

**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
Southern Pines North Carolina

Claim: Duty station for purposes of determining
locality pay

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0024

//Judith A. Davis for

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

3/12/2013

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 Southern Pines, Moore 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 19, 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, mostly 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 on Ft. Bragg.”

The claimant states that prior to September 2006, her “duty station was designated as Ft. Bragg, and [she] received locality pay for Cumberland County, which is where the main post of Ft. Bragg is located.” She states:

[a]fter Sep 2006, at the discretion of OPM, my duty station was designated as my home located in Moore County, NC. A portion of Ft. Bragg is also located in Moore County. There was no change in duties, and I have always been classified as a Ft. Bragg Agent.

As a result of the change in Sep 2006, Ft Bragg Agents residing outside Cumberland County receive less locality pay, although their duties and work area are the same as the Ft. Bragg Agents living in Cumberland County.¹ Ft. Bragg Agents living in Cumberland County, [sic] receive approximately \$2,300.00 a year MORE in locality pay than Ft. Bragg Agents who perform exactly the same work but live in another county.

The claimant states she lived in Moore County prior to the agency's decision to change her duty station and that her “loss in locality pay was solely the direct result in the Agency's decision to change [her] duty station.” She states:

Because the work being compensated for differs only in where it is composed and typed into a ROI and transmitted via PIPS, I am requesting that the Agency use its discretion to

¹ 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/policy-data-oversight/pay-leave/salaries-wages/2012/locality-pay-area-definitions/>.

adjust my duty station to Ft. Bragg, as opposed to my home, to bring my pay into parity with that of other Ft. Bragg Agents living in Cumberland County.

I am also requesting the difference in higher locality pay from Sep 2006 to present.

She also states that while she is compensated for Internet service, she is not compensated for the space and electricity used and if she chooses to fax something from her residence, there is no compensation 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: She states domicile parking allows agents the “flexibility to conduct leads at hours outside of normal work hours/days thereby increasing productivity and efficiency, often without incurring overtime charges to the government.”

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 regarding the 10 counties in her territory, the claimant states:

The largest percentage of my field work, and my work overall, is completed on Ft. Bragg. Ft Bragg is located in Cumberland, Harnett, Hoke and Moore Counties. Only Moore County is not included in the RDC, NC locality pay area. If the justification of the lower locality pay is based on seven counties being outside of the RDC, NC area, those seven counties account for a very small percentage of my field work. The majority of my work is completed on Ft. Bragg, NC.

Additionally, all of the information provided by FIS (Federal Investigations Service) is also applicable to any Ft. Bragg agent regardless of the agent’s residence....Ft. Bragg agents are randomly assigned cases from the same territory and pool of work. The only difference is that is a Ft. Bragg agent resides in Cumberland, Harnett, or Hoke County, the agent receives higher pay than a Ft. Bragg agent residing in a county outside of those three counties. I have not seen any information provided by FIS as to why they need to pay employees doing the exact same work under the exact same circumstances different rates. This disparate situation is why I am seeking a change in my duty station and the reason for the pay claim.

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 Federal civilian employee performs a majority of his or her work 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.

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.