11615 PLM II

DECISION

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

FILE: B-194024 DATE: October 5, 1979

MATTER OF: Entitlement to Living Quarters Allowance

DIGEST: Air Force determined properly that employee was a local hire for position in Berlin. He applied for a listed vacancy at Camp New Amsterdam, the Netherlands. Incident to his selection and resulting transfer he claims entitlement to living quarters allowance (LQA). Where Headquarters, USAF and Department of Defense have determined that transfer was not a "management generated action" or request under applicable regulations there is no basis for entitlement to LQA.

By letter of November 12, 1978, Mr. , a civilian employee of the Department of the Air Force, appealed the disallowance by our Claims Division on November 6, 1978, of claims for a living Quarters Allowance (LQA) while he was employed at Camp New Amsterdam, the Netherlands.

states that he enrolled at the Free University in Berlin in October of 1972, in order to pursue his doctorate. Possibly his enrollment at the Free University was related to his being considered for grants administered by the United Nations Institute of International Education. On March 25, 1974, he received an overseas limited appointment not to exceed June 24, 1977, as a Guidance Counselor, GS-9, with the Air Force in Berlin. The agency determined that he was ineligible to receive LQA on the basis that he was a local hire. On September 1, 1974, he gained career-conditional status and was converted to a career-conditional appointee. He applied for a listed position vacancy and was selected under a merit promotion certificate for the position of Education Services Officer, GS-11, at Camp New Amsterdam, the Netherlands. He was transferred effective on April 4, 1975, and he remained on duty there until he entered on a leave-without-pay status on January 31, 1977.

claims LQA during the period he was stationed at Camp New Amsterdam. The agency and our Claims

Division have denied his claim on the basis that he was not entitled to LQA under the applicable regulations. He claims that he was entitled to LQA while stationed at Camp New Amsterdam under either section 031.12b(3) or under section 031.12c.

The authority for the payment of LQA to employees of the Government in foreign areas is contained in 5 U.S.C. § 5923. The criteria for determining whether an employee recruited outside the United States is entitled to such an allowance are contained in the Department of State Standardized Regulations (DSSR) (Government Civilians, Foreign Areas), which provides in pertinent part as follows:

"031.12 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/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 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/her return transportation to the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or

"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."

If the agency determination that was a "local hire" at the time he was initially appointed to a Government position overseas was correct there would be no basis for entitlement to LQA under section 031.12b(3) incident to his transfer from Berlin to Camp New Amsterdam. We find no error in that determination. In order to be entitled to LQA under section 031.12b(3) it is necessary that the individual be employed by such organization under conditions which provide for his return transportation to the United States. There is nothing in the record to show that he was employed by either the United Nations Institute of International Education or by the Free University, Berlin, with provisions for return transportation to the United States. Thus, whether either organization meets the definitions set forth in section 031.12b(3) there is no basis to hold that was entitled to LQA thereunder upon his initial appointment to a Government position overseas nor upon his subsequent transfer on April 4, 1975.

Under section 031.12c of the DSSR, where an employee is "required by the agency to move to another area," the Department of Defense (DOD) has implemented such section by DOD Instruction (DODI) No. 1418 dated September 16, 1974, which provides in section 111 B1d as follows:

"* * * This provision will be applied only when an employee is relocated (Permanent Change of Station) to another area by a managment-generated action.

F.P.M. A.F. Supp. ch. —, para. —

> In all other situations, this provision will not be applied unless it is established that management has no other alternative but to request an employee not now eligible for the living quarters allowance to relocate to another area."

See also paragraph 2-4c of the Air Force Supplement to Basic FPM, Chapter 592.

Paragraph 1-5a of the Air Force Supplement to the Basic FPM (Increment 22) dated July 6, 1973, provides that the determination as to whether a transfer justifies LQA eligibility under the "required move to another area" provisions under section 031.12c and paragraph 2-4c of Chapter 592, are for determination by Headquarters, USAF (DPCMC).

On May 16, 1975, claims were forwarded by Air Force officials with a recommendation that the payment of LQA be approved. On July 25, 1975, Headquarters, U.S. Air Force (DPCMC) responded by determining that DODI 1418.1, para. 111 Bld, does not authorize the granting of LQA to an employee who had not previously been entitled to such allowance, and who applies for and fills a vacancy at another overseas location. The Headquarters, USAF, stated that such a situation would not constitute a "management-generated action" which it defined as including a reassignment due to abolishment of an employee's position; a transfer of the function where the employee works; or a management requested reassignment. Headquarters, USAF, concluded that "* * * where such actions are not requested by the employee, an LQA could be authorized." (emphasis supplied). On August 10, 1976, the Staff Director, Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) also determined that the circumstances of transfer did not constitute a "management-generated action" so as to entitle the employee to LQA. The Office of the Assistant Secretary defined a "management-generated action" as an action taken either at the request of or by the direction of management.

Since the Headquarters, USAF, and the Department of Defense have determined that the circumstances of transfer

did not constitute a "management-generated action" or request under para. 111 B1d of D0DI 1418.1, there is no basis upon which to hold that was entitled to LQA under section 031.12c incident to his transfer to Camp New Amsterdam.

Accordingly, the disallowance of ' claim for LQA is sustained.

Deputy Comptroller General
of the United States