UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Human Capital Leadership
and Merit System
Accountability Division

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

Claimant: Kenneth W. Groover

Organization: Intelligence Directorate
Headquarters, U.S. European Command
J2
Stuttgart, Germany

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied; Lack of Jurisdiction and Lack of Standing

OPM file number: 08-0009

Robert D. Hendler

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

9/18/08
Date

The claimant contacted the U.S. Office of Personnel Management (OPM) by email on August 6, 2007, seeking "guidance/processing of an appeal that I sent to OPM. The appeal is for Living Quarters Allowance [LQA] for duty as a new hire with Dept. of the Army while in Stuttgart, Germany working for the U.S. European Command." An email of the same date from OPM's Classification and Pay Claims Program Manager (PM) provided a link to OPM's Compensation and Leave Claims Web page and advised OPM would not accept and docket a claim until an agency-level claim denial had been issued on the matter. In his August 16, 2007, email to OPM's PM, the claimant advised he would request such a written denial and asked OPM to hold the claim package he had mailed for processing pending receipt of the agency-level claim denial. OPM received the claim request on August 6, 2007. The January 8, 2008, agency-level claim denial found the claimant ineligible for LQA and stated: "Should Mr. Groover believe the determination that he is ineligible for LQA to be incorrect he may appeal the decision to the Office of Personnel Management...." Based on forgoing decision and the claimant's description of himself as a "new hire," we requested an agency administrative report which we received on May 19, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction and lack of standing.

Section 3702(a)(2) of title 31, United States Code (U.S.C.) states: "The Director of the Office of Personnel Management shall settle claims involving Federal civilian employees' compensation and leave." Therefore, the plain and unambiguous language of the statute makes clear the claim may only be filed by or on behalf of a Federal civilian employee or former Federal civilian employee. Since the claimant was not and is not a Federal employee, he has no standing to file a claim; and this claim must be denied for lack of jurisdiction.

Although we may not render a decision on this claim, we note that documents submitted into the record suggest that the claimant is not eligible for LQA. The claimant asserts DSSR 031.12 is vague in its definition of how an employer is to provide for return transportation to the United States. More specifically, he asserts the term "conditions" is vague in "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." DSSR 031.12(b)(4). The claimant states "conditions" would "allow several options for ones [sic] return transportation such as an arrangement between the employee and the company for payment, tickets, voucher, etc.," and asserts in his employment contract with L-3 Communications/Titan Group, that he is employed under conditions which provide for his eventual return to the United States." He further asserts DSSR 031.12 does not specify he must currently qualify for return transportation or have fulfilled his employer's requirements for return transportation as a prerequisite for eligibility to receive LQA entitlements.

In contrast, the agency views the previously cited section of DSSR 031.12 as requiring the contractor to obligate itself to return the employee to the United States upon completion of the contractual requirement. The agency concluded the claimant's current employment contract with L3 Communication Services Group, Technical Management Services Group (LCGS TMSG) provides for a repatriation payment under specific conditions, but establishes "no employer-obligated condition to provide for a return transportation to the United States." The agency states the previous contract with CACI Premier Technology, Inc., (CACI) did not specifically

provide the claimant's return transportation to the United States. In addition, the agency states that, had CACI provided return transportation to the United States or its territories, such an agreement would not be transferable to LCSG. Further, the agency asserts that, since the claimant left employment with CACI in April 2007, any mutually agreed upon obligations no longer exist between the two parties. The agency concludes the claimant's argument that he had a return transportation agreement with CACI that would exist beyond the employment relationship, had it been in place, is flawed.

DSSR 031.12 states:

> **031.12 Employees Recruited Outside the United States**
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> Quarters allowances prescribed in Chapter 100 may be granted to employees recruited outside the United States, provided that:
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> 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
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> 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:
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> (1) the United States Government, including its Armed Forces;
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> (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
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> 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.
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> 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, DSSR 031.12.b(4) requires conditions to be in place to specifically ensure return transportation to the United States or another enumerated location. Such conditions are not met by the promise of a repatriation payment which, in the case of LCSG TMSD, could be paid so long as the claimant moved at least 400 miles from his last LCSG TMSD duty station. The claimant could use this payment to relocate to another overseas

location or for any other purpose. Thus, the language of the agreement does not ensure return transportation to the United States or the other enumerated locations stipulated in DSSR 031.12.b(4). Furthermore, substantially continuous employment in DSSR 031.12b(4) must be with an employer (singular) which recruited the employee in the United States and induced the employee to accept overseas employment. The record shows the claimant's employment agreement with his initial employer in Germany, CACI, did not specifically provide for return transportation to the United States or any other enumerated location in DSSR 031.12b(4). Even assuming, arguendo, the CACI contract met the required return transportation conditions, the claimant's leaving CACI to work for LCSG TMSD ended the required continuous employment with the employer which recruited him in the United States, thus also precluding the granting of LQA.

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.

Distribution

Mr. Kenneth W. Groover
CMR 480 Box 3000
APO AE 09128

Assistant Deputy Chief of Staff, G1
(Civilian Personnel)
Department of thee Army
United States Army, Europe and Seventh Army
Unit 29351
APO AE 09014-9351

Department of the Army
Policy and Program Development Division
2461 Eisenhower Avenue, Room 148
Alexandria, VA 22332