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D. Cagayan

DECISION



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

FILE: B-189055

DATE: November 30, 1977

MATTER OF: Clark Edwards - Cost of Living Allowances

DIGEST: Civilian employee of U.S. Army stationed in Hawaii, whose cost of living allowance (COLA) is being phased out based on 1976 survey by Civil Service Commission, claims backpay and restoration of allowance. Pursuant to 5 U.S.C § 5941 and Executive Order No. 10000, as amended, Commission has responsibility of administering COLA, including establishing of proper rates of payment. Action taken was in accordance with regulations issued by the Commission at 5 C.F.R. § 591.208 and 5 C.F.R. § 591.213. Claim may not be allowed.

This decision concerns the request of Major D.E. King, an authorized finance and accounting officer of the Department of the Army, on the claim of Mr. Clark Edwards, a civilian employee of the U.S. Army Engineer Division at Fort Shafter, Hawaii, for backpay from the period December 12, 1976, to the present, representing the phasing out and eventual discontinuance of his cost of living allowances (COLA). Mr. Edwards also requests restoration of his receipt of COLA.

The record shows that Mr. Edwards resides in Kailua, Hawaii, on the Island of Oahu. Mr. Edwards is entitled to Department of Defense commissary and post exchange (PX) privileges. The only limitation on these privileges is that Mr. Edwards is not entitled to purchase articles of the military uniform.

On December 29, 1976, Mr. Edwards was informed by the U.S. Army Civilian Personnel Office that under the Civil Service Commission (Commission) standards set forth in Federal Personnel Manual (FPM) Letter No. 591-16, November 15, 1976 (see also FPM Letter No. 591-17, November 19, 1976), he would not be entitled to continued payments of COLA and that such payments would gradually be phased out in accordance with the Commission's instructions.

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This action was based on Mr. Edwards' entitlement to commissary and PX privileges. Prior thereto Mr. Edwards had been authorized COLA at the rate of 12-1/2 percent of his base salary.

In conducting its 1976 review of COLA rates, the Commission considered a recipient's entitlement to Federal housing and access to commissary/PX privileges in determining the proper rates of allowance. Accordingly, the Commission determined that the COLA rate for the State of Hawaii, Island of Oahu, was as follows:

Geographic coverage/allowance category	1976 Index	Authorized allowance rate (percent)
State of Hawaii		
Island of Oahu:		
Local retail/private housing...	113.1	17.5
Local retail/Federal housing...	100.9	0
Commissary/PX/private housing..	104.2	0
Commissary/PX/Federal housing..	87.4	0
Commissary/PX/military housing.....	72.5	0

Mr. Edwards questions the authority of the Commission to reduce or eliminate payments of COLA where an employee is entitled to certain privileges such as access to a commissary and/or residing in Federal housing.

The Commission's consideration of commissary/PX privileges in its establishment of rates of COLA in Hawaii in its 1976 review of cost of living index was in accordance with the regulations issued by the Commission at 5 C.F.R. § 591.208

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and 5 C.F.R. § 591.213 which state in pertinent part as follows:

"§ 591.208 Deductions from allowances.

"Deductions from allowances are made where warranted because of Federal housing or special purchasing privileges in accordance with the provisions of section 205(b)(2) of Executive Order 10,000, as amended.

"§ 591.213 Periodic review.

"The Commission shall review from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart which are prescribed for payment of allowances and differentials. The purpose for the review is to make warranted changes to insure that payments under this subpart shall continue only during the continuance of conditions justifying payment of allowances and differentials and shall not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually."

The statutory authority for a cost of living allowance for Federal employees stationed outside the continental United States or in Alaska is found at 5 U.S.C. § 5941(a) (1970) which is derived from 5 U.S.C. § 118h, section 207 of the Independent Offices Appropriation Act, 1949, as amended. Concerning the administration of COLA payments, 5 U.S.C. § 5941(a) provides in pertinent part as follows:

"Except as otherwise specifically authorized by statute, the allowance is paid

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only in accordance with regulations prescribed by the President establishing the rates and defining the area, groups of positions, and classes of employees to which each rate applies."

By Executive Order No. 10000, September 16, 1948, as amended, the President has authorized the Commission to administer the payment of COLA to Federal employees.

Section 210 of Executive Order No. 10000, authorizes the Commission to conduct a periodic review, at least annually, of the rates of COLA which have been fixed.

Section 205(b) of Executive Order No. 10000, as amended, pertains to the fixing the rates of COLA and provides as follows:

"(b) The Civil Service Commission shall, (1) in designating places under section 205 (a) hereof, consider the relative consumer price levels in the area and in the District of Columbia, and give due consideration to the differences in goods and services available and to the manner of living of persons employed in the areas concerned in positions comparable to those of United States employees in the areas, and (2) in fixing the Territorial cost-of-living allowance pursuant to such subsection, make appropriate deductions when quarters or subsistence, commissary or other purchasing privileges are furnished at a cost substantially lower than the prevailing local cost." (Emphasis added.)

The regulations of the Commission found at 5 C.F.R. § 591.208 and 5 C.F.R. § 591.213 were issued pursuant to 5 U.S.C. § 5941 (1970) and Executive Order No. 10000, as amended, and have the force and effect of law.

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In view of the above, there appears to be no legal basis for challenging the authority of the Commission to consider commissary/PX and Federal housing privileges in establishing rates of COLA.

Mr. Edwards also challenges the manner in which the Commission conducted its cost of living survey in Hawaii, particularly with regard to the value which the Commission attached to commissary/PX and Federal housing privileges. Mr. Edwards contends that the commissary privileges which were available to him were of far less value than the Commission's survey would indicate. However, since the administration of COLA is the responsibility of the Commission, we will not substitute our judgment for that of the Commission with regard to the manner of conducting of cost of living surveys and the establishment of rates of COLA.

Finally, Mr. Edwards states that, on November 10, 1976, he voluntarily surrendered the personal identification card which entitled him to commissary and PX privileges. He contends that since he no longer has access to such privileges, his entitlement to COLA should be restored. This argument is without merit as there is no provision in either Executive Order No. 10000, as amended, or in the regulations promulgated by the Commission, which would allow the restoration of COLA upon a voluntary relinquishment of commissary/PX or Federal housing privileges.

Accordingly, there exists no legal basis upon which to restore Mr. Edwards' entitlement to a cost of living allowance. Moreover, Mr. Edwards is not entitled to backpay under 5 U.S.C. § 5596 (Supp. IV, 1974) as there has been no unwarranted or unjustified personnel action with regard to the phasing out and discontinuance of Mr. Edwards' COLA.

In accordance with the above, Mr. Edwards' claim for the amounts of the cost of living allowance withheld from him beginning in December 1976 may not be certified for payment.


Deputy Comptroller General
of the United States