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ms. Kelley

DECISION



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

FILE: B-194893

DATE: January 17, 1980

MATTER OF: Charles V. Liebscher - Quarters Allowance

DIGEST: Where DOD and Army regulations prohibit the grant of living quarters allowance under section 031.12c of the Standardized Regulations to new local hires, locally hired employee is not entitled to quarters allowance based on fact that he moved between cities within Germany at the time of his appointment. Since circumstances of his employment did not meet conditions for waiver of the alternative requirements of section 031.12b delegated to the local appointing authority and since the head of agency did not otherwise waive those requirements, employee was properly disallowed quarters allowance.

This is in response to the appeal by ²⁰Mr. Charles V. Liebscher, a civilian employee of the U. S. Army, of his [claim for living quarters allowance as an employee recruited outside the United States]. For the reasons discussed below we sustain the Army's decision.

On November 29, 1976, Mr. Liebscher was hired locally by the Army for employment in Frankfurt, Germany. His appointment followed a period of employment in Europe with a United States company. He had traveled to Europe in January to accept employment with the company under conditions which did not provide for his return transportation to the United States. He voluntarily terminated his employment with that company in October 1976, at which time he was residing in Kaiserslautern, Germany, approximately 85 miles from Frankfurt. Mr. Liebscher claims that he was erroneously advised at the time of his appointment that he was not entitled to a living quarters allowance.

United States citizens recruited outside the United States and working for the Government may be granted a quarters allowance only under certain circumstances, described in the Department of State's Standardized Regulations (Government Civilians, Foreign Areas). Subject to other limitations not pertinent to Mr. Liebscher's case, section 031 of the Standardized Regulations authorizes the granting of a quarters allowance provided that the employee's place of residence is fairly attributable to

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his employment by the Government, provided he meets either the following conditions of section 031.12b or c:

- "b. 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/her return transportation to the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or

- "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."

The regulations additionally provide that section 031.12b may be waived by the head of agency upon a determination that unusual circumstances in a particular case justify such action.

Mr. Liebscher specifically claims that because his appointment by the Army resulted in his moving from Kaiserslautern to Frankfurt, Germany, he was employed under circumstances that meet the requirements of section 031.12c, quoted above. In addition he claims that the requirements of section 031.12b should be waived by the head of agency given unusual circumstances in his case. He has suggested a number of factors that

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he feels indicate that his case involved unusual circumstances, most of which relate to his qualifications and their particular value to the Army.

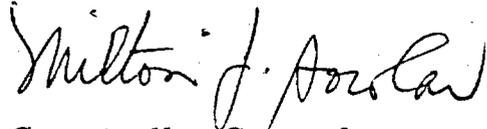
Insofar as applicable to the Department of Defense (DOD), the Standardized Regulations are implemented by DOD Instruction 1418.1. As in effect when Mr. Liebscher was appointed and currently, para. III. B. 1. d specifically states that subsection 031.12c of the Standardized Regulations will apply only upon permanent change of station and "will not be applied to new hires." This DOD policy is reflected in the Department of the Army's Civilian Personnel Regulations (CPR) 592, para. 2-2a(2), effective January 29, 1975. Inasmuch as the granting of a quarters allowance to local hires is discretionary under section 031.12, and since the applicable DOD and Army instructions specifically preclude the granting of an allowance to new hires based on the fact that they may be required to move to another area as a condition of employment, Mr. Liebscher is not entitled to a quarters allowance under section 031.12(c) of the Standardized Regulations.

Within the Department of the Army, CPR 592, para. 1-2b provides that the determination that unusual circumstances in a particular case warrant waiver of the requirements of section 031.12(b) of the Standardized Regulations is reserved to the head of agency, except as otherwise delegated by CPR 592, para. 2-2a(3). By specific provision at para. 2-2a(3), individuals to whom appointing authority has been delegated are also delegated authority to waive section 031.12b for locally hired United States citizen employees who meet the conditions set forth in that paragraph. Those conditions reflect considerations recognized in DOD Instruction 1418.1 as involving unusual circumstances and relate to changes in family and dependency relationships which may occur in the course of an individual's employment and not to the agency's particular need for his services or abilities. Thus, it appears that the Civilian Personnel Officer at the appointing activity properly declined to waive the requirements of section 031.12(b) in Mr. Liebscher's case. For this reason and because authority for waiver in unusual circumstances other than those set forth in CPR 592, para. 2-2a(3) is reserved to the head of the agency rather than this Office, we are unable to find that Mr. Liebscher was improperly denied a quarters allowance.

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Although documentation submitted by Mr. Liebscher indicates his belief that the "unusual circumstances" in his case should have been determined "individually by head of agency," the regulations do not require the Secretary of the Army to consider the matter of waiver in each case in which a locally hired employee fails to meet the conditions of section 031.12(b) and the record does not indicate that a specific request for waiver was submitted to the Secretary of the Army through Army channels.

For the reasons set forth above, our Claims Division's disallowance of Mr. Liebscher's claim for a quarters allowance is sustained.

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For The Comptroller General
of the United States