



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

B-178654

July 6, 1973

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Mr. Gerald W. Stockton
U.S. Naval Shore Electronics
Engineering Activity, Japan
Box 5
APO Seattle 98762

Dear Mr. Stockton:

This is in reference to your letter of April 26, 1973, appealing the settlement by our Transportation and Claims Division, dated April 11, 1973, that disallowed your claim for living quarters allowance as a Department of the Navy civilian employee stationed in Yokosuka, Japan.

The record shows that you arrived in Japan in February 1955 as an employee of the Philco Corporation at the U.S. Naval Ship Repair Facility in Yokosuka. Your employer held a United States Government contract to provide technicians known as Technical Representatives (TechReps) for the maintenance of Government equipment. You occupied a TechRep position with Philco Corporation until July 1960 when you terminated your employment to begin a private business venture (trading company) in Japan. On April 22, 1968, you accepted a GS-856-11 overseas limited appointment as a local hire Department of the Navy civilian by the U.S. Naval Shore Electronics Division, Ship Repair Facility, Yokosuka, now known as the U.S. Naval Shore Electronics Engineering Activity, Japan. As a condition of employment, you were required to travel from Japan to Okinawa at your own expense and on your own time, where you were authorized transportation and travel expenses from Okinawa to Japan on your first day of employment. This procedure was employed by your organization with your concurrence and cooperation to preclude a lengthy waiting period that would have been required to obtain permission and visa changes from the Japanese Government for your employment. As a part of your employment processing, you were given and required to sign a transportation agreement providing for the return of yourself, your family and household goods to Montrose, Iowa, the place claimed as your residence in the United States. The Consolidated Civilian Personnel Office, Yokosuka, Japan, in November 1968 apparently discovered that, as a local hire employee, you were not entitled to a transportation agreement and requested you to return your copy of the agreement to that office. The transportation agreement was then destroyed and your records were corrected to delete all reference thereto.

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In March 1969 you were reassigned to Okinawa and were provided and required to sign another transportation agreement indicating Yokosuka, Japan, as your point of hire and place of actual residence. During your assignment in Okinawa you were administratively deemed to be entitled to a living quarters allowance until your reassignment back to Japan, your place of hire, in September 1971.

You contest this determination and claim that Montrose, Iowa, was your actual residence and for this reason you should have been entitled to the living quarters allowance. Further, you contend as an alternate that assuming Japan was your actual residence at the time of hire, it could no longer be viewed as such after your assignment in Okinawa. Rather you maintain that Japan should be viewed the same as any other overseas post for the purpose of living quarters allowance.

Section 5923 of title 5, United States Code, the authority under which living quarters allowance may be paid employees of the Government in foreign areas, was enacted as section 211 of the Overseas Differentials and Allowances Act, 74 Stat. 793. Section 203 of that act provided that the allowances authorized therein " * * * shall be paid in accordance with regulations prescribed by the President * * *." Subsequently, by Executive Order No. 10903, January 11, 1961, 26 P.R. 217 as amended, the regulatory authority of the President was delegated to the Secretary of State.

Under that delegation of authority, the Secretary of State has promulgated Standardized Regulations (Government Civilians, Foreign Areas) which are statutory in nature and govern the payment of such allowance as the living quarters allowance that you claim. The pertinent portion of the Standardized Regulations in effect during the period here involved provided as follows:

031 United States Citizen Employees

031.1 Quarters Allowances

031.11 Employees Recruited in the United States

Quarters allowances prescribed in Chapter 100 may be granted to employees who were recruited by the employing Government agency in the United States, the Commonwealth of Puerto Rico, the Canal Zone, and the possessions of the United States. * * *

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 employment by the United States Government; 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

* * * * *

- 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.

Regarding your entitlement to living quarters allowance in Japan, the Director, Consolidated Civilian Personnel Office, Yokosuka, Japan, made the following ruling in the second endorsement of your November 1, 1971 letter, dated November 12, 1971, which has been concurred in by the Director of Civilian Manpower Management, Department of the Navy:

*** Japan was established as his place of actual residence at the time when he was hired. It was also determined that Mr. Stockton was ineligible for Living Quarters Allowance as he did not meet the eligibility criteria of Par 031.12 ***.

* * * * *

e. At the time of reassignment to Okinawa this office determined that Mr. Stockton was eligible for Temporary Lodging Allowance and Living Quarters Allowance under the exception listed in Par 031.12d *** because he was required to move to another geographical area.

d. Upon Mr. Stockton's reassignment back to Japan (his point of hire), this office determined that he was no longer eligible for Living Quarters Allowance *** under the same criteria applied to his initial appointment. Specifically, upon his reassignment to Okinawa, Mr. Stockton met the eligibility requirement of Pars 031.12a, b and d but upon his return to Japan did not meet the eligibility requirement of 031.12a which requires that an employee's actual place of residence in the place to which quarters allowance applies shall be attributable to his employment by the United States Government. The fact that his point of hire was Japan was the basis for this determination. Mr. Stockton's Department Head was informed of the basis for the decision ***.

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Paragraphs "c" and "d" quoted above, erroneously refer to subparagraph 031.12d, which was included in a revised subsequent version of the Standardized Regulations, whereas it should have cited subparagraph 031.12e which was the version of the regulation in effect at the time of appointment and hereinabove quoted.

We have long held that it is the responsibility of the administrative agency to determine the place of "actual residence" of an employee, such determination to be made on the basis of all the available facts. 35 Comp. Gen. 244, 246 (1955); 37 id. 848 (1958); 39 id. 337, 339 (1959); and 45 id. 136 (1965). Such determination will not be disturbed by our Office unless plainly erroneous or inconsistent with the law or regulations.

The record shows that subsequent to your employment with the Philco Corporation you remained in Japan for the purpose of establishing a private business venture and that you operated such business for 20 months. It was therefore administratively determined that your place of actual residence was Yokosuka, Japan, immediately preceding your employment. In our view, the Department of the Navy's conclusion in this respect was reasonable and consistent with the facts.

In regard to your alternate contention, we point out that under the provisions of section 031.12e of the Standardized Regulations, the employing agency had authority to pay a living quarters allowance to you while in Okinawa as an employee locally hired in Japan and transferred to that location. However upon return to Japan, your place of hire and the place administratively determined as your place of actual residence, no authority existed under the Standardized Regulations to pay you an allowance. Your tour of duty in Okinawa may not be viewed as a change in residence so as to circumvent the conditions in the regulations concerning eligibility for allowances of persons recruited overseas.

In view of the foregoing the denial of your claim by our Transportation and Claims Division was proper and is hereby sustained.

Sincerely yours,

PAUL G. DEMBLING
Acting Comptroller General
of the United States