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PLM-11  
Mr. Forman

**DECISION**



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

*Entitlement to High Cost Area Rate for Housing and Cost of Living Allowances*

FILE: B-196859

DATE: February 19, 1980

MATTER OF: Norma J. Raymond

**DIGEST:** Civilian employee of Air Force stationed in Japan upon involuntary dismissal returned to United States. She contested dismissal and was reinstated to the position with backpay under 5 U.S.C. § 5596. The backpay award includes allowances for housing and cost of living which are paid employees working in high cost areas overseas even though the employee is not present in that area during period of wrongful dismissal.

The question is whether an employee who is awarded backpay under the Back Pay Act (Act), 5 U.S.C. § 5596, for a wrongful dismissal is entitled to receive allowances provided to compensate the employee for being assigned to a high cost area when the employee is not present at the high cost area during the period of wrongful dismissal. Since the Act provides for payment of all allowances the employee would have earned if the improper dismissal had not occurred, she is entitled to receive the allowances in question.

3929 - The question is presented for an advance decision by Captain Ronald M. Oberbillig, Accounting and Finance Officer, Kadena Air Base, Japan, and concerns an award made to Norma J. Raymond, a civilian employee of the Air Force.

Ms. Raymond was separated from her position of Supervisory Recreation Specialist--Service Club Activity, 18th Combat Support, Kadena Air Base, Japan, based on unsatisfactory performance of duty. She returned to the United States and appealed her dismissal to the Merit Systems Protection Board and was awarded retroactive restoration and backpay under the Act. The employee did not return to Japan but rather resigned shortly after her reinstatement.

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B-196859

At the time of her dismissal, Ms. Raymond was receiving:

1. basic pay,
2. post differential,
3. premium pay,
4. living quarters allowance, and
5. post allowance (cost of living)

The Accounting and Finance Officer states that Ms. Raymond has received an award in accordance with the provisions for backpay computation as specified in Federal Personnel Manual (FPM) Supplement 990-2, § 8-6 (June 16, 1977). However, he has withheld the computed amounts for living quarters allowance and post allowance. While he recognizes that FPM Supplement 990-2, § 8 58-6.c(3) states that an employee's award should include all allowances even if the employee does not physically remain in the location giving rise to the allowance, he questions whether the Comptroller General decisions and Court of Claims decision referenced in the regulation are adequate authority to pay the allowances in this case. Based on the cases cited in the regulation and the authorities upon which they rely, the officer finds that the implication is that presence in the foreign area is a requirement before entitlement can be established.

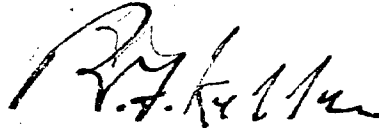
In a Court of Claims' case involving a wrongfully dismissed civilian employee of the Air Force stationed at an Air Base in Japan, the question as to payment of living quarters allowances arose. The Court held that the employee was entitled to receive the living quarters allowance for his entire period of dismissal even though he was not present in Japan for the entire period of his wrongful separation. Urbina v. United States, 428 F. 2d 1280 (Ct. Cl. 1970). The Court reasoned that the subsections of the Back Pay Act, which provide that an employee is entitled to all allowances he would have earned but for the period of wrongful dismissal and that for all purposes, the employee is deemed to have performed services for the agency during

B-196859

this period, required this result. Urbina v. United States, supra, at 1285 discussing 5 U.S.C. §§ 5596(A) and (B).

On the basis of the Urbina case, the employee may receive payment of the withheld living quarters allowance. Further we find the reasoning in that decision applicable to payment of post allowance and find that that allowance is also payable.

Accordingly the voucher is being returned for payment if otherwise correct.



Deputy Comptroller General  
of the United States