

**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
Lumberton, North Carolina

Claim: Duty station for purposes of determining
locality pay

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0032

//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 Lumberton, Robeson County, North Carolina, to Fort Bragg, Cumberland County, North Carolina, for purposes of determining her locality pay. We received the claimant's June 12, 2012, claim request on June 28, 2012, the agency administrative report (AAR) on December 12, 2012,¹ and the claimant's comments on the AAR on December 26, 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 a 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 the 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 in her June 12, 2012, claim request that:

In Jan 06, a higher cost of living raise was given to Cumberland and other surrounding counties that was about \$2300 more than the rest of the United States.² At that time, my duty station was and continues to be Fort Bragg, NC. However, in Jun 2006, I received notice that my duty station would be my home in Robeson County, NC and my pay would be reduced to the locality of that area. There were [sic] no change in my duties but [I] have received \$2300 less in annual salary each subsequent year than my coworkers that conduct the exact same duties.

* * * * *

As a result of the change in Jun 06, agents working on Ft Bragg, but residing outside Cumberland County (Moore, Lee and Robeson Counties) receive less locality pay, although their duties and work areas are the same as agents living in Cumberland and Hoke County.³ The locality pay was never an issue while working for Defense Security Service and Defense Investigative Services.

¹ In the undated AAR, the agency states it did not receive the claimant's March 31, 2012, pay claim (which shows a date of March 21, 2012) until August 2, 2012, and issued a claim denial on August 6, 2012, thereby rendering the claim adjudicable by our office effective August, 6, 2012.

² 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/policy-data-oversight/pay-leave/salaries-wages/fact-sheets/#url=BLS-Data>.

³ 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

Agents working on Ft. Bragg and living in Cumberland and Hoke County, receive approximately \$2,300.00 a year MORE in locality pay than agents who perform exactly the same work on Fort Bragg, but live in another county. (Note: the agents involved in this request⁴ all lived in their respective counties PRIOR to the decision changing their duty location; [sic] the loss in locality pay was solely the direct result in the agency's decision to change the agent's [sic] duty station determination.”

She states:

Because the work being compensated for differs only in where it is composed and typed into a ROI and transmitted into PIPS, I am requesting 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 and Hoke County. I request from the agency back pay, including interest and any attorney's fees that may be incurred, as well as adjusting the amount for retirement purposes.

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.

The agency states the claimant:

was notified that her duty station was Laurinburg/Scotland/North Carolina from the date of her initial appointment until September 17, 2006, when it was changed to

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/>.

⁴Although the claimant filed a claim limited to herself, OPM has received similar claims from other OPM investigators.

Lumberton/Robeson/North Carolina upon [her] promotion from GS-7 to GS-9. Her duty station was changed when, as part of the routine when processing promotions and other types of personnel actions, we verified her home address as her duty station of record. She did not lose any pay due to that change in duty station, as her duty station was previously, and remained in the “Rest of United States [RUS] locality pay area.

The agency also states the claimant’s assigned investigative area consists of Hoke, Harnett, Cumberland, Lee, Montgomery, Moore, Richmond, Robeson, Sampson, and Scotland counties.

In her response to the AAR regarding her assertion that her duty station was always Fort Bragg, the claimant states:

My work has primarily been at Fort Bragg, NC since my employment began. From time to time, I have been asked to work in SC depending on agency needs. When I began my employment in Sep 05, I was required to report to the office at Fort Bragg each and every day until sometime in the Spring of 2006. So, I am confused as to how my duty station was not Fort Bragg? I was not allowed to work from home at all during that time period. After that change was made in the Spring of 2006, I was allowed to do a portion of my work (typing) from home but I still have to report to Fort Bragg almost on a daily basis as the majority of my work is there. The concern that I have is that I have performed the exact same duties/work requirements (often at a higher performance rating) for the past seven years at the exact same location as other employees for significantly less pay.

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.⁵ 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.

⁵ That the claimant was required to report daily to the Fort Bragg office from the date of her initial appointment on September 5, 2005, until sometime in the spring of 2006 does not limit the agency's flexibility in determining the claimant's duty station since her case development work was conducted throughout the aforementioned 10-county area, including Scotland County in which her initial home was located. We also note such work control is not unusual for employees like the claimant who was serving a one-year probationary period as a GS-7 trainee in a career ladder leading to the GS-12 grade level.