

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: Budingen Health Clinic
Department of the Army
Budingen, Germany

Claim: Waiver of indebtedness for
Living Quarters Allowance

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 05-0047

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

4/3/2009

Date

In her July 26, 2005, letter received by the U.S. Office of Personnel Management (OPM) on August 12, 2005, the claimant writes regarding a living quarters allowance (LQA) waiver denied by the Defense Finance and Accounting Service on July 13, 2005. The claimant occupied a [position] during the period of the claim when she was employed by the Department of the Army (DA) at the Budingen Health Clinic in Budingen, Germany. Our attempts to obtain an agency administrative report (AAR) on the claim request were unsuccessful. However, for the reasons discussed herein, the claim is denied for lack of jurisdiction.

In its July 13, 2005, letter the Defense Finance and Accounting Service (DFAS), Denver, Colorado, denied the claimant's request for a waiver of \$3,493.47 of indebtedness resulting from a reconciliation of the claimant's advance LQA for the pay periods ending November 2, 2002, through January 8, 2005. The DFAS letter advised the claimant she was ineligible for a waiver under 5 U.S.C. § 5584, indicating the claimant could contact the:

...head of [her] employing agency [who] may make a determination that an employee does not have to refund the LQA overpayment, if it is shown that the recovery would be against equity and good conscience or against the public interest. This claim would be ultimately decided by the Office of Personnel Management (OPM). OPM has the authority over all compensation and allowance claims for Federal employees.

As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies in which the debt accrued, regardless of the amount. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996; and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. Neither Pub. L. No 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations for other agency's employees involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision regarding the denial of, a request for a waiver of claimant's indebtedness to the United States.

The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. Regulations concerning the adjudication and settlement of claims for compensation and leave (part 178 of title 5, Code of Federal Regulations (CFR)) require a final agency-level denial to be issued before it is submitted to OPM for adjudication. See 5 CFR § 178.102(a)(3) and (b). However, the instant case does not appear to challenge such a denial since it appears the claimant's employing agency, DA, never received a claim on this matter from the claimant and, therefore, never issued a claim denial. The claimant's July 26, 2005, letter to OPM does not dispute the underlying debt which was subject to the DFAS waiver denial but, rather, explains why the overpayment occurred. As discussed above, waiver decisions reside with the head of the agency; therefore, review of factors offered in support of granting a waiver is an action outside the scope of OPM's claims settlement authority. Therefore, the claim must be denied for lack of jurisdiction.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.