

UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

MAR 4 1977

B-188268

The Honorable Irving Jaffe  
Acting Assistant Attorney General  
Civil Division  
Department of Justice

Attention: Robert M. Hollis, Attorney  
Court Claims Section

Dear Mr. Jaffe:

Subject: [REDACTED], et al. v. United States  
Ct. Cl. No. 20-77

Reference is made to your letter dated January 27, 1977 (file reference RMH:reb 154-20-77) and your statutory call form of the same date requesting a report of the petition filed January 17, 1977, in the above-entitled case in which the plaintiffs seek payment for Living Quarters Allowances (LQA) they contend were erroneously denied them while employed as Junior Reserve Officer Training Corps (JROTC) instructors serving at American high schools run by the Department of Defense (DOD) on military bases in Europe. They also seek to be awarded attorneys' fees and cost of suit.

Certain of the named petitioners have filed claims with the General Accounting Office, some of which are based on the alleged erroneous payments of the LQA. The details of each such claim are set forth in the attachments to this letter.

The petition alleges that the plaintiffs, all of whom have retired from military service and are receiving retired or retainer pay and other benefits, were employed as JROTC instructors at DOD High Schools in Europe and, as part of their salary, the plaintiffs were furnished housing at no expense or paid an LQA. They also allege that in accordance with a decision of the Comptroller General dated July 3, 1975 (55 Comp. Gen. 44), the LQA was no longer paid and DOD was obligated to collect from the petitioners any sums previously paid contrary to said decision. They further allege that all other teachers in the DOD schools on military bases in Europe

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received a salary and in addition received LQA or furnished government quarters at no expense and the failure to do the same for them is arbitrarily discriminatory.

This Office has no knowledge of the facts alleged in the petition other than those referred to in our decision, 54 Comp. Gen. 44, supra. We assume you will receive a complete report on this matter from the Department of the Army, which, we have been advised, has supervision over DOD High Schools in Europe.

In our decision, 55 Comp. Gen. 44, which was in response to Department of Defense Military Pay and Allowance Committee Action No. 515, we stated that where retired members are employed as administrative or instructors in the JROTC program under 10 U.S.C. 2031(d) at DOD operated schools in U.S. military bases in foreign countries and occupy Government owned or controlled quarters which are determined by such installation commander to be adequate for the member and dependents for his grade or rating if called to active duty at that location, such retired member may not be credited with Basic Allowance for Quarters in the computation of the "additional amount" payable to him under 10 U.S.C. 2031(d)(1). A complete discussion and rationale for our holding is contained in the decision, a copy of which is attached.

It should be noted that to allow these members compensation including an amount representing a basic allowance for quarters and in addition to furnish them Government housing at no cost or an LQA would be paying them twice for the same item.

It is also to be noted that plaintiff #5, [REDACTED], wrote to this Office on March 8, 1976, and questioned the correctness of our July 5, 1975 decision. By letter dated July 2, 1976, copy attached, we attempted to explain that decision to Mr. [REDACTED].

The outcome of the plaintiffs' request that the court award attorneys' fees and costs should be governed by the provisions of 28 U.S.C. 2412 (1970).

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Further inquiry concerning this case may be addressed to Mr. Gerald P. Siegel, telephone 275-5422.

Please keep us advised of the progress of this case.

Sincerely yours,

Edwin J. Mousma

Edwin J. Mousma  
Assistant General Counsel

- Enclosures:
- (1) Plaintiff # 8 - [REDACTED]
  - (2) Plaintiff #10 - [REDACTED]
  - (3) Plaintiff #17 - [REDACTED]
  - (4) Plaintiff #19 - [REDACTED]
  - (5) Plaintiff #28 - [REDACTED]
  - (6) Decision B-182133 - July 3, 1975 (53 Comp. Gen. 44)
  - (7) Ltr to Mr. [REDACTED] dtd July 2, 1976

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Director - Claims Division



Assistant General Counsel - Edwin J. Monama

Claims For Living Quarters Allowance by  
JROTC Instructors overseas - B-188268-O.M.

There is pending in the U.S. Court of Claims a case, ██████████ et al. v. United States Ct. Cl. No. 20-77, in which the petitioners are protesting the denial of payment to them of Living Quarters Allowances as JROTC instructors in DOD High Schools overseas.

All claims for such allowances or requests for waiver of overpayment because of receipt of LQA should be held in abeyance, pending resolution of the matter by the court.

We shall keep you advised as to the proceedings in this matter.

Attachments - 4

- Claims Files Nos.:
- 2-2710965
- 2-2726047
- 2-2638806
- 2-2712826
- 2-2621448
- 2-1506806
- 2-775452
- 2-2281762

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