UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 16, 2024

CBCA 7823-RELO

In the Matter of DAVID G.

David G., Claimant.

Alisha Davis, Chief, Civilian Personnel Flight, 31st Force Support Squadron, United States Air Forces in Europe, Department of the Air Force, APO Area Europe, appearing for Department of the Air Force.

**BEARDSLEY**, Board Judge (Chair).

Claimant, David G., a civilian employee of the Department of the Air Force (Air Force or USAF), claims temporary quarters subsistence allowance (TQSA) reimbursement for his move from Germany to Italy to accept a new job with the Air Force. Because claimant did not meet the regulatory requirements for TQSA or have specific authorization from the head of the agency, he is not eligible for TQSA.

## Background

After his discharge from the military in 2012, claimant remained in Europe to study and work. In 2021, claimant accepted a civil service position with the United States Government in Germany. In 2022, claimant applied for new, civil service positions in both Germany and Italy. He accepted a position with the Air Force in Italy, and claimant's December 2022 orders indicated that TQSA "may be authorized for temporary lodgings occupied at the foreign [permanent duty station]. Verify eligibility with responsible foreign [civilian personnel supervisor]. (DSSR [Department of State Standardized Regulations], Sec. 120)." In March 2023, the Air Force determined that claimant was eligible for a living quarters allowance (LQA) in Italy. Claimant moved to Italy in March 2023, where he lived

in on-base temporary lodging facilities (TLFs) and off-base lodging. Eventually, claimant began the home-buying process in Italy.

In May 2023, the Air Force informed claimant that he was not eligible to receive LQA reimbursement. The Air Force determined that claimant did not meet the LQA eligibility requirements in DSSR 031.12 subsections a and b because he had worked at "various locations" and for "multiple employers" since he was discharged from the military. The Air Force contended that claimant did not meet the *singular* employment condition in DSSR 031.12 or the "substantially continuous employment" standard in Department of Defense Instruction (DoDI) 1400.25, vol. 1250, encl. 2, ¶ 2.a (Feb. 2012).[1] Only after this denial of LQA did claimant make a claim for TQSA. The Air Force contends that claimant is not eligible for TQSA for the same reasons that it determined he was not eligible for LQA.

## Discussion

Claimant challenges the decision of the Air Force to deny his eligibility for LQA and TQSA. We do not have the authority to decide LQA eligibility. *See, e.g.*, *Tyler L.*, CBCA 7055-RELO, 21-1 BCA ¶ 37,945, at 184,296. Thus, we will only consider claimant's TQSA claim here.[2]

The Overseas Differentials and Allowances Act, 5 U.S.C. § 5923 (2018), which is implemented by the DSSR, "authorizes agencies to reimburse employees who are stationed abroad for housing expenses when they are not provided government quarters without charge."[3] "The statute is implemented through the DSSR at section 120 to apply to civilian employees." *David C. Scheivert*, CBCA 6657-RELO, 20-1 BCA ¶ 37,577, at 182,459 (citing *William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760). "'Quarters allowance' means an allowance granted under the authority of title 5 U.S.C. 5923 and Sections 120 or

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[1] DoDI 1400.25, volume 1250, "establishes DoD policy, delegates authority, assigns responsibilities, and authorizes the payment of allowances and differentials to DoD appropriated fund civilian employees who are U.S. Citizens living in foreign areas pursuant to the Department of State Standardized Regulations."

[2] Claimant's argument that the Air Force civilian personnel officer's original decision granting LQA entitles him to TQSA has no merit. *See Tae-Hoon Kim,* CBCA 6665-RELO, 20-1 BCA ¶ 37,593, at 182,530.

[3] The Federal Travel Regulation (FTR) also states that "TQSA may be authorized under the DSSR." FTR 302-3.101, tbl. D (41 CFR 302-3.101, tbl. D (2022)). The Joint Travel Regulations (JTR) similarly refer to the DSSR for TQSA authority. JTR 054205 (Mar. 2023).

130 of" the DSSR. DSSR 111, Definition. TQSA "means an allowance granted to an employee for the reasonable cost of temporary quarters, meals and laundry expenses incurred by the employee and/or family members." DSSR 121, Definition.

For claimant to be eligible for TQSA reimbursement, he must satisfy the eligibility requirements in DSSR 031.12 for employees recruited outside of the continental United States (OCONUS). The DSSR, in relevant part, states:

> Quarters allowances prescribed in Chapter 100 [e.g., TQSA] may be granted to employees recruited outside the United States, provided that:
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> 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/her employment by the United States Government; and
>
> b. prior to appointment, the employee was recruited in the United States
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> . . . .
>
> and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to 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.
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> Subsection 031.12b may be waived by the head of agency upon determination that unusual circumstances in an individual case justify such action.

DSSR 031.12.

Claimant was recruited OCONUS. "[T]he DSSR focuses upon where the person was physically located when he was 'recruited' for employment." *Roger C. Castro*, CBCA 5100-RELO, 16-1 BCA ¶ 36,344, at 177,202 (citing *James E. Pierce, Jr.*, GSBCA 15201-RELO, 00-1 BCA ¶ 30,816). Claimant was working and living in Germany at the time he applied for and was hired for the position in Italy.

Claimant meets the requirement of DSSR 031.12a, given that he moved to Italy for his new job with the Air Force. *See id.* However, claimant "must also satisfy either subsection (b) or subsection (c) of DSSR 031.12 to qualify for TQSA." *Id.* Claimant does

not satisfy the requirements set forth in DSSR 031.12b. Not only was claimant not recruited in the United States "prior to appointment" for the job in Italy, but he had not been in "substantially continuous employment" with the Federal Government "under conditions that provided for [his] return transportation to the United States."[4] DSSR 031.12b.

DoDI 1400.25, volume 1250 further explains what is required to satisfy "substantially continuous employment" in DSSR 031.12b. Former civilian members "shall be considered to have 'substantially continuous employment' for up to 1 year from the date of separation or when [the] transportation entitlement is lost." DoDI 1400.25, vol. 1250, encl. 2, ¶ 2.a. Claimant did not have substantially continuous employment because his appointment to the position in Germany did not occur within one year after separation from the military.

Claimant was required to move to Italy as a condition of employment as required by DSSR 031.12c. *Castro*, 16-1 BCA at 177,203 (citing *Frank Lacks, Jr.*, CBCA 1785-RELO, 10-1 BCA ¶ 34,374, at 169,732 ("in considering DSSR 031.12c requirements, reviewing whether, 'as a condition of his employment,' claimant 'was required to move' from one area in Germany 'to another area in Germany' as a new hire for a new job")). However, "entitlement to TQSA under DSSR 031.12c is limited to 'cases specifically authorized by the head of agency' or his[/her] delegate." *Id.*

> Section 031.12c . . . shall be applied when an employee is relocated to another area by a management-generated action. It shall also be applied when management requests that an employee . . . relocate to another area. A management request that an employee relocate is considered a management-generated action. A move through a voluntary reassignment is not considered a management-generated action.

DoDI 1400.25, vol. 1250, encl. 2, ¶ 2g. Here, there was a voluntary reassignment–not a management-generated action. In fact, claimant had competing offers. Claimant could have taken a new position in Germany but instead chose the position in Italy. Moves "resulting from employees' applications for vacancies are never considered management-directed" as required by DSSR 031.12c. USAF/USAFE-AFAFRICA (United States Air Forces in Europe-Air Forces Africa) Instruction 36-105, 3.2.1.2.4 at 4. There is no indication in the record evidencing the head of the Air Force or his/her delegate specifically authorized or required claimant's move.

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[4] "The requirements of subsection 031.12b 'may be waived by the head of agency upon determination that unusual circumstances in an individual case justify such action,' DSSR 031.12, but [DoDI 1400.25, vol. 1250, encl. 2, ¶ 2.c(1)] limits waiver approvals to circumstances generally associated with marital or domestic partner situational changes . . . , which are not applicable here." *Castro*, 16-1 BCA at 177,202 n.3.

> This decision comports with the very purpose of overseas allowances. As stated in the DoDI, TQSAs and LQAs are not automatic salary supplements or entitlements, but instead, intended as recruitment incentives for U.S. civilian employees living in the United States to accept federal employment in a foreign area. DoDI 1400.25[, vol. 1250,] ¶ 4.c; *see also Acker v. United States*, 620 F.2d 802, 806 (Ct. Cl. 1980).

*Paul J. Bauer*, CBCA 5294-RELO, 17-1 BCA ¶ 36,891, at 179,785.

Claimant fails to satisfy the eligiblity requirements for TQSA in DSSR 031.12, for employees recruited OCONUS.[5]

Decision

We deny the claim.

*Erica S. Beardsley*
ERICA S. BEARDSLEY
Board Judge

[5] We decline to resolve claimant's arguments that he was not a locally available applicant or that Spain, Germany, and Italy are separate foreign areas, since those arguments are not dispositive of the claim before us.