



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 12, 2017

CBCA 5711-RELO

In the Matter of ROBERT J. HAYDEN

Robert J. Hayden, APO Area Europe, Claimant.

Yanir M. Hill, Assistant Deputy Chief of Staff, G1 (Civilian Personnel), United States Army, Europe, APO Area Europe, appearing for Department of the Army.

**DANIELS**, Board Judge (Chairman).

The Department of the Army hired Robert J. Hayden for a position in Wiesbaden, Germany, beginning in September 2016. Mr. Hayden moved to Germany and quickly entered into a three-month lease for an apartment in which to live temporarily. Is he entitled to a temporary quarters subsistence allowance (TQSA) for his first ninety days in Wiesbaden?

Before Mr. Hayden assumed the position, the Army assured him that the answer is Yes. It told him – in orders, in a memorandum from the human resources office, and orally – that he was eligible for this allowance. After he submitted a voucher for reimbursement for the first thirty days of TQSA, however, the Army changed its position to No. The agency deemed him ineligible for the allowance because at the time of his appointment, he had been working for a United States contractor in Qatar and he had been hired for that position when he was living and working in a different foreign location, rather than in the United States. The correct answer to the question is Maybe. The Secretary of the Army or his designee has the authority to permit Mr. Hayden to receive the allowance.

When in foreign areas, Department of Defense civilian employees are subject to the Department of State Standardized Regulations (DSSR) regarding travel and relocation matters. Joint Travel Regulations, intro. ¶ B.3.c(1). The DSSR authorizes quarters

allowances, including TQSA, to be granted to “employees who were recruited by the employing government agency in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the possessions of the United States.” DSSR 031.11, 111. These regulations also say that “[q]uarters allowances . . . may be granted to employees recruited outside the United States, provided that” certain conditions exist. *Id.* 031.12. These conditions are as follows:

- 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, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former 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 Commonwealth of the Northern Mariana Islands, the former 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.

*Id.*

Mr. Hayden clearly meets conditions (a) and (c) of DSSR section 031.12. He does not meet condition (b), however, because he was not recruited in the United States or any of the other places mentioned in that condition. Although his home of record is in New York State, and he was working for a United States firm abroad when he was hired by the Government, he was not living in the United States or any of the other named places when he was recruited

by that firm. For that reason, the Army determined upon reflection – and maintains to this day – that Mr. Hayden is not entitled to TQSA.

In making this determination, however, the Army has ignored the final sentence of DSSR section 031.12: “Subsection 031.12b may be waived by the head of agency upon determination that unusual circumstances in an individual case justify such action.” Whether the circumstances of this case – written and oral promises that TQSA would be provided – are sufficiently “unusual” as to justify waiving condition (b) is a determination to be made by the Secretary of the Army or his designee. If that official so finds, Mr. Hayden will be eligible for TQSA. If not, he will have been, in the agency’s words, “an employee seemingly acting [in] good faith by relying on [incorrect] information he was provided by government representatives.” We remand the case to the Secretary for his decision as to whether condition (b) should be waived.

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STEPHEN M. DANIELS  
Board Judge