

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

Claimant: [name]

Organization: [agency component]
Headquarters, U.S. European Command
J2
Stuttgart, Germany

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied; Lack of Jurisdiction and
Lack of Standing

OPM file number: 08-0027

//Judith A. Davis for

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

9/18/2008

Date

In his March 11, 2008, claim request which the U.S. Office of Personnel Management (OPM) received on March 24, 2008, the claimant seeks to challenge the Department of the Army's decision which found he was not eligible for living quarters allowance (LQA) based on his April 30, 2007, tentative selection for [position] with Headquarters, U.S. European Command J2, [agency component], in Stuttgart, Germany. His request included a copy of a January 8, 2008, agency-level claim denial from the Headquarters, U.S. Army, Europe, and Seventh Army, Office of the Deputy Chief of Staff, G1, Civilian Personnel Directorate, which states: "Should [claimant] believe the determination that he is ineligible for LQA to be incorrect he may appeal the decision to the Office of Personnel Management...." Based on forgoing agency guidance and lack of clarity as to the claimant's standing, we requested an agency administrative report (AAR) which we received on July 1, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction and lack of standing.

Section 3702(a)(2) of title 31, United States Code (U.S.C.) states: "The Director of the Office of Personnel Management shall settle claims involving Federal civilian employees' compensation and leave." Therefore, the plain and unambiguous language of the statute makes clear the claim may only be filed by or on behalf of a Federal civilian employee or former Federal civilian employee. Since the claimant was not and is not a Federal employee, he has no standing to file a claim and this claim must be denied for lack of jurisdiction.

The claimant asserts the December 7, 2007, firm offer of employment which he accepted on December 12, 2007, "formed an employment contract, on which I reasonably acted...incurring hardship and cost." Thus, the claimant also appears to seek monetary damages for breach of contract. According to 31 U.S.C. 3702(a)(2), OPM's authority to settle Federal civilian claims extends only to claims for compensation and leave matters as discussed previously which arose during their employment. The scope of OPM's authority under section 3702(a)(2) does not extend to considering or deciding breach of contract claims or to awarding monetary damages on the basis of such claims. Accordingly, OPM does not have jurisdiction to consider, or settle, this aspect of the claim request. See OPM file number S98002201, February 24, 1999.

Although we may not render a decision on this claim, we note that documents submitted into the record suggest that the claimant is not eligible for LQA. The claimant states the agency-level January 8, 2008, decision, which revoked the Fort Huachuca Civilian Personnel Advisory Center prior approval of LQA, voiding his "firm job offer on 4 January 2008, a mere three days prior to my agreed upon start date of 7 January 2008, should be seen as nor [sic] meeting the spirit and intent of the DSSR or DOD [Department of Defense] Regulations [sic] 1400.25-M." He asserts the manner in which the determination to deny LQA was "handled should be deemed "unusual circumstances" per Subsection 031.12b" and he believes the "circumstances described above warrants [sic] a waiver outlined by Subsection 031.12b." The claimant asserts he was employed by Titan Corporation under "conditions" which would provide for his "eventual return to the United States." He further asserts DSSR 031.12 does not specify he must currently qualify for return transportation or have fulfilled his employer's requirements for return transportation as a prerequisite for eligibility to receive LQA entitlements.

The AAR states the claimant declined the offer of employment on January 28, 2008, after having been informed his hiring circumstances rendered him ineligible for LQA as he did not meet

the requirements of DSSR 031.12b and indicated the claimant was not currently a Federal employee. The agency states the claimant retired from the U.S. Army at Fort Meyer, Virginia, on February 28, 2005. While still on military leave, the U.S. firm, Titan Corporation, offered the claimant a position in Germany, subsequently changed from Darmstadt to Stuttgart, on July 30, 2004, with an anticipated start date of November 22, 2004. The transition assistance payment offered after successful completion of employment “establishes no employer-obligated condition to provide for the employee’s return transportation, either to the United States or any other specific location.” Therefore, the agency concluded the claimant did not meet the requirement of having been continuously employed under conditions providing for his return transportation to the United States as stipulated by DSSR 031.12b and, thus, was not eligible for LQA. The AAR also states the claimant did not meet the requirements for and, thus, was not eligible for LQA under the waiver criteria established by the Department of Defense. The agency responded to other issues raised by the claimant which are not material to the underlying technical issues of this claim and will not be further addressed. However, we note agency provided documentation in the AAR demonstrating that independent records show the claimant’s employment was not terminated and “he continues to be employed until present with Titan Corporation.”

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.

Contrary to the claimant's assertion, DSSR 031.12.b(4), requires conditions to be in place to specifically ensure return transportation to the United States or another of the enumerated locations. Such conditions are not met by the promise of a repatriation payment which, in the case of Titan Corporation, could be paid under the length of employment schedule in his Titan Corporation employment offer, so long as the claimant moved at least 400 miles from his last Titan duty location and his employment termination was classified as "eligible for rehire." The claimant could use this payment to relocate to another overseas location or for any other purpose. Thus, the language of the agreement does not ensure return transportation to the United States or another of the enumerated locations stipulated in DSSR 031.12.b(4).

The authority to waive the requirements of 031.12b is reserved to the head of the employing agency, and OPM will not review such determinations. However, we note the claimant's situation does not meet any of the established situations in Department of Defense Civilian Personnel Manual 1400.25-M, Subchapter 1250, Overseas Allowances and Differentials, paragraph SC1250.5.1.3.

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.