

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

Claimant: [name]

Organization: Fayetteville Investigative Field Office
Central Region Southern Atlantic Area
Central Region Field Investigations
Field Management
Operations
Federal Investigative Services
U.S. Office of Personnel Management
Sanford, North Carolina

Claim: Duty station for purposes of determining
locality pay

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0023

/s/ Linda Kazinetz for

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

1/3/2013

Date

The claimant, who is employed in an Investigator, GS-1810-12, position with the U.S. Office of Personnel Management (OPM), requests that OPM change her official duty station from her domicile in Sanford, Lee County, North Carolina, to Fort Bragg, Cumberland County, North Carolina, for purposes of determining her locality pay. We received the claim request on May 16, 2012, the agency administrative report (AAR) on June 29, 2012, and the claimant's comments on the AAR on July 20, 2012. For the reasons discussed herein, the claim is denied.

The claimant states she is a background investigator and conducts a majority of her interviews and record reviews (commonly referred to as leads) at Fort Bragg. She also states she conducts the remaining reviews in neighborhoods, employers, educational institutions, or contract agencies, most in Cumberland County, North Carolina. The claimant states that after conducting this field work, she types a report of investigation (ROI) into the PIPS (Personnel Investigations Processing System)-R (Field Work Reporting System) for transmission via PIPS. She further states that “[s]coping, typing, planning, etc., are conducted at the home of each agent [investigator]” but “[t]his work, while vital, does not constitute a majority of the time expended on each case,” and that “[w]orking at home is at the direction of the agency and for the convenience of the government.” The claimant also states the duty location for three “Supervisory Agents in Charge (SAC) is Fort Bragg, NC” but “[t]here are not enough phone/internet lines available for agents [nonsupervisory investigators] to work in the office at Ft. Bragg, NC.”

The claimant states that prior to September 2006, her “duty station was and had always been Ft. Bragg, NC.” However, in January 2006, “a higher cost of living raise was given to Cumberland County,”¹ and in June 2006 she received notice that her duty station would be her “home in Sanford, Lee County, NC” and her “pay was reduced to the locality of that area.” She asserts:

There was no change in my duties. I was forced to work from my home by OPM. This was an effort to reduce costs for OPM by not having to lease office space and have other costs incurred by having an office. I receive no compensation by working from my home.

The claimant states that as a result of this change, agents who work on Fort Bragg and live in Cumberland and surrounding counties² receive approximately \$2,300 a year more in locality pay than other agents who work on Fort Bragg but reside in another county, e.g., Moore and Lee Counties. The claimant states:

Because the work being compensated for differs only in where it is composed and typed into a ROI and transmitted into PIPS, I request the agency adjust my duty station to Ft. Bragg (as opposed to my home) to bring my pay into parity with that of our co-workers who live in Cumberland County and surrounding counties. I request from the agency

¹ Federal employee compensation under the General Schedule is not subject to cost of living adjustments; i.e., COLA. Instead, it is adjusted based on changes in the Employment Cost Index (ECI). See <http://www.opm.gov/oca/pay/html/UsingBLSData.asp>

² The Raleigh-Durham-Cary, North Carolina, locality pay area covers North Carolina's Chatham, Cumberland, Durham, Franklin, Harnett, Hoke, Johnston, Orange, Person, Wake, and Wayne Counties, and the Federal Correctional Complex-Granville County. See <http://www.opm.gov/oca/12tables/locdef.asp#r>.

back pay, interest and any attorney's fees that may be incurred, as well as adjusting the amount for retirement purposes.

In the AAR, the agency states section 531.605(a)(2) of title 5, Code of Federal Regulations (CFR), gives an agency discretion to determine the location where an employee's work activities are based, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work. The agency states the claimant begins her work day from her home, parks her Government-owned vehicle at home, and is provided Internet access to perform work in her home. The agency also describes the various work functions performed by the claimant at her home, and states such work occupies approximately 30-40 percent of her work hours. The agency states these factors support OPM's determination that the claimant's work activities are based at her home and that she regularly performs work at her home. Although she spends the remaining time outside her home, the agency states the investigative area she covers consists of 10 counties, only three of which are covered under the Raleigh-Durham-Cary, North Carolina, locality pay area.

In her response to the AAR, the claimant states she still disagrees with OPM's "findings." She further states: "What OPM has not provided is that locality pay is based on where a majority of a government civilian work load exists, not where the government employee resides. Thus, the basis for my claim." The claimant further states:

I was never told when I took this job my pay would be reduced based on where I reside. I was never given an option of working out of the office at Ft. Bragg or working from my home. I was forced to work from my home with no compensation and then my locality pay was reduced on top of that.

Also, the IRS does not recognize my home as an office and will not allow any deductions for such.

I am not a contract employee and do not feel it is my position to provide work space for the government at my expense.

These last statements relate to the claimant's initial claim request in which she states that while she is compensated for Internet service, she is not compensated for faxing from her residence or for maintaining a telephone line to do so. In addition, she states that she has domicile parking for her Government vehicle but is not compensated for the parking space used, even though this is an asset to the Government since it "increases productivity and efficiency, often without incurring overtime charges to the government."

Under 5 CFR 531.604(b)(1), an agency determines an employee's locality pay rate by determining the employee's official worksite consistent with the rules in 5 CFR 531.605, which states, in relevant part, that:

(a)(1) Except as otherwise provided in this section, the official worksite is the location of an employee's position of record where the employee regularly performs his or her duties.

(2) If the employee's work involves recurring travel or the employee's work location varies on a recurring basis, the official worksite is the location where the work activities

of the employee's position of record are based, as determined by the employing agency, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work.

Contrary to the claimant's assertions in her comments to the AAR, the plain language of the regulation does not provide for official worksite determination based on where "the majority of the government civilian [employee's] work load exists" for employees who, like the claimant, are covered by 5 CFR 531.605(a)(2). The regulatory language gives the agency discretion in determining where "the work activities of the employee's position of record are based" when the employee's work involves recurring travel or the work location varies on a recurring basis for purposes of 5 CFR 531.605, as long as it is in a locality pay area "in which the employee regularly performs work." Thus, when the regulatory language is permissive and gives the employing agency discretion in determining the employee's official worksite, the agency's action will not be questioned unless it is determined that the agency's action was arbitrary, capricious, or unreasonable. See OPM File Number. S9601174 (undated); and OPM File Number S001638, June 26, 1998. The record shows the claimant regularly performs work in her home. Thus, the designation of her home as her work location for purposes of determining her locality pay rate cannot be considered arbitrary, capricious, or unreasonable. Accordingly, the claim is denied.

The claims jurisdiction of OPM under section 3702(a)(2) of title 5, United States Code (U.S.C.), is limited to consideration of statutory and regulatory liability. OPM has no authority to authorize payment based solely on consideration of equity. Therefore, the claimant's assertion she has not been treated equitably has neither merit nor applicability to our claim settlement determination. Further, OPM's authority to adjudicate employee compensation matters does not extend to conditions of employment established by the employing agency other than when such determinations affect a statutory or regulatory entitlement to compensation. Thus, the fact the agency did not give the claimant the option of working out of an office at Fort Bragg rather than from her home, requires her to park her Government-furnished vehicle at her home, and other employee non-compensation expense issues she raises are not subject to review under OPM's compensation claims process. Likewise, OPM does not have jurisdiction over the tax related matters which are exclusively the province of the Internal Revenue Service. See OPM File Number 000687, August 4, 1999.

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.