

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

50968

FILE: B-182602

DATE: AUG 12 1975

MATTER OF:

Patricia A. McKusick - living quarters allowance

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## DIGEST:

Army employee who traveled to Heidelberg, Germany, in 1961 with intent of obtaining employment while her husband attended university there and who was not employed by the Army until 2-1/2 years later, following intervening employment with a German firm and a nonappropriated fund activity, may not be granted living quarters allowance. Although she may have been sole support of family, she was recruited in the foreign area and fails to meet the criteria of section 031.12 of the Standardized Regulations (Government Civilians, Foreign Areas).

Acting under power of attorney, the American Federation of Government Employees requests our reconsideration of the denial of Mrs. Patricia A. McKusick's claim for a living quarters allowance by our Transportation and Claims Division's Settlement Certificate No. Z-2517841 dated July 16, 1974.

Mrs. McKusick's claim for a living quarters allowance for the period from October 1963 until the present is predicated on her understanding that the regulations contained at section 031.12 of the Standardized Regulations (Government Civilians, Foreign Areas) authorize the granting of such an allowance in view of the financial dependency of her husband. On her behalf the American Federation of Government Employees suggests that the previous denial of her claim may have been made without proper consideration of the precedent set in the case of Mrs. Russelle Hedley, B-168161, June 19, 1970. This precedent, it is urged, stands for the proposition that an individual is entitled to a living quarters allowance if she is the sole support of her family. Moreover, it is suggested that the fact that Mrs. McKusick was granted a transportation agreement suggests that she is likewise eligible for a living quarters allowance and that the granting of the former necessarily insures eligibility for the latter allowance.

The record indicates that Mrs. McKusick traveled to Germany in January of 1961 with the express intent, as indicated by her application for employment, of finding work during the course of her husband's

studies at the university in Heidelberg. She remained unemployed until June of 1961 when she obtained a position with a German firm for the next 18 months. For the subsequent 9-month period she was employed with the Transatlantic Council, Boy Scouts of America, a nonappropriated fund activity affiliated with the United States Forces Overseas. Effective October 7, 1963, and January 26, 1964, respectively, Mrs. McKusick obtained a temporary and an overseas limited appointment with the Department of the Army, and on November 27, 1966, was ultimately converted to career status. Since October of 1963 she has been continually employed with the Army.

Section 031.12 of the Standardized Regulations (Government Civilians, Foreign Areas), as in effect at the time of the employee's initial appointment in 1963 and substantially as in effect until March 26, 1971, provides:

"Employees Recruited Outside the United States

"Quarters allowances prescribed in Chapter 100 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 employment by the United States Government; and
- "b. the employee is not a member of the household of another employee or of a member of the U.S. Armed Forces; and
- "c. prior to appointment, the employee was recruited in the United States, the Commonwealth of Puerto Rico, the 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;
  - "(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 return transportation to the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or

"d. the employee was temporarily in the foreign area for travel or formal study and immediately prior to such travel or study had resided in the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or

"e. as a condition of employment by the government agency, the employee was required by that agency to move to another area, in cases specifically authorized by the head of agency."

As in effect from March 26, 1971, through July 10, 1972, section 031.12 provides substantially as above, with subsection d and e, however, having been deleted. The language of subsection b above is deleted from section 031.12 as in effect from July 11, 1972, to the present.

Since Mrs. McKusick was neither recruited in the United States nor transferred from another agency and clearly meets neither the requirement of subsection 031.12c or of subsection 031.12e, quoted above, the only possible basis upon which entitlement to a living quarters allowance could be predicated is subsection 031.12d which authorizes payment of a living quarters allowance to an employee appointed while overseas temporarily for travel or formal study. Our Transportation and Claims Division, as did the Army, concluded that, since Mrs. McKusick had been in Heidelberg for approximately 2-1/2 years prior to her employment with the Federal Government, her visit could not be termed temporary. And moreover, since she went to Heidelberg with the intention of seeking employment during her husband's studies, it was concluded that she could not be found otherwise to have met the criteria set forth at section 031.12d.

We understand that as a matter of policy the Army does not consider a stay of more than 6 months in a foreign area to be temporary.

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While we have no basis to dispute the reasonableness of this policy or its application to Mrs. McKusick's situation, it is of no particular significance in this case as the regulations make no provision for housing or a housing allowance based solely upon the fact that an employee is temporarily in the foreign area for reasons other than formal study or travel. There appears to be no dispute as to the fact that Mrs. McKusick was not in Heidelberg for the purpose of formal study. Under subsection 031.12d, the fact that her husband may have been there for that purpose is irrelevant. With regard to the contention on her behalf that she might be considered to have been in Heidelberg at the time of her appointment for the purpose of travel, we note that a similar argument was rejected in B-168161, June 22, 1971, and August 30, 1971. In that case, the employee had been in the foreign area for 8 months prior to her initial appointment with the Army for the express purpose of "winding up her husband's affairs" and returning to the United States. Pointing out that the fact that she may have been in the foreign area on a temporary basis at the time of her appointment was not in itself sufficient to establish entitlement, we rejected her further contention that she was there for the purpose of "travel," explaining that the term "travel" has long been viewed by our Office as referring to travel for the purpose of sightseeing. We continue to so view that term. Given Mrs. McKusick's 2-year record of employment prior to her appointment with the Army as well as her husband's matriculation in school in the area, we are unable to conclude that her presence in Heidelberg was for the purpose of travel. The record quite clearly contradicts any such conclusion.

Contrary to the understanding of Mrs. McKusick's representatives, our decision B-168161, June 19, 1970, regarding the eligibility of Mrs. Hedley for a living quarters allowance does not establish the principle that such an allowance is payable to an employee based on the fact that he or she is the sole support of his family. The June 19, 1970 decision concerning Mrs. Hedley's entitlement was addressed to the then Director for Overseas Education Association, who had requested an informal decision concerning the entitlement of two employees, one of whom was Mrs. Hedley, to a living quarters allowance. Correspondence from Mrs. Hedley indicated that she understood that she had been held ineligible for a living quarters allowance under section 031.13 of the Standardized Regulations based on the Army's determination that her employment did not determine the location of the family at the post or in the area. Section 031.13 as in effect during the period from October 13, 1963, through August 10, 1968, provides in pertinent part as follows:

"031.13 Married Women Employees

"a. A quarters allowance may be granted to a married woman employee residing with her husband (or, if not legally separated, is working in such proximity that a common dwelling could be maintained) only if

"(1) \* \* \* she is the member of the household whose job determines the location of the family at the post or in the area, and

"(2) \* \* \* she is the only member of the household receiving a quarters allowance from the United States Government.

"b. If a married woman employee meets the provisions of section \* \* \* 031.13a she may be granted the 'with family' rates of allowances and the supplementary post and education allowances only if her husband is 51 percent dependent upon her for support. Otherwise, she may be granted only the 'without family' rate of temporary lodging, living quarters, post, foreign transfer and home service transfer allowance."

But for the deletion of subparagraph b in August of 1968, the above regulation remained in effect substantially as quoted above until July 11, 1972, when the section was deleted in its entirety.

Based on the information that had been provided at the time and our understanding that denial of a living quarters allowance to Mrs. Hedley had been based solely on the determination that she did not meet the requirement of 031.13a(1), above, we stated our view that the allowance appeared to have been improperly denied. We advised the Director, Overseas Education Association, that since Mrs. Hedley had not filed a claim with this Office we were transmitting the pertinent documents to the Secretary of the Army for consideration in light of our determination.

The Army's response indicated that Mrs. Hedley had not been denied a living quarters allowance because of her failure to meet the conditions of section 031.13, but, rather that she did not meet the basic eligibility criteria contained at section 031.12, here in question. Since she had not been recruited in the United States or transferred from another agency, and, like Mrs. McKusick, met neither the criterion at subsection 031.12c or subsection 031.12e, entitlement could be established only under subsection 031.12d applicable to employees temporarily in the foreign area for travel or formal study. In indicating our concurrence with the Army's view that Mrs. Hedley was not in the foreign area for either such purpose, we relied on our holding in B-141723, February 2, 1961, wherein we had stated that "the 'travel' contemplated by subsection 031.12d is travel which may be performed for sight-seeking or educational purposes as distinguished from travel performed in the course of business or incident to seeking employment."

In regard to the argument that the determination to give Mrs. McKusick a transportation agreement necessitates granting her a living quarters allowance, we note that the regulations governing transportation entitlement contained at chapter 4 of the Joint Travel Regulations, Volume 2, are not identical to the above-discussed provision pertaining to the granting of a living quarters allowance. The authority for granting each benefit rests in two separate regulations. This was taken into consideration when the Transportation and Claims Division issued Settlement Certificate No. Z-2517841, dated July 16, 1974, disallowing Mrs. McKusick's claim for living quarters allowance. The Department of the Army in a report to our Office recognizes the fact that Mrs. McKusick had been granted a transportation agreement but had determined that there was no basis to review or disturb her eligibility for this benefit.

For the reasons indicated above we affirm the determination that Mrs. McKusick is not entitled to a living quarters allowance.

R.F. KELLER

Deputy Comptroller General  
of the United States