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

Claimant: [name]

Organization: [organizational component]
Department of the Navy
Yokosuka, Japan

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0020

/s/ Judith A. Davis for

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

12/10/2012

Date

The claimant requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of living quarters allowance (LQA) for the period of employment from March 29, 2010, to December 17, 2011, as a Federal civilian employee of the [organizational component], Department of the Navy, in Yokosuka, Japan. We received the claim on March 8, 2012, the agency administrative report (AAR) on May 30, 2012, and the claimant's comments on the AAR on May 21 and 23, 2012. The claimant requests LQA and reimbursement of transportation and relocation costs associated with travel from Yokosuka, Japan, to Barstow, California, upon conclusion of his employment in the amount of $58,816.37 (total includes $50,526.39 in LQA and the remainder includes cost of airline tickets, lodging, and shipping). For the reasons discussed herein, the claim is denied.

The claimant was recruited for and accepted employment with the United States firm Chenega-Blackwater Solutions, LLC, while residing in Norfolk, Virginia, effective May 22, 2006. He was assigned to Aomori, Japan, and worked for the firm until November 2007. While residing in Aomori, the claimant was recruited and hired by another United States firm, Computer Sciences Corporation (CSC), effective November 13, 2007. The claimant relocated to Yokosuka, Japan, to perform contract work for the [organizational component]. On March 18, 2010, he was notified by CSC that his work on this contract would be terminated effective April 1, 2010, as a result of a business decision to reduce staffing levels. In a March 17, 2010, request for a waiver of LQA criteria on behalf of the claimant and other affected contractor positions, the Commanding Officer of the [organizational component] stated it had been determined that converting the claimant's and other like contractor positions to Federal civilian positions would result in significant cost savings. As a result, the claimant's employment with CSC would not be renewed in April 2010, but a corresponding Navy position for which he could apply would be advertised and filled. The claimant applied for and was subsequently offered and accepted the position effective March 29, 2010. On April 9, 2010, the LQA waiver request was denied.

On May 18, 2012, the agency made their final determination on the claimant's LQA request. The agency states the claimant is ineligible for LQA because: (1) he was a local hire and did not meet criteria under Section 031.12b of the Department of State Standardized Regulations (DSSR), and (2) he had not been in substantially continuous employment under conditions providing for his return transportation to the United States.

Although agreeing he is a local hire, the claimant asserts he meets the criteria for LQA eligibility under Section 031.12b of the DSSR. The DSSR sets forth basic eligibility criteria for the granting of LQA. DSSR Section 031.12 states LQA 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;
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> (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...

Immediately prior to appointment to his first Federal civilian position on March 29, 2010, the claimant was employed by the United States firm CSC. However, this firm had not recruited him in the United States or one of the other enumerated locations specified in DSSR Section 031.12b above. Rather, CSC had recruited him from his previous employer, Chenega-Blackwater Solutions, LLC, in Aomori, Japan. DSSR Section 031.12b limits "substantially continuous employment" to employment by one qualifying employer rather than multiple such employers prior to appointment. Thus, the claimant's subsequent employment by CSC broke the continuity of employment by a single employer (i.e., "such" employer that recruited him in the United States) for purposes of LQA eligibility under DSSR Section 031.12b for employees recruited outside the United States.

In addition to these initial disqualifying circumstances, the claimant has not established that he was in substantially continuous employment "under conditions which provided for his return transportation to the United States" or its territories with his initial employer in Japan. Specifically, he has not provided documentation, such as an employment contract or relocation agreement, showing that Chenega-Blackwater Solutions, LLC, the firm which recruited him from the United States, had obligated itself to repatriate him to the United States upon termination of his employment. Instead, the claimant submitted a November 8, 2006, letter of identification (LOI) for official travel of Government contractors which identified the claimant as an employee of the firm Chenega-Blackwater Solutions, LLC (we note the LOI states that any entitlements designated on the form do not constitute an authorization). The claimant also submitted a February 16, 2010, letter from the Human Resources Manager of the Chenega Security and Protection Services, LLC, verifying the claimant's employment with the firm and stating his authorized entitlements included travel to and from Japan and Norfolk, Virginia, upon hiring and termination of employment. We do not accept this as valid documentation of repatriation rights as there is no indication this individual was authorized by the firm to represent its position regarding its explicit financial commitments to its employees and regardless, such assertions purporting otherwise undocumented benefits during a past period of employment are neither enforceable nor do they substitute for written commitment to such benefits conferred at the actual time of employment. Thus, the claimant has not established that he had been in "substantially continuous" employment under conditions which provided for his return transportation to the United States, and specifically by the employer which recruited him in the United States.

Further, there is no evidence that CSC, the claimant's subsequent employer in Japan, provided him with repatriation benefits at the time of his employment with that firm. He submitted a letter dated September 13, 2010, from an individual identified as CSC's "OITO Director" stating: "In regards to former CSC employees, CSC would like to confirm that for the personnel that were hired originally in the states or those that possessed a valid transportation agreement at time of hire that CSC would provide for return airline ticket. This ticket would be to tax home of record in the USA for personnel as required by applicable SOFA regulations." The claimant also submitted a "Letter of Employment" dated February 12, 2010, and signed by a CSC "Group Manager, OCONUS Information Technology Operations," which stated only that the claimant's "authorized entitlements by CSC" were LQA, cost of living allowance, and transportation (i.e., "travel to the worksite at initiation of hire: TAD as required"). Letters from CSC representatives, who may or may not be authorized to speak for the firm regarding its employee benefit obligations and purporting past benefits, do not establish that CSC had committed itself at the time of hire to provide return transportation to the United States and are not acceptable for purposes of LQA determination. Further, the letter from CSC's "OITO Director" would appear to contradict the claimant's assertion of return transportation to the United States, in that it states the firm would provide this transportation only for employees who were "hired originally in the states" or who "possessed a valid transportation agreement at time of hire." The claimant was hired by CSC in Japan and has not submitted documentation of a "valid transportation agreement" that was in his possession at the time of his hire by CSC.

Thus, the claimant has provided no documentation establishing that he had return transportation benefits at any time during his contractor employment in Japan prior to his Federal appointment.

The claimant infers that because he was sponsored by the Status of Forces Agreement (SOFA) between Japan and the United States while employed by Chenega-Blackwater Solutions, LLC, and CSC, the firms were responsible for his return transportation. He cites Article IX, section 5 of the SOFA, which states: "If the status of any person brought into Japan…is altered so that he would no longer be entitled to such admission, the United States authorities shall notify the Japanese authorities and shall, if such person be required by the Japanese authorities to leave Japan, assure that transportation from Japan will be provided within a reasonable time at no cost to the Government of Japan." This SOFA provision mandates neither that the "transportation from Japan" be *back to the United States* (i.e., the "repatriation" required under DSSR Section 031.12b) rather than to an alternative destination requested by the employee, nor that the employing organization assume the cost of this transportation. Therefore, there is no "return agreement" implicit in the SOFA and binding on the claimant's employing organizations that would meet the requirements of section 031.12b.

The DSSR contains the governing regulations for allowances, differentials, and defraying of official residence expenses in foreign areas. Within the scope of these regulations, the head of an agency may issue further implementing instructions for the guidance of the agency with regard to the granting of and accounting for these payments. Thus, Department of Defense Instruction (DoDI) 1400.25-V1250 implements the provisions of the DSSR, but may not exceed their scope; i.e., extend benefits that are not otherwise provided for in the DSSR. DoDI 1400.25-V1250 specifies that overseas allowances are not automatic salary supplements, nor are they

entitlements.[1] They are specifically intended as recruitment incentives for U.S. citizen civilian employees living in the United States to accept Federal employment in a foreign area. If a person is already living in a foreign area, that inducement is normally unnecessary.

The statutory and regulatory languages 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 that the circumstances justify such action, and the agency's action will not be questioned unless it is determined that the agency's action was arbitrary, capricious, or unreasonable. Under 5 CFR 178.105, the burden is upon the claimant to establish the liability of the United States and the claimant's right to payment. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979). Since an agency decision made in accordance with established regulations as is evident in the present case cannot be considered arbitrary, capricious, or unreasonable, there is no basis upon which to reverse the decision.

The claimant also requests reimbursement of transportation and relocation costs associated with travel from Yokosuka, Japan, to Barstow, California, at the conclusion of his employment with [organizational component]. OPM does not have authority to consider this request or assert jurisdiction over any claim against Navy on this matter. The U.S. General Services Administration (GSA), not OPM, is responsible for issuing regulations on travel, transportation, and subsistence expenses and allowances for Federal civilian employees as authorized in chapter 57 of title 5, United States Code. GSA's Civilian Board of Contract Appeals is responsible for settling travel and transportation claims (http://www.cbca.gsa.gov/). Therefore, this portion of the claim is denied for lack of jurisdiction.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.

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[1] The claimant cites *Thomas v. United States*, No. 10–303, (Fed.Cl. September 7, 2011) to support his assertion of LQA entitlement. In *Thomas*, the court held that it was mandatory for the agency to compensate an employee entitled to LQA upon satisfaction of the conditions outlined by DSSR requirements. However, in the present case the claimant does not meet basic DSSR requirements. Further, *Roberts v. United States*, No.10-754C, 2012 WL 1825278 (Fed.Cl. Apr. 30, 2012, reissued May 21, 2012) rejected the findings in *Thomas* and instead upheld the statutory and regulatory language as permissive, giving agencies discretion in determining whether to grant LQA to agency employees.