

**U. S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: Department of the Army
Vicenza, Italy

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 13-0001

/s/ Linda Kazinetz for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

12/24/13

Date

The claimant is a Federal civilian employee of the Department of the Army (DA) in Vicenza, Italy. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's termination of his living quarters allowance (LQA). We received the initial claim on August 14, 2011, the claimant's request to withdraw his claim on November 3, 2011, his resubmission of the claim on September 25, 2012, and the agency administrative report (AAR) on September 12, 2013. For the reasons discussed herein, the claim is denied.

On May 9, 2011, the claimant was notified by his agency that a review of his records had determined he had been erroneously determined eligible for LQA upon his appointment into the Federal service on December 18, 2008, and that the allowance was therefore being terminated. In his initial claim request, the claimant does not challenge the agency's finding that he did not meet the LQA eligibility provisions in the Department of State Standardized Regulations (DSSR), section 031.12b, which requires that an employee recruited outside the United States must, prior to appointment, have been recruited in the United States by his or her previous employer. However, he asserts that "the appropriate authorities determined that [he] was eligible for LQA," that he "made financial decisions based on an official offer made to [him] by the U.S. Government," and that "any reasonable person would conclude that the Government's offer letter should be legal and binding." In his request to withdraw this claim, he acknowledges that he was not entitled to LQA. His subsequent resubmission of the claim includes no assertion of eligibility but rather focuses on the financial hardship caused by the LQA termination and his agency's delay in processing his request for waiver of indebtedness. In addition, by email dated September 16, 2013, and addressed to the agency representative identified as the point of contact on the AAR and to OPM, the claimant states: "Your analysis is correct, I don't dispute my LQA eligibility. What I dispute... is the fact that I had to face financial difficulties due to someone's erroneous decision."

OPM adjudicates compensation and leave claims for Federal employees under section 3702(a)(2) of title 31, United States Code (U.S.C.). This authority is narrow and limited to consideration of whether monies or leave are owed the claimant for the stated claim under the applicable statute and implementing regulations. The scope of OPM's authority under 31 U.S.C. 3702(a)(2) does not extend to considering claims on the basis of hardship.¹

It is well established that where a Federal employee holds his or her position by virtue of appointment, any entitlement to compensation must be based solely on the applicable statutes and regulations, and those statutes and regulations do not give rise to an implied-in-fact contract. See *Chu v. United States*, 773 F.2d 1226, 1229 (Fed.Cir.1985) ("[A]bsent specific legislation, federal employees derive the benefits and emoluments of their positions from appointment rather than from any contractual or quasi-contractual relationship with the government"; see also *Schism v. United States*, 316 F.3d 1259, 1275 (Fed.Cir.2002)(noting that "[f]ederal employees, both military and civilian, serve by appointment, not contract...")) Therefore, the Government's offer letter for the claimant's position and by extension any benefits extended therein does not constitute a "legal and binding" contract as asserted by the claimant.

¹ To the extent the claimant appears to assert he should be compensated for his financial hardship, it is well established that neither the Back Pay Act nor any other statutory authority provides for payment of compensatory or consequential damages. See *Lewis E. Robinson*, B-230496, June 7, 1988; and OPM File Number 10-0010, March 12, 2010, at <http://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/decisions/>.

Further, it is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials, such as that resulting in DA's erroneous granting of LQA to the claimant. Payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice given by a Government employee cannot estop the Government from denying benefits not otherwise permitted by law. See *OPM v. Richmond*, 496 U.S. 414, 425-426 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed.Cir. 1997); and 60 Comp. Gen. 417 (1981). Therefore, that the claimant was erroneously determined to be eligible for LQA upon his appointment to the Federal service and had received LQA based on that determination does not confer eligibility not otherwise permitted by statute or its implementing regulations.

In his September 16, 2013, email, the claimant questions the agency's decision to grant a one-year waiver to those employees whose LQA grants were terminated as a result of a recent Department of Defense-directed LQA audit, but not to other employees whose LQA grants were terminated based on reviews performed prior to the audit. The DSSR stipulates that section 031.12b may be waived under the provisions of section 031.12c, which states:

Subsection 031.12b may be waived by the head of agency upon determination that unusual circumstances in an individual case justify such action.

Therefore, the agency exercised its authority under DSSR section 031.12c in granting a one-year waiver in connection with the LQA audit. Since this authority is reserved to the head of agency, OPM may not review such matters within the context of the claims adjudication function it performs under section 31 U.S.C. § 3702(a)(2), and the claimant's questions regarding the parameters of the waiver must be directed to his agency.

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.