



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

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B-168161

November 16, 1973

Mrs. D. Ruselle Hedley
219 Georgetown Road
Weston, Connecticut 06880

Dear Mrs. Hedley:

Reference is made to your letter dated September 12, 1973, wherein you again claim housing allowance for the period August 1960 to December 1968 when you were a teacher at a United States Army Overseas Dependents School in Heidelberg, Germany. This matter was the subject of our decisions B-168161, June 19, 1970, and B-169161, May 14, 1971, addressed to Mr. Cecil Driver of the Overseas Education Association, Inc., and a letter of June 12, 1972, addressed to Mrs. Cynthia Kallman of the Hartford Times.

You contend that the denial of your claim was based upon discrimination against married women and, in effect, ask us to reconsider our previous decisions in light of the United States Supreme Court decision in Frontiero v. Richardson, 411 U.S. 677 (1973). In that case, the Supreme Court ruled that the different treatment accorded male and female members of the Armed Services with regard to the claiming of a member's spouse as a dependent for the purpose of obtaining increased quarters allowance was in violation of the Constitution.

We stated in our letter dated June 19, 1970, that the allowance of your claim for the period of August 1960 to October 13, 1963, would be precluded under section 134.11 of the Standardized Regulations (Government Civilian, Foreign Areas), since your husband was physically and mentally capable of self-support. We also stated that on the basis of what Mr. Driver informed us, your claim for a housing allowance from October 13, 1963, to December 7, 1968, was probably erroneously denied under section 031.13 of the Standardized Regulations, since it appeared that you provided 52 percent of the family support. We referred the matter to the Department of the Army in light of our views regarding section 031.13. However, the Army reported that your claim for the entire period you were stationed in Germany was for disallowance under section 031.12 of the Standardized Regulations. Therefore, in our decision of May 14, 1971, your claim for a housing allowance from October 13, 1963, to December 7, 1968, was disallowed under section 031.12 which provided during the period in question:

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"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 employment by the United States Government; and
- "b. the employee is not a member of the household of another employee or of a member of the U.S. Armed Forces; and
- "c. 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 return transportation to the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or
- "d. the employee was temporarily in the foreign area for travel or formal study and immediately prior to such travel or study had resided in the

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United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or

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 essential requirements contained in section 031.12 were in effect during the entire period you taught in Germany. This section was first promulgated on April 2, 1961. Prior to that time the same requirements pertinent to your case were imposed by the Department of the Army Civilian Personnel Regulations (CPR) T7.3-2, which were issued pursuant to section 216 of the Standardized Regulations.

Since you were not recruited in the United States or transferred from another agency you did not meet the requirements of section 031.12(c) or (e) as quoted above. The remaining provision under which you could have qualified was section 031.12(d) which authorizes the allowance to be paid to employees appointed while overseas "for travel or formal study." The term "travel" as used in that regulation contemplated "travel performed for sight-seeking or educational purposes as distinguished from travel performed in the course of business or incident to seeking employment." See B-141723, February 2, 1961, copy enclosed. Inasmuch as the record indicates that you went to Heidelberg for the express purpose of seeking employment with the Overseas Dependents School System, you could not qualify for a housing allowance under section 031.12(d) or its predecessor, CPR T7.3-2, during any of the period you were employed in Germany.

This is true even though other regulations, such as section 134.11 of the Standardized Regulations, relating to the entitlement of teachers in the Overseas Dependents School System to housing allowances may have been discriminatory with respect to married women because the provisions under which your claim was disallowed are not discriminatory.

Accordingly, again your claim must be denied.

Sincerely yours,

Paul G. Dembling

Acting Comptroller General
of the United States

Enclosure

cc: Deputy Director of Civilian Personnel
Office of the Deputy Chief of Staff for Personnel
Department of the Army
Washington, D.C. 20310

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