

The claimant occupies a [position] with the [agency component], Department of the Army, in Eyselshoven, The Netherlands. He was appointed to this position effective November 11, 2007. In his January 23, 2008, letter to the U.S. Office of Personnel Management (OPM), received on February 7, 2008, the claimant requests “a review and establishment of LQA entitlement” by OPM. We requested an agency administrative report (AAR) which we received on May 13, 2008, and the claimant’s May 13, 2008, comments on the AAR on May 27, 2008. For the reasons discussed herein, the claim is denied.

The claimant states his LQA “entitlement” is based on his employment by a United States firm overseas “and the applicable company’s authorization for return transportation to the United States as a condition of employment.” He asserts a statement from an official of the firm CACI Premier Technology Inc. (CACI) “clearly states that I was in fact entitled to return transportation to the US [sic] upon completion of employment...based on the industry standard of a monetary cap unlike JTR entitlements to US [sic] government workers.” The claimant disagrees with a memorandum issued by his servicing human resources office describing his relocation agreement with CACI as a bonus. He asserts normal business practice is to “set dollar limits on transportation/relocation agreements not an open dollar amount.” The claimant states his employment with CACI was a “full entitlement position” with “full logistical support” like “any government position overseas.” He points to his receipt of an overseas allowance to cover housing expenses as “further evidence that I meet the intent of the DSSR [Department of State Standardized Regulations].” The claimant states the agency decision is “not consistent with the DSSR, in that based on the dollar cap a LQA entitlement would never be authorized if the transportation entitlement of a Civilian Company [sic] is based on a dollar limitation. Industry standard is to set such a limitation.”

In contrast, the agency states the claimant was ineligible for LQA under DSSR 031.12b, since he did not have a transportation agreement with his employer (CACI) which would provide for his return transportation to the United States. The AAR indicates the claimant was previously employed with Headquarters, Combat Equipment Group, Europe, with a duty station in Eyselshoven, The Netherlands, as a [position] until he returned to the United States on official-change-of-station orders in October 2006. Although the CACI offer letter shows a Summerville, South Carolina, address, the agency asserts the claimant resided in The Netherlands, at the time he accepted the CACI offer. The agency states the relocation agreement discussed in the offer letter specifies CACI “agrees to ‘pay or reimburse [the] Employee for relocation expenses for a total aggregate cost not-to-exceed Four Thousand Dollars...’ from his primary residence in Vaesrade, The Netherlands area to the Heidelberg area.” The agency indicates the agreement specifies “CACI shall not be responsible for any costs incurred by the employee in connection with a change in residence or work location following termination of CACI employment for any reason.” The AAR refers to an enclosed October 16, 2007, email from a CACI representative to the claimant stating “CACI will honor [his] relocation rights to your home of record in South Carolina, in accordance with the CACI Relocation Agreement after you have completed 12 months of satisfactory service against this contract.” The agency states:

However, this statement is not part of CACI’s contractual agreement...and in and of itself does not constitute a transportation entitlement meeting the spirit and intent of the DSSR, Section 031.12b. It shows that CACI will honor the relocation rights it offered when

concluding the contractual agreement...which has a focus on a set dollar amount that the company is willing to reimburse him for rather than a specific location. This is further evidenced in...[the] e-mail of October 10, 2007,...[responding the claimant's email] in which he [the claimant] expresses his concerns of his relocation agreement reflecting The Netherlands, as a point of reference and not the United States, and further asked if CACI would honor a transportation agreement back to the United States. [The CACI representative] stated in his October 10, 2007, e-mail...that "...we [CACI] will honor the \$ cap on the relocation agreement."

The agency states a member of its staff contacted CACI and was advised "CACI would return [the claimant] to wherever he wanted to as long as the travel expenses would not exceed the dollar cap established in the relocation agreement." The agency concluded the primary purpose of the CACI relocation assistance was to provide a set dollar amount of reimbursement and not to return the employee to any given location. Thus, the agency found the CACI transportation entitlement did "not meet the requirements of the DSSR Section 031.12b for return transportation to the United States, or its territories." The AAR further states the claimant applied for and was accepted for his position while he was in Europe. Thus, the agency concludes he is excluded from the provisions of DSSR 031.11 which renders him ineligible for LQA as an employee recruited from the United States.

In his May 13, 2008, comments on the AAR, the claimant states he was not residing in The Netherlands, but was visiting his wife in The Netherlands, when he accepted the CACI job offer: "This was in anticipation of the firm offer which was forthcoming." He states CACI would have paid for his transportation from the United States, to Germany, if he had been physically located in the United States, and United States-based personnel who received offers to fill his vacant position upon his leaving to work for the Government were given this transportation entitlement. He rejects the agency's rationale regarding his CACI transportation agreement, asserting industry practice would result in the DSSR requirements never being met when working for a United States firm overseas. He further states he fulfilled his 12 month residency requirement based on the approximately 9 months he worked in the United States, and the three months he worked for a United States firm overseas.

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 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.

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, DSSR 031.12b(4) requires conditions to be in place to specifically ensure return transportation to the United States, or another enumerated location. The CACI "Relocation Agreement" provides for the claimant's relocation from "Vaesrade, The Netherlands, are to Heidelberg, CACIs [sic] work site in Germany." Thus, the agreement clearly does not ensure return transportation to the United States, or another enumerated location as required by the clear and unambiguous language of DSSR 031.12b(4). The CACI employment letter discussion in section "Repatriation Related Expenses" does not commit CACI to repatriation and, thus, does not specifically ensure transportation to the United States, or another enumerated location as discussed previously. The section further states "CACI reserves the right to change its policies and benefits with or without notice. Otherwise, any such changes must be in writing and signed by an Officer of CACI." Thus, the CACI October 10, 2007, email on this matter, viewed in a light most favorable to the claimant, does not commit CACI as stipulated in its own employment letter and, thus, does not meet the conditions for return transportation stipulated in DSSR 031.12b(4).

The claimant's rationale with regard to "12 month residence" appears to pertain to the application of Army in Europe (AE) Regulation 690-500.592, Civilian Personnel Living Quarters Allowance, dated November 18, 2005, in force at the time of the claimant's November 11, 2007, appointment to employees recruited in the United States, as covered by DSSR 031.11, which states:

031.11 Employees Recruited in the United States

Quarters allowances prescribed in Chapter 100 may be granted to employees who were recruited by the employing government agency in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the possessions of the United States. In the case of married couples see Section 134.13.

AE Regulation 690-500.592, 7.a. states:

(1) Employees recruited in the United States, or its possessions for positions at grades GS-09 (or equivalent), WG-11, WL-09, WS-05, and above. This includes employees selected for entry-level positions with target grades at or above these grade levels. Grade restrictions do not apply to applicants selected for hard-to-fill positions or career program positions (AR690-950 or appropriate agency career program guidelines) below the GS-09 (or equivalent) level. Employees who previously vacated an outside the continental United States, (OCONUS) civilian or contractor position must have resided permanently in the United States, for at least 1 year immediately before accepting the formal job offer. This 1-year residency requirement does not apply to—

- (a) Employees serving on a mandatory mobility agreement.
- (b) Applicants hired into hard-to-fill positions.
- (c) Applicants who were civilian or contractor employees serving overseas in an area where family members were not authorized on an assignment that provided for their return transportation to the United States.

It appears the claimant wishes to assert he was recruited in the United States, since he was “visiting” his wife in The Netherlands, and his 9 month period of employment in the United States, when combined with his 3 month period of employment with CACI, would meet the 12 month residency requirements of AE 690-500.592, 7.a. Assuming, *arguendo*, AE 690-500.592, 7.a. pertains to the claimant; i.e., he was recruited in the United States, and was an employee who previously vacated an outside the continental United States position, he did not reside permanently in the United States for at least one year immediately before accepting the formal job offer and, thus, would have been ineligible for LQA under the provisions of this regulation.

The terms of the relevant statutory and regulatory provisions are permissive and give agency heads considerable discretion in determining whether to grant LQAs to agency employees. *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979). Thus, an agency may withhold LQA payments from an employee when it finds the circumstances justify such action, and the agency’s action will not be questioned unless it is determined the agency’s action was arbitrary, capricious, or unreasonable. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979). This approach also applies to the establishment of LQA policies which are more restrictive than those of the DSSR.

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, under controlling agency policy in effect at the time the claimant was hired (AE Regulation 690-500.592, November 18, 2005), we find the employing activity acted in accordance with agency policy in declining to provide the claimant with LQA. Therefore, the agency’s November 28, 2007, decision denying the claimant’s request for LQA is not arbitrary, capricious, or

unreasonable since it acted within the confines of well-established LQA policy authorized by the DSSR. Accordingly, the claim for LQA is 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.