



United States  
**Office of  
Personnel Management**

Washington, DC 20415

**Compensation Claim Decision  
Under section 3102 of title 31, United States Code**

**Claimant:** [name]

**Organization:** Central Processing Facility  
235<sup>th</sup> Base Support Battalion  
U.S. Army Installation Management  
Agency  
Ansbach, Germany

**Claim:** Request for Living Quarters Allowance

**Agency decision:** Denied

**OPM decision:** Denied

**OPM contact:** Robert D. Hendler

**OPM file number:** 05-0024

/s/ Judith A. Davis for

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

5/18/2006

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Date

The claimant is a former military member hired overseas. He occupies a [GS-9] position with the Central Processing Facility, 235<sup>th</sup> Base Support Battalion (BSB), U.S. Army Installation Management Agency, Department of the Army, in Ansbach, Germany. The claimant requests reconsideration of his agency's decision concerning his eligibility for living quarters allowance (LQA). The Office of Personnel Management (OPM) received the compensation claim on June 29, 2005, and the agency administrative report on October 4, 2005. For the reasons discussed herein, the claim is denied.

The claimant believes he met the criteria as a United States (U.S.) hire when he accepted the [GS-9] position in Ansbach, Germany and is, therefore, entitled to LQA. He states he served as Central Processing Facilities Manager, Master Sergeant, HQ 279<sup>th</sup> BSB in Bamberg, Germany from July 1, 2001, until July 30, 2003. His revised Permanent Change of Station reassignment orders from the 279<sup>th</sup> BSB to the Military Entrance Processing Station (MEPS)-Chicago show his available date as July 20, 2003. The claimant states he resided at the Bachelor Enlisted Quarters (BEQ) at Great Lakes, Illinois, from July 20, 2003, until July 20, 2004. However, the bill he provided from the BEQ shows he arrived on August 8, 2003, and departed on June 16, 2004.

The claimant states he flew to Germany on July 1, 2004, on permissive temporary duty (PTDY) to be with his two children during a difficult time for his family. A copy of his orders, dated January 9, 2004, shows he was reassigned for separation processing including PTDY from July 1 through July 20, 2004, and transition leave from July 21, 2004, until September 30, 2004. The DA Form 31, Request and Authority for Leave, provided with his claim shows he was on approved leave with PTDY from July 1, 2004, through September 30, 2004. The claimant states he went to the Bamberg Civilian Personnel Operations Center (CPOC) office on September 14, 2004, and asked [name], a CPOC representative, "based on my current status being on transition leave from the military until October 1, 2004, how long I could stay in Germany and not be considered a local hire as far as employment." He also asked if his retirement orders and DA form 31 showing him to be assigned to his unit in the U.S. "...until October 1, 2004 satisfy the 12 month CONUS residency requirement." The claimant states he was told as long as his PCS and retirement orders covered one year and he did not work or obtain a work permit in Germany, his documentation would fulfill the requirement. The claimant states he then went to the U.S. Customs Office in Bamberg, Germany, on September 16, 2004, and was told he could remain in Germany for 90 days past his retirement date without having to obtain a work permit or having to otherwise get approval from the German Government. The claimant's DD-214, Certificate of Release or Discharge from Active Duty shows a separation date of September 30, 2004. The claimant states he was a tourist on vacation in Germany after retiring from the Army and that his legal residence remained in the U.S.

The job announcement for the [GS-9] position at the 235<sup>th</sup> BSB in Ansbach, Germany, was issued October 20, 2004, and closed on October 26, 2004. The claimant applied for the position while in Germany. His resume contained a mailing address in Dayton, Ohio, which he described as his mother's house in his June 21, 2005, letter to us, and two local German telephone numbers. The claimant states that he was contacted by [name] of the Ansbach Civilian Personnel Advisory Center (CPAC) who: asked if he was still interested in the [GS-9] position, inquired about his status in Germany, and informed him that he would be considered a local hire.

The claimant received a tentative offer of employment letter dated December 27, 2004, which informed him of the need to verify his LQA eligibility and requested pertinent information to permit that assessment.

As evidence his legal residence was in the U.S. when he applied for and accepted the [GS-9] position, the claimant states he voted in the last presidential election and paid taxes while employed in the State of Illinois. He also provided: an Ohio State driver's license, his resume, and his DA Form 31, dated April 24, 2004, all showing the Dayton, Ohio, address; a bill from the BEQ in Great Lakes, Illinois, with a departure date of June 16, 2004; a cable bill addressed to the claimant at MEPS-Chicago, in Des Plaines, Illinois, dated September 8, 2004; a DD-214 Form indicating his last duty assignment as MEPS-Chicago in Des Plaines, Illinois, with a separation date of September 30, 2004; a 2004 W-2 forms with a Des Plaines, Illinois, address; and correspondence from the Social Security Administration mailed to the Des Plaines, Illinois, address dated December 14, 2004. The claimant received a letter from CPAC, dated January 4, 2005, confirming his selection for the position and informing him he was not eligible for LQA because he did not meet the one-year U.S. residency requirement.

The claimant requested his agency reconsider the decision to deny him LQA. He received a letter dated March 2, 2004, from Erin J. Freitag Chief, Civilian Human Resources Agency (CHRA) Europe Region, CPOC Director, informing him that he was not entitled to LQA because he had received an offer of employment while overseas and had no stateside residency. The claimant sent a letter, dated May 11, 2004, to the Chief, CHRA, again requesting reconsideration of the decision to deny him LQA in which he states "While vacationing in Germany, I applied for and was offered a position with the 235<sup>th</sup> Base Support Battalion, as a [GS-9 position]...On 4 JAN 05 I was presented a Confirmation Letter...Line 5 of the letter states, 'You are not eligible for LQA because you do not meet the one-year U.S. residency requirement' ...Because I wanted the job, I accepted this position and began the rebuttal process to retain my LQA entitlements."

The claimant makes statements regarding possible discriminatory action by the agency concerning the manner in which his LQA requests were handled. OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. §3702 which is narrow and restricted to those matters. In adjudicating this claim, our only concern is to make our own independent decision about eligibility for LQA by comparing the facts in the case to criteria in Federal regulations and other Federal guidelines. Therefore, we have considered the claimant's statements only insofar as they are relevant to making that comparison.

It is Department of Defense (DoD) policy, under DoD Directive 1400.25, that overseas allowances, including LQA, and differentials (except the post allowance) are not automatic salary supplements; nor are they entitlements. They are specifically intended to be 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.

Conditions for LQA are set forth in U.S. Army in Europe (AE) regulation 690-500-592 (5) (a), dated June 20, 2003, which was the governing regulation for LQA eligibility on the date of the

claimant's hire. It specifies that LQA will be granted for the following types of appropriated fund employees:

- (1) U.S. hires in grades GS-9 (or equivalent), WG-11, WL-9, WS-5, and above.
- (2) Local-hire appointments to positions in grades GS-9 (or equivalent), WG-11, WL-9, WS-5, and above. Both of the following eligibility criteria must be met to be eligible:
  - (a) Before being appointed, the employee was recruited in the United States by the U.S. Government, including its Armed Forces: a U.S. firm, organization, or interest; or an international organization in which the U.S. Government takes a part.
  - (b) The employee has been in substantially continuous employment by one of the employers in (a) above under conditions that provided for the employee's return transportation to the U.S.
- (3) Federal civilian employees selected for positions in grades GS-9 (or equivalent), WG-11, WL-9, WS-5, and above who meet *all* (emphasis added) of the following criteria:
  - (a) Are transferring to the European region from another overseas Government activity or agency without a break in service.
  - (b) Meet basic eligibility criteria of Department of State Standardized Regulations, section 031.11 or 031.12. Section 031.11 specifies that LQA may be granted to employees who were recruited by the employing Government agency in the U.S.... Section 031.12 specifies the LQA may be granted to employees recruited outside the U.S., when the employee's actual place of residence in the place to which the quarters allowance applied at the time of receipt shall be fairly attributable to his employment by the U.S. Government; and prior to employment, the employee was recruited in the U.S.
  - (c) Were already receiving or eligible to receive LQA at the time of selection.

For the purpose of determining LQA eligibility, a **U.S. hire** is defined as a person who permanently resided in the United States from the time he or she applied for employment until and including the date he or she accepted a formal job offer. The residence must have been for at least one year immediately before accepting a formal job offer. A **local hire** is a person hired to fill a position who is physically residing in the country in which the position is located under employment conditions that provide for the employee's return transportation to the U.S. **Physical Residency**, for the purpose of determining local hire status, is the actual physical presence of an applicant overseas for more than merely a transitory or tourist purpose as finally

determined by the proponent of this regulation, regardless of the applicant's home of record, legal residence, or domicile.

The record shows the claimant was a soldier in the U.S. Army reassigned from Bamberg, Germany to MEPS-Chicago, Illinois, on July 20, 2003. From July 20, 2003 until he retired from the Army on September 30, 2004, he was assigned to a unit within the U.S. However, prior to retiring, the claimant was granted permissive temporary duty and transition leave from July 1, 2004, to September 30, 2004. The purpose of transition permissive temporary duty is to facilitate transition into civilian life for house and job hunting and may be authorized for soldiers retiring from active duty. It is an authorization, not an entitlement. Commanders must ensure that soldiers have a need to either relocate or conduct job search activities during the requested dates of transition permissive temporary duty. If neither of these activities is necessary, then permissive temporary duty is not appropriate (reference title 10, United States Code, Department of Defense Directive 1327.5, and AR 600-8-10). The claimant's approved leave status just prior to his retirement allowed him to retire from his military unit in the U.S. without having to be physically present in the U.S. to process out.

The claimant arrived in Germany July 1, 2004, and there is no evidence of return transportation to the U.S. The claimant lived in the U.S. from July 20, 2003, to July 1, 2004, less than one year. During this time he resided at the bachelor enlisted quarters from August 8, 2003, till June 16, 2004, and the only other address he cites as a residence during this period is that of his mother's house. This is not equivalent to having permanent residency in the U.S. He applied for and accepted the position while living in Germany, and was not under employment conditions providing for his return transportation to the U.S. just prior to accepting the position. The claimant does not meet LQA eligibility requirements as either a U.S. hire or local hire.

The claimant states the agency made a number of mistakes in its interpretation and application of AE regulation 690-500.592, dated June 20, 2003, and that they provided conflicting information to him regarding his eligibility for LQA. However, it is well established that a claim may not be granted based on misinformation that may have been provided by Federal employees. *See Richmond v. OPM*, 496 U.S. 414, 425-426 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed Cir. 1997); and 60 Comp. Gen. 417 (1981); *Carl H.L. Barksdale*, B-219505 (November 29, 1985); *E. Paul Tischer, M.D.*, 61 Comp.Gen. 292 (1982).

The claimant makes reference to the revised AE regulation 690-500-592, dated November 18, 2005, as supporting his belief that he is eligible for LQA. As previously stated, AE regulation 690-500-592 (5) (a), dated June 20, 2003, was the governing regulation for LQA eligibility on the date of the claimant's hire and, therefore, provides the criteria by which this decision must be rendered.

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.

*Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979).

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. The Department of the Army decision of March 2, 2005, regarding the claimant's entitlement to a LQA 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.