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DECISION



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

FILE: B-168161

DATE: December 15, 1977

MATTER OF: Leola M. Broadnax - Claim for living quarters allowance

DIGEST: Employee of Overseas Dependents Schools who, at the time of employment overseas, did not meet the requirements of section 031.12c, d, or e of the Standardized Regulations for granting of a quarters allowance or transportation agreement is not entitled to those benefits and allowances by reason of having been advised at the time of employment that she would be entitled to "full benefits" of a Department of the Army civilian. B-168161, February 10, 1972, affirmed.

By letter dated June 14, 1977, Mrs. Leola M. Broadnax requests reconsideration of our decision B-168161, February 10, 1972, disallowing her claim for quarters or a quarters allowance as well as for a determination that she is eligible to negotiate a transportation agreement entitling her to return transportation to the United States for home leave and separation purposes. That decision confirmed our Claims Division's Settlement Certificate Z-2450617, dated June 21, 1971.

Our decision B-168161, supra, addressed the following circumstances of Mrs. Broadnax' employment with the Department of the Army Overseas Dependents Schools as set forth in the Settlement Certificate:

"* * * you were a dependent of a military member of the U. S. Forces in Germany when first locally employed as a substitute teacher on October 31, 1967, at the Erlangen Elementary School. This appointment was converted to an Excepted Appointment NTE June 14, 1968. You were reappointed on an Excepted Appointment NTE June 11, 1969, for the school year 1968-69. In December 1968, and again in February 1969, you advised the Principal of the Erlangen Elementary School that you would not be available for a teaching assignment for the 1969-70 school year since you planned to return to the United States

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upon your husband's retirement. He retired on July 1, 1969, however, you remained in Germany, and received an appointment as a substitute teacher for the school year 1969-70. On August 28, 1970, you were given an Excepted Appointment NTE June 11, 1971. This was converted to an Excepted Appointed, conditional on May 9, 1971."

The denial of her claim was predicated on the fact that she did not meet any of the following requirements of section 031.12c, d, or e of the Standardized Regulations:

"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

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"e. 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."

Mrs. Broadnax' request for further consideration of the same claim is not supported by any new information that would tend to establish that she did in fact meet any of the above requirements. Rather, she bases her request on the contention that she was misled as to her eligibility for the benefits and allowances in question as follows:

"On 28 August 1970 I was recruited as an Elementary teacher at Nuernberg Elementary School. Reference my application (Incl # 3) a statement was added by Mr. Carl H. Seeman C/TSO 8-28-70. This statement notes that I was explained why I was not eligible for 'either Free Government Housing or permit me to negotiate a transportation agreement'. (JTR). Mr. Seeman in fact did not explain these conditions of employment. I hereby submit that these statements were added after my departure from the processing interview. Had I been advised that these benefits were denied me I would have been at least properly informed. On the contrary Mr. Seeman advised me that I would have full benefits of DAC. On or about 30 September 1970 I returned to CPO for clarification of Standard Form 50 (Notification of Personnel Action) dated 8-28-70 which I had received and at that time learned of the statement Mr. Seeman had added to my application form.

"I feel that I was hired under false pretenses and eight years have been filled with much time consuming litigation in order to rectify a situation which need not have happened at all."

We have examined the form referred to by Mrs. Broadnax which is a questionnaire to be filled out by the employee for the purpose of determining his or her eligibility for certain benefits including quarters, quarters allowance, and transportation agreement entitlement. In fact, Mrs. Broadnax' responses to

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the questions posed by the questionnaire support the conclusion reached in B-168161, supra, that she did not meet the requirements of either section 031.12c, d, or e, quoted above. We refer specifically to the following questions and answers:

"(6) Names of employers (include foreign firms) inclusive dates of employment and locations of employment since arriving overseas:

<u>EMPLOYERS</u>	<u>DATES</u>	<u>LOCATIONS</u>
ERLANGEN ELEM. SCHOOL	NOV. 67-June 69 (NTE & SUBSTITUTE) 1969-70	ERLANGEN, GERMANY

"(7) My employment conditions did not provide for return transportation to the place of recruitment or residence at my employers expense. If it did, proof is attached or will be furnished promptly.

* * * * *

"e. The one reason that best describes why I left the US for overseas is Travel / Formal Study / Employment / Retirement / Spouses' desire to Study overseas / Spouses' employment / other
FOLLOW HUSBAND ON OVERSEAS ASSIGNMENT

"f. I do not have a return ticket to the US / or other places as follows:

"g. I did not have a return ticket to the US / other place _____ when I departed such location.

"h. If I came overseas for the purpose of formal study, the following is submitted: N/A"

With respect to Mrs. Broadnax' contention that she was misled as to her entitlement to the benefits in question, we note that she does not specifically claim to have been advised that she was entitled to quarters, quarters allowance or a transportation agreement, but merely that she was advised that she would have "full benefits" of a Department of the Army civilian employee. These

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benefits, depending upon the circumstances of the particular individual's employment, may or may not include any or all benefits and allowances. In fact, the statement which Mrs. Broadnax indicates was added to the form after she had left the interview indicates that she was specifically advised that she did not meet the conditions for granting of quarters, a quarters allowance or a transportation agreement:

"As result of the above statements made by the employee, it is determined that she does not meet any of the 'reasons for being in the area' requirements, necessary to grant her either Free Government Housing (Department of State Standardized Regulations), or permit her to negotiate a transportation agreement (JTR). The employee was explained why she is not eligible. Although appointed as an NTE Teacher, and for reason of her appointment not eligible presently under any circumstances, this determination has been made to clarify her entitlements situation, should her circumstances i. e. her employment status change, and an application of initial entitlement rights become necessary."

This statement bears the same date, August 28, 1970, as does the form to which it is affixed. By Mrs. Broadnax' own statement it was added to her application sometime after her interview of that date and before September 30, 1970. Inasmuch as the form in question was filled out for the express purpose of permitting a determination of her eligibility for the benefits claimed, we find no impropriety in the fact that the statement, constituting that determination, may not have been made simultaneously with her execution of the form.

Although Mrs. Broadnax claims to have been misled in some manner as to her eligibility for the allowances in question, the nature of any misrepresentation made is unclear and, in fact, the record suggests that, to the contrary, she was specifically told that she was not entitled to quarters, a quarters allowance or a transportation agreement. Nevertheless, inasmuch as her ineligibility is clear, any misrepresentation by a Government official to the contrary would not have the effect conferring

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eligibility for any of the allowances claimed. In this regard, it is well established that the Government is not bound by the unauthorized acts of its agents. Charles C. Varga, Jr., B-179040, August 19, 1974.

For the foregoing reasons, Mrs. Broadnax' claim for quarters, a quarters allowance and a transportation agreement is again denied and the determination to that effect by B-168161, February 10, 1972, is affirmed.

R. K. Kistner
Deputy Comptroller General
of the United States