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

Claimant: [name]

Organization: Department of the Army

Okinawa, Japan

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 14-0015

/s/ Chris Hammond for

Robert D. Hendler Classification and Pay Claims Program Manager Agency Compliance and Evaluation Merit System Accountability and Compliance

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3/7/14

Date

The claimant is a Federal civilian employee of the Department of the Army in Okinawa, Japan. He requests the U.S. Office of Personnel Management (OPM) "consider relieving [him] of all responsibility to pay back past LQA allowance and not stop [his] LQA allowance in May 2014 but continue [his] LQA allowance" either indefinitely, until December 31, 2014, or until the end of his current tour on August 3, 2015. OPM received the claim request on January 28, 2014. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

As a result of a Department of Defense (DoD) directed, DOD-wide LQA audit, the claimant was notified by agency memorandum dated April 25, 2013, that he did not meet the LQA eligibility requirements under section 031.12b of the Department of State Standardized Regulations (DSSR) because prior to appointment, he had been recruited overseas and had been employed by more than one employer in the overseas area and that accordingly, the agency's previous determination finding him eligible for LQA was erroneous. The memorandum also stated that DoD had authorized a one-year waiver of DSSR section 031.12b for employees whose LQA grants were being terminated under these circumstances. The claimant requests his LQA be continued for hardship reasons and asserts he "should not be held responsible for someone else's mistake."

OPM adjudicates compensation claims for certain Federal employees under the authority of section 3702(a)(2) of title 31, United States Code (U.S.C.). The authority in 31 U.S.C. § 3702(a)(2) is narrow and limited to determining if monies are owed the claimant under the controlling statutes or regulations. Section 3702 does not include the authority to waive provisions of the DSSR, which determine LQA eligibility. The applicable regulation in this case, DSSR section 031.12c, authorizes the head of the employee's agency to waive section 031.12b upon determination that unusual circumstances in an individual case justify such action. Therefore, OPM may not consider the claimant's request for LQA continuance within the context of the claims adjudication function it performs under section 31 U.S.C. § 3702(a)(2) and the claim is denied for lack of jurisdiction.

In his claim request, the claimant states he has filed a waiver request regarding the erroneous LQA payments with the Defense Finance and Accounting Service but has not yet received a final determination from them. As a result of legislative and executive action, the authority to waive overpayments of erroneous payments and allowances now resides with the heads of agencies, regardless of the amount. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996, and the Office of Management and Budget (OMB) Determination Order of December 17, 1996. Neither Pub. L. No. 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision on, the request for a waiver of a claimant's indebtedness to the United States.

Further, it is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials. 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. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990). Therefore, that the claimant had erroneously been found eligible for

LQA and had initially received LQA based on that erroneous determination does not confer eligibility not otherwise permitted by statute or its implementing regulations to continue to receive such erroneous payments.

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.