

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

Claimant: [name]

Organization: [agency component]
Department of the Army
Stuttgart, Germany

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 08-0010

//Judith A. Davis for

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

11/4/2008

Date

The claimant is currently employed in an [position] at the [agency component], Department of the Army (DA), in Stuttgart, Germany (GE). He requests the U.S. Office of Personnel Management (OPM) reverse his agency's decision to deny him living quarters allowance (LQA). OPM received the claim request on January 2, 2008, the agency administrative report (AAR) on May 20, 2008, and the claimant's comments on the AAR on May 28, 2008. For the reasons discussed herein, the claim is denied.

The record shows the claimant was appointed to an [position] with [agency componnet], DA, in Giebelstadt, GE, effective September 4, 2005. The claimant asserts and the agency concedes the claimant was erroneously informed by the then Kitzingen Civilian Personnel Advisory Center in the August 9, 2005, letter offering the claimant the position that he would be "...entitled to Living Quarters Allowance."

The claimant does not contest the underlying facts of the case. The record shows the claimant was separated from the Army on March 16, 1988, at Fort Jackson, South Carolina. The claimant's resume provided in the AAR indicates he returned to GE sometime in or around December 1990 and held employment as a Sales Associate with Army and Air Force Exchange Service (AAFES), a non-appropriated fund component of the Department of Defense, in Frankfurt, GE. He was subsequently employed by the 32nd Army Air Defense Command in Darmstadt, GE, from April 1993 until October, which did not convey a transportation entitlement for his return to the United States or other enumerated locations. The claimant was subsequently employed by Lockheed Martin from October 1995 to March 1997 at Rhein-Main Air Base. It is unclear whether this employment provided for return transportation to the United States or another of the enumerated locations stipulated in Department of State Standardized Regulations (DSSR) 031.12b(4). The claimant's October 2004 Letter of Understanding for EDS International SOFA Expatriate Assignments with Electronic Data Systems (EDS), for whom he worked from 1997 until his September 4, 2005, Federal Government appointment, did not provide for return transportation as stipulated in DSSR 031.12(b)(4): "There are no repatriation benefits offered by this package. Repatriation costs are the responsibility of the employee, unless offered by EDS management with LCM approval."

DSSR 031.12 states:

031.12 Employees Recruited Outside the United States

Quarters allowances prescribed in Chapter 100 may be granted to employees 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, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of 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 had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States; or

- c. as a condition of employment by a Government agency, the employee was required by that agency to move to another area, in cases specifically authorized by the head of agency.

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

The record indicates the claimant returned to GE on his own accord, and thus is not eligible for LQA under DSSR 031.12a-b(4) and the eligibility criteria under Army in Europe Regulation 690-500.592, dated June 20, 2003, in effect at the time of the claimant's appointment. The language of the EDS agreement also did not ensure return transportation to the United States or the other enumerated locations stipulated in DSSR 031.12b(4). The fact the claimant was receiving a "HOUSING/COLA allowance of 20K" [shown as 20% in an August 19, 2005, EDS memorandum provided by the claimant], his veterans' status, and the impact on his family have no bearing on and may not affect this determination.

The claimant seeks relief because: "I feel that I have been mistreated and gave [sic] false information since the beginning. Feel that USAREUR, G1, did not take into consideration that the CPAC office in Kitzgen misleads me, causing me a lot of financial hardships." It is well established that payments of money from the Federal Treasury are limited to those authorized by law, and erroneous advice or information provided by a Government employee cannot bar the Government from denying benefits which are not otherwise permitted by law. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 110 S. Ct. 2465, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990). See also OPM file number S9700423; OPM file number 9700369, January 15, 1998; OPM file number S98001982, October 2, 1998; and OPM file number S001584, November 16, 1998.

The claimant's claim request includes a copy of his September 13, 2007, Request for Exception to USAREUR Waiver Policy. The authority to waive the requirements of DSSR 031.12b is reserved to the head of the employing agency, and OPM will not review such determinations.

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.