400.25, Volume 1250, provides additional guidance in identifying that an individual was originally recruited in the United States by defining a "U.S. hire" as "A person who physically resided permanently in the United States...from the time he or she applied for employment until and including the date he or she accepted a formal offer of employment."

The claimant requests that OPM waive Subsection 031.12b of the DSSR. However, as stated under Section 031.12 of the DSSR, only the head of the agency can waive Subsection 031.12b "upon determination that unusual circumstances in an individual case justify such action." Thus, OPM has no authority to waive Subsection 031.12b. However, we note that in a June 6, 2013, email to the claimant from DIA, her eligibility to receive LQA was extended to May 14, 2014.

The claimant notes that although DoD Instruction 1400.25, Volume 1250, specifies that a waiver of Subsection 031.12b of the DSSR can be approved if a sponsoring spouse dies, she was a "legal dependent of [her] father when he suddenly passed away" and "the spirit and intent of both the DSSR and DoD Instruction are that family members are not penalized by the inadvertent 'departure' of a sponsor." However, besides the fact this provision covers only spouses, waiver of that paragraph does not include waiver of the basic criteria of section 031.12 of the DSSR that LQA "may be granted to *employees* recruited outside the United States." (Emphasis added) Thus even if the claimant were the spouse of the sponsor, she would have to have been a DIA employee at the time of the sponsor's death to be eligible under this provision. The record shows the claimant is the daughter of the sponsor and was a university student (not a DIA employee) at the time of the sponsor's death.

This settlement is final. No further administrative review is available within the OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.