

**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 for rental
quarters following occupancy of
personally owned quarters

Agency decision: Denied

OPM decision: Denied

OPM file number: 13-0033

/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 denial of living quarters allowance (LQA) for rental quarters following his occupancy of personally owned quarters (POQ). We received the claim on April 23, 2013, and the agency administrative report (AAR) on August 19, 2013. For the reasons discussed herein, the claim is denied.

The claimant requests an "exception to policy for an extension to continue receiving [LQA] for rental quarters in Italy beyond ten years in accordance with DoDI [Department in Defense Instruction] regulation 1400 25-V1250 paragraph E2.2.1." The claimant occupied POQ for which he had received LQA for ten years. He states he is compelled to seek rental quarters more suitable for his handicapped spouse but has been unable to sell his POQ. He requests continuation of LQA until the sale of his POQ or his DEROS [date eligible for return from overseas] date of July 2015, whichever occurs first.

The agency counters that the Department of State Standardized Regulations (DSSR) and DoDI 1400.25-V1250 prohibit the grant of full LQA for POQ beyond ten years, and that DoDI 1400.25-V1250 explicitly prohibits the grant of LQA for rental quarters if an employee owns quarters in the local area of work.

The Department of State Standardized Regulations (DSSR) contain the governing regulations for allowances, differentials, and defraying of official residence expenses in foreign areas. Section 136 of the DSSR addressing POQ states:

- a. When quarters occupied by an employee are owned by the employee or the spouse, or both, an amount up to 10 percent of original purchase price (converted to U.S. dollars at original exchange rate) of such quarters shall be considered the annual rate of his/her estimated expenses for rent. Only the expenses for heat, light, fuel (including gas and electricity), water, garbage and trash disposal and in rare cases land rent, may be added to determine the amount of the employee's quarters allowance in accordance with Section 134. The amount of the rental portion of the allowance (up to 10 percent of purchase price) is limited to a period not to exceed ten years at which time the employee will be entitled only to above utility expenses, garbage and trash disposal, plus land rent.
- b. The following transactions shall not be considered to meet the intent of these regulations so as to warrant payment of the rental portion of living quarters allowance beyond the initial ten year period specified in Part a:
 - (1) sale or gift of quarters owned by the employee or the spouse, or both with employee remaining in the same quarters, or
 - (2) the purchase or exchange and move to other quarters in daily commuting distance of the same post.

Payment for utilities and (if necessary) land rent may be continued beyond the 10 year period. The head of agency may waive provisions of Part b in unusual circumstances.

The agency states in its AAR that while section 136b "provides the authority to agencies to consider unusual circumstances that would warrant extension beyond the 10-year period," the claimant's circumstances "cannot be considered an unusual circumstance as this is a matter outside this agency's sphere of influence." However, the claimant is not eligible for waiver by the head of agency (i.e., DA) under DSSR section 136b because he is not requesting extension of the ten-year period for receipt of LQA for POQ, but rather a separate grant of LQA for rental quarters following the POQ grant. Relevant to this request, the implementing regulations contained in DoDI 1400.25-V1250, state in paragraph E2.2.1.:

The annual rent payable for personally owned quarters (POQ) is based on the purchase price or appraised value of the property, converted to U.S. dollars at the exchange rate in effect at the time of purchase. *Employees who own, or are purchasing a POQ, may not be paid quarters allowances under a rental contract if the POQ is within the employee's local area of work.* [Italics added.]

Thus, DoDI 1400.25-V1250 specifically prohibits the granting of LQA for rental quarters if the employee owns POQ in the local area of work. This is not "policy" as the claimant asserts but rather a regulatory requirement.¹ OPM's claims adjudication authority under 31 U.S.C. § 3702(a)(2) is narrow and limited to determining if the statutory and regulatory provisions applicable to the asserted claim have been correctly interpreted and applied. It does not include the authority to waive or grant exception to provisions of agency regulations. Therefore, OPM may not consider the claimant's request for an "exception" within the context of the claims adjudication function it performs under section 31 U.S.C. § 3702(a)(2).

The statutory and regulatory languages are permissive and give agency heads considerable discretion in determining whether to grant LQAs to agency employees. *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979). Thus, an agency may withhold LQA payments from an employee when it finds that the circumstances justify such action, and the agency's action will not be questioned unless it is determined that the agency's action was arbitrary, capricious, or unreasonable. Under 5 CFR 178.105, the burden is upon the claimant to establish the liability of the United States and the claimant's right to payment. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979). As discussed previously, the claimant has failed to do so. Since an agency decision made in accordance with established regulations as is evident in the present case cannot be considered arbitrary, capricious, or unreasonable, there is no basis upon which to reverse the decision.

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.

¹ DSSR section 013 states in pertinent part: "Within the scope of these regulations, the head of an agency may issue such further implementing regulations as he/she may deem necessary for the guidance of his/her agency with regard to the granting of and accounting for these payments."