

**U.S. Office of Personnel Management  
Compensation Claim Decision  
Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Air Force  
Sembach, Germany

**Claim:** Request for living quarters allowance  
for privately owned quarters outside  
commuting area

**Agency decision:** Denied

**OPM decision:** Denied; Failure to state a claim upon  
which relief may be granted

**OPM file number:** 10-0038

//Judith A. Davis for

---

Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Merit System Audit and Compliance

3/31/11

---

Date

The claimant is a Federal civilian employee of the Department of the Air Force at the [agency component] in Sembach, Germany. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial that his living quarters allowance (LQA) be paid for personally owned quarters (POQ) outside the commuting area of his post of assignment. We received the claim on June 14, 2010, the agency administrative report (AAR) on August 19, 2010, and additional clarifying information from the agency on February 8, 2011. For the reasons discussed herein, the claim is denied for failure to state a claim upon which relief may be granted.

The claimant states his "desire to purchase a house in Jena, Germany using my LQA," which location is "outside of the commuting distance to Ramstein AB and the Kaiserslautern Military Community area," and that his "appeal is based on the fact that I have not found nor have I been provided with the written policy which specifically prohibits LQA to be used for quarters which are outside the commuting distance of the post of assignment." The claimant asserts that the basis for the agency's denial of his request is not referenced in Department of Defense (DoD) Instruction 1400.25-M, subchapter 1250, Overseas Allowances and Differentials.

The agency responds that the claimant's request was denied "since the intent of the LQA is to provide housing for an employee at or near the post of assignment" and that "it is not the intent of the US government to fund homesteading in foreign countries."

After receipt of the AAR, we received additional information from the agency that the claimant had purchased POQ in the local commuting area of his post. We subsequently contacted the claimant, who confirmed this purchase by email with the explanation that his "claim was not prospective, but I was not able to finance a house in Jena without a guarantee that I would receive LQA for that house."

The governing regulations for OPM's claims adjudication authority are contained in part 178 of title 5, Code of Federal Regulations (CFR). Under 5 CFR 178.105: "The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment."

Contrary to the claimant's assertion, we find his claim was prospective in that he had not purchased the POQ for which he was seeking LQA, and the claim is now speculative in that he has purchased a POQ at his post of assignment. Since there can be no liability on the part of the Government or a right to payment under these circumstances, this claim must be denied for failure to state a claim upon which relief may be granted.

Although we may not render a decision on this claim, we note that the Department of State Standardized Regulations (DSSR) do not authorize LQA for POQ outside the employee's post. The DSSR contains the governing regulations for allowances, differentials, and defraying of official residence expenses in foreign areas. Within the scope of these regulations, the head of an agency may issue further implementing instructions for the guidance of the agency with regard to the granting of and accounting for these payments. Thus, DoD 1400.25-M implements the provisions of the DSSR but may not exceed their scope; i.e., extend benefits that are not otherwise provided for in the DSSR.

DSSR Section 040 provides the following definitions, which "apply to all chapters of these regulations, unless waived or modified in specific instances":

- g. "Country of assignment" means the country in which the employee's post is located as listed in the electronic Table of Allowances (Section 920).
- h. "Post" means the place designated as the official station of the employee, regardless of whether he/she is detailed elsewhere or resides at another place with the authorization or approval of the head of his/her agency. (See also Section 061.)
- m. "Family" or "family member" means one or more of the following individuals *residing in the same quarters as the employee at his/her post*, or who would normally reside at the post except for the existence of circumstances cited in Section 262 warranting the grant of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a dependent or a member of the family of another employee for the purpose of determining the amount of a similar allowance: (emphasis added)

DSSR Section 061 provides the following guidance regarding "post classifications":

The classifications (i.e. allowance rates) for living quarters, post, transfer, education allowance, danger pay, and post differential at any place in foreign areas where employees may be assigned are provided in the electronic Section 920 found at [the Department of State website].

Section 920 lists posts and their associated allowance rates. Posts are identified as specific employment stations, such as "Sembach, Germany," as opposed to simply "Germany."

Given the definition of "post" as a specific duty station, DSSR Section 132.11 provides the following guidance for the commencement of LQA grants for newly appointed or transferred employees: "When authorized, an LQA grant to a newly appointed or transferred employee shall commence at his/her *post* as of one of the following dates, whichever is latest [italics added]."

The DSSR is replete with other references to "post" in connection with when LQA may be granted:

#### Section 132.2 Continuance of Grant

The LQA grant may continue, provided the employee maintains and pays for his/her quarters at the *post*: [italics added]

\* \* \* \* \*

#### Section 132.41 Transfer

When an employee is transferred from a *post* at which LQA has been granted, such grant shall terminate as of the following dates, whichever is earliest: [italics added]

\* \* \* \* \*

### Section 132.42 Separation

When an employee is separated while assigned to a *post* at which LQA has been granted, such grant shall terminate at the end of the last day of his/her employment... [italics added]

These repeated references to "post" within the context of those circumstances under which LQA is authorized makes clear that LQA may only be paid for housing at the "official station of the employee."

In addition, LQA is defined in Section 131.1 as follows:

"Living quarters allowance", hereinafter referred to as LQA, means a quarters allowance granted to an employee for the annual cost of suitable, adequate, living quarters *for the employee and his/her family*. [italics added]

This section as well as the section that defines "family" or "family member" imposes the additional requirement that the housing for which the LQA is paid be actually occupied by the employee; i.e., LQA may not be paid for housing occupied exclusively by the employee's family while the employee lives elsewhere.

DoD 1400.25-M, subchapter 1250, does not address whether LQA may be paid for POQ outside the employee's post, and therefore defers to the DSSR in its entirety on that issue without further restrictions.

The claimant cites as "precedent" that U.S. Army in Europe (USAREUR) Regulation 690-500.592, which is the USAREUR regulation implementing the provisions of the DSSR regarding LQA, "permits LQA to be used outside of the local area of the post of assignment."

However, since USAREUR Regulation 690-500.592 is the implementing regulation for LQA granting and accounting within the Department of the Army (DA) for its employees, as permitted by the DSSR, the claimant may not rely on this regulation to support his claim since he is not a DA employee. The DA regulations implementing the DSSR have no bearing on the policies and practices of the Department of the Air Force as the DA and DAF are separate Government agencies and as stated above each head of an agency has the discretion to issue agency instructions implementing the DSSR.

Under 5 U.S.C. § 5923 as implemented by the DSSR, LQA is a discretionary allowance that may only be granted when specific circumstances are met. LQA may be granted to an eligible employee for the cost of suitable, adequate, living quarters for the employee and his family. Family is defined to include certain individuals residing in the same quarters as the employee at his/her post. Therefore, under the regulations and policies applicable to Department of the Air Force employees, the Department of the Air Force is not required to grant LQA to an employee if the employee's residence is not suitable, adequate, living quarters for the employee and his eligible family members residing in the same quarters at the employee's post.

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. Under 5 CFR 178.105, the burden is upon the claimant to establish the liability of the United States and the claimant's right to payment. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979).

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.