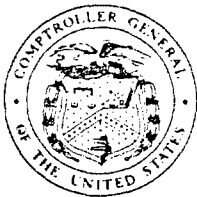


DECISION



11209 PLM-1  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-170177

DATE: August 23, 1979

MATTER OF: Wesley L. Goecker - Statute of Limitations -  
*[Request For Living Quarters Allowance]*

- DIGEST: 1. *He* Time limit for filing claims in GAO was changed from 10 to 6 years effective July 2, 1975, and claims received on that date which accrued prior to July 2, 1969, are barred.
2. GAO has no basis for overturning *the* administrative determination, required by regulations, which fixed approved rent ceiling for *the* employee's overseas private quarters at *the* amount below rent he was actually paying and thereby disqualified *the* employee for payment of living quarters allowance (LQA). Governing law and regulations give agencies considerable discretion concerning payment of LQA and there is no evidence of arbitrary and capricious exercise of discretion by agency. )

Mr. Wesley L. Goecker has requested review of the disallowance of his claim for a living quarters allowance (LQA) from February 25, 1966, to August 6, 1969. During this period he was a civilian employee of the U.S. Army Corps of Engineers stationed in Japan where he rented private quarters. (The Army and the Air Force, which administered housing in the area, refused to grant him an LQA, initially on the ground that suitable Government quarters were available and later on the ground that the quarters he rented were not approved private housing as defined by governing regulations because the rent was in excess of the approved ceiling.)

*the employee's* Mr. Goecker's claim was disallowed by the Claims Division of the General Accounting Office (GAO) because (1) it was received in GAO on July 2, 1975, the effective date of the change in the time limit for filing claims in GAO from 10 to 6 years and, therefore, that portion of the claim which accrued more than 6 years before receipt, i.e., prior to July 2, 1969, was barred, and (2) controlling regulations made the granting of an LQA discretionary with the employing agency and GAO had no authority to overrule the agency's determination regarding the claimant's entitlement in the absence of evidence that it was arbitrary or capricious.

Mr. Goecker contends that no part of his claim is barred because a letter dated March 14, 1975, from the Director, Transportation and

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Claims Division [United States General Accounting Office], indicates that claims received on or before July 2, 1975, will not be barred by the 6-year limitation. He further contends that regulations and implementing rental evaluation guides were defective, misinterpreted, and improperly applied to his situation, that some employees received an LQA even though their rent was known to be in excess of established ceilings, and that others obtained an LQA by understating the amount of their rent on their applications and paying the balance to their landlords "under the table" in violation of the regulations.

That portion of Mr. Goecker's claim which accrued prior to July 2, 1969, is in fact barred. The 10-year time limit for filing claims in GAO established by the Act of October 9, 1940, 54 Stat. 1061 (31 U.S.C. §§ 71a and 237) was changed to 6 years, effective July 2, 1975, by title VIII of Pub. L. No. 93-604, approved January 2, 1975, 88 Stat. 1965. B-185748, October 27, 1976. Since the claim was received in GAO on July 2, 1975, the effective date of this change, it is governed by the 6-year limitation. The letter of March 14, 1975, upon which Mr. Goecker relies is incorrect to the extent it indicates a different result.

Moreover, we can find no basis for allowing the remainder of Mr. Goecker's claim covering July 2 to August 6, 1969. Sections 5922(c) and 5923(2) of title 5, United States Code, provide that an LQA may be granted in accordance with regulations prescribed by the President. The President's authority was delegated to the Secretary of State by section 1(b) of Executive Order 10903, January 11, 1961, 26 F.R. 217. The Secretary's regulations, Standardized Regulations (Government Civilians, Foreign Areas) 1961, bestowed considerable discretion in the granting of an LQA upon heads of agencies and required them to withhold payment altogether when in their judgment circumstances warranted. Section 134.2 (TL:SR-144, 1-2-66). The Standardized Regulations also authorized heads of agencies to issue further implementing regulations. Section 013 (TL:SR-127, 1-6-63).

The implementing Air Force Regulations, 5 AFR 34-6, February 25, 1965, and its successor, 5 AFR 30-11, November 4, 1966, prohibited not only the payment of an LQA for but also the occupancy of any other than "approved private housing." Approved private housing was defined as off-base private housing which met prescribed standards of construction, sanitation, and environment, and which rented for an amount not in excess of the ceiling approved for it under those regulations. Sections 2c, 8a, and 9.

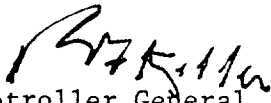
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(The private housing occupied by Mr. Goecker was not approved and he was not granted an LQA because the rent he was paying--\$100 per month plus utilities--exceeded the approved ceiling--initially \$69.22 per month. As a result of his persistent complaints that his quarters had not been properly evaluated several additional evaluations were made and the ceiling was ultimately raised, <sup>although</sup> to \$83.68 per month--still well below the amount he was paying. → 6A0

We find nothing in the Air Force regulations inconsistent with the governing law or the Standardized Regulations. Neither do we find any substantial evidence that the Air Force abused its discretion and applied the regulations arbitrarily or capriciously to Mr. Goecker. On the contrary, it appears that considerable time and effort were devoted to determining the proper evaluation of his property--albeit not to his satisfaction. Accordingly, we have no basis for disturbing the determination that he was not entitled to an LQA. See B-161434, June 21, 1967, and February 20, 1970.

The file indicates that there may have been some misapplications and violations of the regulations as Mr. Goecker alleges. These of course should not have been permitted or condoned but they do not provide any basis for allowing his claim.

For the foregoing reasons the disallowance of Mr. Goecker's claim is sustained.

  
Deputy Comptroller General  
of the United States