

Compensation Claim Decision
Under section 3102 of title 31, United States Code

Claimant: [name]

Organization: [agency component]
Headquarters, Eighth U.S. Army
Uijongbu, Korea

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 06-0050

/s/ for

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

6/12/2007

Date

The claimant occupies a [position] in [agency component], Headquarters Eighth United States (U.S.) Army (EUSA) Uijongbu, Korea. He requests the U.S. Office of Personnel Management (OPM) reconsider the agency's decision regarding his entitlement to receive living quarters allowance (LQA). We received the claim on September 19, 2006, and the administrative report on December 6, 2006. For reasons discussed herein, the claim is denied.

The claimant was appointed to his current position on October 14, 2004. After reporting for work, he requested the agency provide him LQA stating he: initially applied to a world-wide vacancy announcement but was referred as a local hire; was not asked at his time of hire if he was a state-side or local hire; and was denied overseas entitlements due to an administrative error by the agency. He asserts management clearly intended to provide LQA for the position because they had budgeted and planned for it; the vacancy announcement stated "foreign area benefits may be authorized, and there would not be a problem if the announcement had not been changed from a world-wide to Korea-wide area of consideration." The claimant further asserts the Korea Civilian Personnel Operations Center (Korea CPOC) erroneously advised management LQA could be included in a Korea-wide announcement and the Korea CPOC published the amended announcement authorizing permanent change of station (PCS) and LQA foreign area benefits even though Korea-wide vacancy announcements usually specifically state that PCS and LQA are not authorized.

The Korea CPOC; Office of the Deputy Chief of Staff for Personnel, G1, U.S. Army Civilian Human Resources Agency, North Central CPOC, Rock Island, IL; and Director Human Resources Management, Headquarters, EUSA all found the claimant to be ineligible for LQA. The agency determined he was a "U.S. Hire" in accordance with DOD Manual 1400.25-M, SC 1250, Overseas Allowance and Differentials dated December 1996, and met basic LQA eligibility requirements. However, the amended vacancy announcement under which the claimant applied was announced with a Korea-wide geographic area of consideration indicating management's decision that a sufficient number of candidates were available locally to fill the position. Therefore, offering LQA as a hiring incentive was not necessary. The agency further states: "...if a candidate residing in CONUS [continental U.S.] applies for a position announced with a geographic area of consideration limited to Korea, LQA will not be authorized" and "Although the vacancy announcement that [claimant] applied for stated foreign area benefits may be authorized, this statement was erroneous. Furthermore, management was incorrectly advised that LQA could be offered when the position was announced Korea-wide."

The agency cites EUSA Policy Memorandum, Subject: Living Quarters Allowance (LQA) Determination for Locally Hired Employees dated August 28, 2001, which states:

...LQA is intended to be a recruitment incentive for U.S. citizen civilian employees living in the United States to accept Federal employment in a foreign area. When a person already resides in a foreign area, the inducement of LQA is unnecessary;

...DOD policy states that individuals shall not automatically be authorized these benefits simply because they meet eligibility requirements; and

When positions are recruited locally (Korea-wide) management has determined that a sufficient number of local candidates are available. Therefore, LQA may not be granted regardless of whether the position was pre-designated as hard-to-fill.

The claimant makes various statements concerning the manner in which his agency has handled his LQA requests. OPM's authority to adjudicate compensation and leave claims flows from section 3702 of title 31, United States Code, which is narrow and restricted to those matters. In adjudicating this claim, our responsibility is to make our own independent decision about eligibility for LQA by comparing the facts in the case to criteria in Federal regulations and other Federal guidelines. Therefore, we have considered the claimant's statements only insofar as they are relevant to making that comparison.

Conditions for LQA regarding this claim are set forth in the previously cited EUSA memorandum which must be applied in conjunction with DOD 1400.25-M, CPM SC 1250, Overseas Allowances and Differentials, and Department of State Standardized Regulations (DSSR).

The DSSR, dated May 20, 2001, states

031.11 Quarters allowances...may be granted to employees who were recruited by the employing government agency in the United States...; and

031.12 Quarters allowances...may be granted to employees who were recruited outside the United States...provided that:

(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...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

has been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States..."

DOD Manual 1400.25-M, dated December 1996, SC1250.4, Policy, states:

SC1250.4.1. Overseas allowances and differentials (except the post allowance) are not automatic salary supplements; nor are they entitlements. They are specifically intended to be 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; and

SC1250.4.2. Individuals authorized to grant overseas allowances and differentials shall consider the recruitment need, along with the expense the activity or employing Agency will incur, prior to approval; and

SC1250.4.3. Individuals shall not automatically be granted these benefits simply because they meet eligibility requirements.

The record shows the agency amended the announcement to Korea-wide indicating there were sufficient local candidates to fill the vacancy and it was not necessary to offer LQA as an incentive. The agency issued the amended vacancy announcement soliciting local applicants, and the claimant voluntarily applied and was selected under this announcement. Both the agency and claimant agree he was a U.S. hire. However, he was not **recruited** (emphasis added) outside the U.S. because the agency had amended the announcement to be Korea-wide (DSSR 031.11 and DOD 1400.25-M, SC1250.4.1). We find the agency's decision to be consistent with the EUSA Policy Memorandum on LQA dated August 28, 2001.

The claimant states the agency made mistakes in how it announced and filled the position and this affected his eligibility for LQA. The agency agrees that management was incorrectly advised regarding the vacancy announcement. However, it is well established that a claim may not be granted based on misinformation that may have been provided by Federal employees. 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); *Carl H.L. Barksdale*, B-219505 (November 29, 1985); *E. Paul Tischer, M.D.*, 61 Comp.Gen. 292 (1982).

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. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979).

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. The Department of the Army decision of July 11, 2006, regarding the claimant's entitlement to a LQA is not arbitrary, capricious, or unreasonable. Accordingly, the claim for 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.