

Kirkpatrick



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Robert Kamiyama - Living Quarters Allowance -
Rent Portion

File: B-231406

Date: March 22, 1989

DIGEST

Upon occupying rental quarters overseas, the employee claims he is entitled to the rental portion of the living quarters allowance authorized by 5 U.S.C. § 5923(2) (1982), despite the fact that he had previously owned and occupied a home at the same post for more than 10 years. We hold that the 10-year limitation on reimbursement of a rent substitute when the employee owns quarters did not bar his entitlement to rent reimbursement upon occupying rental quarters.

DECISION

The issue raised by the United States Marine Corps in forwarding this claim to us is whether an employee stationed in a foreign area is entitled to the rental portion of the living quarters allowance authorized under 5 U.S.C. § 5923(2) (1982) while occupying rented quarters when the employee had previously received the maximum 10-year rent substitute while occupying privately-owned quarters at the same post.^{1/} We conclude, for the reasons stated below, that the employee is entitled to the rental portion of the allowance under these circumstances.

Mr. Kamiyama, a civilian employee of the United States Marine Corps, owned a home in Okinawa near his duty station where he resided between August 14, 1958, and June 24, 1978, when he sold the home and moved into government-furnished quarters. On June 10, 1983, he was required to vacate the government-furnished quarters and he rented a home, at which time the Marine Corps began paying him the full Living Quarters Allowance, including rent and utilities. However, the Marine Corps terminated the rental portion of the Living Quarters Allowance beginning March 27, 1985, and collected back the rental portion it had paid him since June 10, 1983.

^{1/} Request by A. A. Fontana, by direction, Commandant of the Marine Corps. (Reference 12592, MPC.33)

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The Marine Corps and the Department of the Navy believe that, under section 136 of the Standardized Regulations,^{2/} Mr. Kamiyama's entitlement to the rental portion had expired, since as a home owner he had received in his Living Quarters Allowance a rent substitute for a 10-year period when he resided in the home. Section 136 provides in pertinent part:

"When quarters occupied by an employee are owned by the employee or the spouse, or both, an amount up to 10 percent of original purchase price of such quarters shall be considered the annual rate of his/her estimated expenses for rent. . . . The amount of the rental portion . . . is limited to a period not to exceed ten years. . . . [Emphasis added.]"

Further, section 136 provides that the period for the rent substitute is not extended beyond 10 years by the employee's:

"(1) sale or gift of quarters . . . with employee remaining in the same quarters, or

"(2) the purchase or exchange and move to other quarters in daily commuting distance of the same post."

The Living Quarters Allowance is authorized by 5 U.S.C. § 5923(2) (1982) and is intended to reimburse the overseas employee for the expense of residence quarters whenever government-owned or government-rented quarters are not provided without charge, and the reimbursement includes rent as well as utilities. For those employees who become eligible other than by transfer or a new appointment, the Living Quarters Allowance commences when the employee ceases to occupy quarters that are rent-free and begins paying quarters expenses. See sections 112 and 132.12 of the Standardized Regulations. See also Advisory Opinion to MSPB, B-220464, Jan. 15, 1986; Urbina v. United States, 428 F.2d 1280 (Ct. Cl. 1970).

We believe the Marine Corps misapplied section 136 in denying Mr. Kamiyama's claim. The 10-year limitation on payment of the rent substitute to a home owner applies only to quarters that are "occupied by an employee" and "owned by the employee or spouse or both." Mr. Kamiyama, after

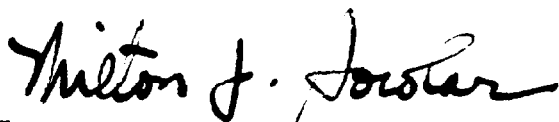
^{2/} Department of State Standardized Regulations, Government Civilians, Foreign Areas, Chapter 100.

selling his home in 1978 and living in government-furnished quarters for 5 years, then leased rather than owned the new quarters for which he claims the rental portion of the Living Quarters Allowance beginning on June 10, 1983, the date he first occupied the rented quarters.

The two additional provisos in section 136(1) and (2), quoted above, are obviously intended to prevent an employee from continuing to receive the rental portion beyond 10 years when (1) he or she remains in the same quarters as previously owned, or (2) buys (or acquires by exchange) other quarters at the same post.

Neither proviso is applicable to Mr. Kamiyama. The first does not apply because he did not remain in the same quarters. After he sold his house in 1978, he ceased to occupy it, and he moved into government-furnished quarters and then into leased quarters. Likewise, the second does not apply because Mr. Kamiyama did not acquire other quarters in the same area by purchase or exchange. Instead, after the sale of his previously owned quarters and after living in government-furnished quarters, he moved into leased quarters for which he began paying rent upon occupancy thereof in June 1983. Nothing in section 136 prohibits payment of the rental portion in these circumstances. Since he did not own the rented quarters and neither proviso (1) or (2) applies to the leased quarters, the 10-year limitation in section 136 does not bar the claim.

Accordingly, we hold that Mr. Kamiyama became entitled to resumption of the rental portion of the Living Quarters Allowance in June 1983.



Acting Comptroller General
of the United States