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DECISION

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

FILE: B-189463 DATE: November 23, 1977

MATTER OF: Costas Mountanos - Living quarters allowance

DIGEST: Air Force employee was locally hired for position in Athens, Greece, and was not eligible for living quarters allowance (LQA). Responding to agency-issued vacancy announcement, employee was selected for position at Aviano, Italy. Installation Staff Judge Advocate held transfer was not management-generated action, and employee was not required to relocate as condition of employment within meaning of Department of State Standardized Regulations section 031.12c. That opinion appears to be overly restrictive and case should be referred to Headquarters, USAF, to determine whether LQA should be granted as a recruitment incentive under Air Force regulations.

By a letter dated May 26, 1977, Captain C. R. Blauw, USAF, Accounting and Finance Officer, United States Air Force, requested our decision regarding a claim submitted by Mr. Costas Mountanos, an Air Force employee, for a living quarters allowance while employed at Aviano Air Base, Italy.

Mr. Mountanos states that on February 7, 1974, after a 3-month vacation with his family in Greece, he was employed by the Air Force at Athens, Greece. Shortly after his employment, he was officially informed that he was considered to be a local hire and therefore ineligible for a foreign area living quarters allowance. Mr. Mountanos did not formally contest his status as a local hire because he was born in Greece and has relatives in that country.

On April 23, 1975, the Air Base at Aviano, Italy, announced a vacancy for a budget analyst, grade GS-560-9 at that location. Mr. Mountanos applied in response to the vacancy announcement and was selected for the position. On June 17, 1975, travel order number A-995

was issued authorizing payment of Mr. Mountanos' travel expenses from Athens, Greece, to Aviano, Italy, as "necessary in the public service." Upon arrival in Aviano, Mr. Mountanos was authorized a living quarters allowance in the amount of $2,500 per year. However, the assistant civilian personnel officer at Aviano cancelled the allowance on August 13, 1975, on the ground that the employee was not entitled thereto.

The authority for payment of a living quarters allowance to employees of the Government in foreign areas is contained in 5 U.S.C. § 5923 (1970). 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 provide, in relevant part:

"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

* * * * *

"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."

We note at the outset that DSSR section 031.12 looks only to the location of the employee's residence at the time he actually receives the allowance, and not to any previous point in time. The meaning, however, of section 031.12c is the focus of the controversy between Mr. Mountanos and his employing agency. That section has been further implemented by Department of Defense Instruction No. 1418.1 dated September 16, 1974, which provides in section III B1d as follows:

> "* * *The provisions of Section 031.12c * * * will not be applied to new hires. This provision will be applied only when an employee is relocated (Permanent Change of Station) to another area by a management-generated action. 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 Air Force Supplement to Basic FPM.

In support of its position, the agency has submitted a legal opinion dated July 22, 1976, from the Staff Judge Advocate, 40th Tactical Group (USAFE). The opinion notes that although a locally hired United States citizen is not generally eligible for a living quarters allowance, such a person may, under the above-cited authorities, become eligible for the allowance if he is obliged to relocate "as a condition of employment" or as the result of "management-generated action." The legal opinion interprets those two terms as referring to a situation in which the employee is forced to relocate as the result of a reduction in force, closing of an installation, or the transfer of an organization. In short, the opinion would limit the application of DSSR section 031.12c only to situations in which the employee must involuntarily relocate by direction of his agency. Since Mr. Mountanos voluntarily applied for the position in Aviano in response to a vacancy announcement appearing at his old station, his

relocation was held not to be the result of "management-generated action." The Staff Judge Advocate's opinion notes, however, that this result is merely based upon an interpretation of the regulations and that the employee should pursue his claim further.

In presenting his claim for the living quarters allowance, Mr. Mountanos contends that he may no longer be considered a "locally hired employee" since he was not in Italy at the time he was selected for the position in Aviano. In addition, he argues that because the agency issued the vacancy announcement to which he responded, his subsequent selection and transfer was the result of management-generated action.

Regarding Mr. Mountanos' contention that he was not locally hired in Italy, we note at the outset that the Standardized Regulations do not specifically use the term "local hire." Rather, they refer to "employees recruited outside the United States." However, section 031.12b of the Regulations prescribes eligibility requirements based on prior residence and terms of employment with the United States or certain specified organizations. A determination under these criteria is generally made only upon the employee's initial entry on civilian duty. See James E. Brown, B-182226, January 27, 1975. However, a subsequent reevaluation is permissible in order to correct errors in the assignment or transfer records when it is later clearly shown that the place of actual residence was other than the location named in the travel agreement and other documents. Brown, supra. Further, we have long held that it is the responsibility of the administrative agency to determine on the basis of all the available facts the actual residence of an employee. Thus, such a determination will not be disturbed by our Office unless plainly erroneous or inconsistent with the law or regulations. B-178654, July 6, 1973. In view of the above, the mere fact that Mr. Mountanos was not present in Italy at the time of his selection for a position in that country may not form the basis for a redetermination of his eligibility under DSSR section 031.12b for a living quarters allowance. In this connection the transportation agreement signed by Mr. Mountanos shows his actual residence as San Francisco, California. In

cancelling his living quarters allowance the Air Force has apparently determined that such designation was incorrect and that his actual residence was in Greece where he was when initially appointed. Under the circumstances of this case we have no basis to disagree with that determination.

The second question presented concerns the proper interpretation of the concept requiring an employee to be relocated "as a condition of employment" as the result of "management-generated action."

In this connection, we believe that the agency's interpretation of the regulations is overly restrictive. By limiting DSSR section 031.12c and the pertinent agency regulations only to situations in which the employee is involuntarily directed to relocate, the agency has apparently precluded the granting of a living quarters allowance as a recruitment incentive where the agency publishes a vacancy announcement to which the employee has responded. Of course, whether a living quarters allowance may be authorized as a recruitment or retentive incentive is a matter which is to be "specifically authorized" by the head of the agency or his delegate.

In the present case, the agency denied Mr. Mountanos' request for a living quarters allowance based on its view that his transfer was not the result of management-generated action. Mr. Mountanos contends that the civilian personnel officer at Athens represented to him that he would receive a living quarters allowance upon transfer to Aviano. Although the Staff Judge Advocate notes that the record contains no documentation to support Mr. Mountanos' contentions, he concludes that the matter should be reviewed at higher levels in the Air Force. It thus appears that no determination was made as to whether that allowance was necessary as an inducement for him to fill the vacancy in Aviano, Italy. The procedure for making such a determination by Headquarters USAF (DPCMC) is set forth in paragraph 1-5a of the Air Force Supplement to Basic FPM (Increment 22) dated July 6, 1973. In view of the representations allegedly made to Mr. Mountanos, and since he was initially granted a living quarters allowance upon his transfer to Aviano, such a

determination should be made by the proper agency authority. We would have no objection to payment of a living quarters allowance if it is authorized in accordance with such determination.

Deputy Comptroller General
of the United States