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

Claimant: [name]

Organization: [agency component]

Department of the Air Force Ramstein Air Base, Germany

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 08-0110

//Judith A. Davis for

Robert D. Hendler Classification and Pay Claims Program Manager

Center for Merit System Accountability

3/27/2009

Date

The claimant is a Federal civilian employee of the Department of the Air Force in [agency component] at Ramstein Air Base (AB), Germany. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's decision regarding his position eligibility for living quarters allowance (LQA). We received the claim on September 16, 2008, and the claim administrative report on December 9, 2008. For the reasons discussed herein, the claim is denied.

The claimant retired from active military service on September 1, 2007, while stationed at Ramstein AB. He applied for [position], while residing in Germany on terminal leave pending retirement and was offered the position on January 17, 2008. On February 1, 2008, the appointing office determined the position did not meet eligibility requirements for LQA. The claimant was hired effective February 11, 2008.

The claimant argues that because he stayed in Germany after retirement during the hiring process, the Government did not incur the cost of a permanent change of station (PCS) for his family and household goods to the United States and back to Germany, with the attendant temporary lodging expenses. He also states his salary is paid by the Air Force Office of Special Investigations (AFOSI) rather than locally by the 435th Wing or by the U.S. Air Forces in Europe (USAFE) and that AFOSI is willing to pay the LQA. He also claims precedent has been set for granting LQA to local hires and cites two cases where employees were hired locally at Ramstein AB (in 2006 and 2007) and received LQA.

USAFE LQA policy is set forth in a March 31, 2003, Memorandum for All Civilian Personnel Flights which references and supplements the Department of Defense (DoD) Civilian Personnel Manual 1400.25-M, subchapter 1250, covering overseas allowances and differentials. This policy states LQA is intended as a recruitment incentive for U.S. residents to accept employment overseas and is considered an allowance, not an entitlement. It further states LQA will normally not be approved for an individual currently residing in the country where the position being filled is located, and a qualified position requires CONUS recruitment with attendant PCS entitlements. Although exceptions due to extenuating circumstances may be approved at the base level, these must be based on factors consistent with the general DoD policy. Each Civilian Personnel Flight is to determine whether LQA is necessary as a recruitment incentive for the position being filled and whether the applicant is eligible to receive LQA based on criteria provided in the Department of State Standardized Regulations and DoD 1400.25-M, subchapter 1250. However, when the incentive is not necessary, no further determination is required.

DoD Manual 1400.25-M specifies 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.

The agency states management had requested local recruitment for the position and had requested the claimant by name. The position was not considered hard to fill because there was a sizable pool of locally available applicants at Ramstein AB, including budget analysts, accountants, and funds management analysts, and because the hiring history for budget analysts had indicated this pool was sufficient. The agency notes the vacancy announcement for the position indicated PCS expenses would not be paid.

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, the claimant was residing in Germany when he applied and was hired for the position. No recruitment incentive was necessary as the position was recruited locally and was not considered hard to fill. The claimant's selection did not save the Government PCS expenses since these were not authorized for the position; nor is this a consideration in determining whether LQA will be offered. Whether an employing organization is willing to pay LQA is not in itself a justification for the expenditure of Government funds for individual benefit.

The claimant provided no information regarding the circumstances surrounding the two alleged precedents he cited. Review of LQA eligibility must be based on controlling regulations and policies and case facts since there is no assurance other cases which may be cited by a claimant have been decided properly. We note that USAFE allows for exceptions to LQA policy for extenuating circumstances consistent with general DoD requirements, as delegated to the base level. The claimant has offered no such circumstances in support of his request for LQA which demonstrate his position was eligible for LQA under controlling agency policy and regulations. 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.