

Date: April 4, 2006
Matter of: [name]
File Number: 05-0019
OPM Contact: Robert D. Hendler

The claimant is an employee of the Department of the Air Force at Ramstein Air Force Base in Kaiserslautern, Germany. He requests the Office of Personnel Management (OPM) reconsider his agency's decision regarding his entitlement to receive a living quarters allowance (LQA). We received the claim on June 20, 2005, and the claim administrative report on February 10, 2006. For the reasons discussed herein, the claim is denied.

The claimant was hired locally for the position of [GS-5 position], on May 3, 1999, while residing in Kaiserslautern, Germany, following his separation from U.S. military service. The position was not designated as hard-to-fill and the vacancy announcement for the position specifically stated that LQA would not be authorized. The claimant, who now occupies a [GS-9 position], requested that an LQA be granted in January 2005. He states that his current GS-9 position is a hard-to-fill position and that he supervises two employees who have LQAs and, therefore, a higher quality of living than he.

On February 28, 2005, the Department of the Air Force denied the claimant's request for an LQA, stating LQA determinations are made at the time of initial appointment, the claimant's position was not identified as hard-to-fill at that time, and an LQA was, therefore, not authorized.

DoD Manual 1400.25-M specifies that overseas allowances are not automatic salary supplements, nor are they entitlements. They are specifically intended as recruitment incentives for U.S. citizen civilian employees living in the United States to accept Federal employment in a foreign area. If a person is already living in the foreign area, that inducement is normally unnecessary.

When the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., *Jimmie D. Brewer*, B-205452, March 15, 1982. In this case, there is no question that the claimant was not authorized to receive an LQA when he was hired for the position. At that time, it was determined that the granting of an LQA was not necessary for recruitment purposes and the vacancy announcement was so annotated. Because an LQA is intended solely as a recruitment incentive, the determination as to whether one will be granted is made when the position is advertised. It cannot be granted later, after the position has been

filled. Because an LQA is not an entitlement and is granted on a case-by-case basis dependent solely on recruitment needs, the receipt of LQAs by the claimant's subordinates has no bearing on his case. Likewise, whether or not his current position would be considered hard-to-fill is not relevant as it has no relationship to the initial LQA determination that was made on the position for which the claimant was originally recruited. The agency's action is not arbitrary, capricious, or unreasonable. Accordingly, the claim for an LQA is denied.

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