

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

Claimant: [name]

Organization: [agency component]
Headquarters, United States Army,
Europe and Seventh Army
Heidelberg, Germany

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 09-0048

//Judith A. Davis for

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

3/18/2010

Date

In his September 10, 2009, claim request which the U.S. Office of Personnel Management (OPM) received on September 29, 2009, the claimant seeks to challenge the Department of the Army's June 23, 2009, decision which found he was not eligible for living quarters allowance (LQA) based on selection for a [position] effective January 20, 2009, with the [agency component], Headquarters, United States Army, Europe and Seventh Army, in Heidelberg, Germany. We received the agency administrative report (AAR) on December 8, 2009. For the reasons discussed herein, the claim is denied.

The claimant states that prior to accepting his Government position on January 20, 2009, he entered Germany on April 15, 2008, as a contractor with CACI, Inc. The claimant disagrees with the agency's "denial of LQA [based] entirely upon the return rights portion of the policy." He states that:

Prior to being hired [by the Government], I asked the European Program Manager (a CACI Officer) to provide the addendum to the contract that addressed this issue. He provided the memorandum, but the LQA [sic] refused to accept it. Had I decided not to accept the Government Position [sic], the letter offering return rights in the amount of \$5000 would have been legally binding on CACI.

In my original offer letter (page3), CACI clearly states that they would pay for me and or my family to return to the US [sic] if an immediate family member (father, sister...) became seriously ill or died. If my family decided to return to the US [sic] after such an event, CACI would have paid the full cost of the relocation. Given such language, it is difficult to imagine that CACI would not equally pay for my return to CONUS [continental United States] following the end of the contract. In essence, this decision says that for lack of an air plane ticket, I am not authorized LQA. For if CACI had simply said they would pay my \$700 air fare back to Lakewood, WA, that would suffice for a return right, as there is no monetary stipulation as to what equals a return right.

The AAR states that CACI did not commit itself to provide for the claimant's return transportation to the United States. Instead, CACI explicitly stated that should the claimant not remain with the firm for at least 12 months, he would be obligated to refund the relocation costs. The agency states:

CACI did not offer [the claimant] return transportation to the United States when the contract's period of performance ended or when either party terminated the employment relationship. As such, according to the documents presented, [the claimant] was not employed by CACI under conditions that provided for his return transportation to the United States. (Enclosure 3).

However, on January 09, 2009, CACI's director for European operations...provided a statement that states, in part, that [the claimant] "...would have been eligible for return rights equal to but not exceeding the amount listed on [his] relocation agreement (\$5000.00), if [he] would have remained until the end of the contract" (Enclosure 4). We advised [the claimant] that we were unable to accept...[the statement] as it not only was inconclusive and speculative with respect to any transportation entitlements to the United

States that CACI might have afforded him, but, equally important, we consider documents that are extraneous to an existing agreement which attempt to purport an entitlement that was not in the original arrangement to be of little value in determining whether such an entitlement existed at the conclusion of the agreement. . . . Therefore, we find that while [the claimant] was hired in the United States by a U.S. firm that provided his transportation to Germany, there is no indication in the records that he had a transportation entitlement with CACI back to the United States.

Responding to the claimant's rationale regarding CACI's willingness to pay for the claimant's return to the United States in case of a serious illness or death in the family, the agency states:

We acknowledge that CACI offered such benefits. . . however, such benefits are voluntary benefits offered by employers to their workforce and are tied to certain significant events should they occur. They are clearly not linked to a return travel authorization at the end of the employment contract.

Department of State Standardized Regulations (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, CACI's commitment in an employment agreement to provide return travel during the course of employment in the case of certain family emergencies is not sufficient to establish LQA eligibility. DSSR 031.12.b(4) requires conditions to be in place to specifically ensure return transportation to the United States or another of the enumerated locations. Such conditions are not met by the promise of a repatriation payment which, in the case of CACI, could be paid upon satisfactory completion of the claimant's assignment up to a total aggregate cost not-to-exceed \$5000. The claimant could use this payment to relocate to another overseas location.

CACI's January 9, 2009, letter states: "[claimant], as an employee of CACI on overseas assignment, would have been eligible for return rights equal but not exceeding the amount listed on his relocation agreement (\$5000.00), if he remained to the end of the contract." Contrary to the claimant's assertions, this letter fails to clearly establish any commitment on the part of CACI to provide the claimant with return transportation to the United States or another of the enumerated locations stipulated in DSSR 031.12.b(4). OPM file numbers 08-0009 and 08-0027, September 18, 2008, and 09-0021, May 18, 2009. Therefore, there is no need to address Army's other concerns regarding CACI's January 9, 2009, letter.

The claimant requests, if being granted full LQA is not possible, a "waiver of the policy as it applies to this situation." The claimant also states he meets the "requirements of DoD Directive 1404.10, dated 23 Jan 2009, as it pertains to the DoD [Department of Defense] Civilian Expeditionary Workforce (Emergency Essential)." As noted in the AAR, the claimant's rationale with regard to his being in an emergency-essential designated position and thus falling under DoD waiver provisions, was not addressed to or decided in his initial agency claim.

OPM's authority under 31 U.S.C. § 3702 is narrow and limited in the case of LQA claims to determining whether a claimant is eligible for LQA and, if so, whether the claimant has received LQA in accordance with agency policies and procedures. An agency's decision to waive LQA eligibility requirements and grant LQA is, by its very nature, at the discretion of the agency and is not subject to review under 31 U.S.C. § 3702. Therefore, we will not address the claimant's request for such a waiver further.

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.