

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

Claimant: [name]

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

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 08-0001

//Judith A. Davis for

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

10/9/2008

Date

The claimant is a former military member hired overseas and currently employed in a [position] with the [agency component], United States Air Force, Europe (USAFE), in Spangdahlem, Germany. He is requesting reconsideration of his agency's decision denying him living quarters allowance (LQA) retroactive to December 26, 2006, the date of his Federal appointment with USAFE in Germany. The U.S. Office of Personnel Management (OPM) received the compensation claim on October 12, 2007, the agency administrative report (AAR) on January 16, 2008, and the claimant's comments on the AAR on March 3, 2008. For the reasons discussed herein, the claim is denied.

The claimant makes various statements relating to the handling of his claim, the agency's motivation and the injustice of the agency's decision. OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. section 3702 which is narrow and restricted to determining the technical merits of the claim. In adjudicating this claim, our responsibility is to make our own independent decision about the propriety of the agency's LQA determination 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.

The claimant separated from active military duty with the USAFE in Buechel, Germany, on January 1, 2007. He emphasizes he did not use his return rights for transportation back to the United States. He accepted the offer of employment with [agency component], USAFE, for a [position]; and the appointment was effective December 26, 2006. The claimant states he was still on active duty when he applied for the position through the normal recruitment channels in early September 2006. He believes due to his assignment, he had no choice but to be considered a local hire and feels he was denied LQA incentives based solely on his military assignment in accordance with Spangdahlem's long standing local policy that local hires will not receive LQA.

The Civilian Personnel Officer, Mission Support Squadron, 52nd Fighter Wing (USAFE), denied the claimant's LQA request on October 9, 2007, based on the determination the claimant was selected as a local overseas Veteran's Employment Opportunity Act candidate. The agency states the claimant applied for the [position] against an external announcement open to military spouses and noncompetitive hiring authorities. The announcement specifically stated permanent change of station (PCS) costs *may* be paid. At the time of the job offer, the claimant was advised by the Human Resources Specialist LQA was not authorized because he was a local hire. The claimant accepted the position and signed the Overseas Employment Agreement (Locally Appointment).

Eligibility for LQA is governed by the Department of State Standardized Regulations (DSSR) which are the overriding regulations for allowances and benefits available to all Federal Government civilians assigned to foreign areas. The DSSR, in Section 013, delegates to the heads of Federal agencies the authority to grant LQAs to agency employees and specifies the head of an agency "may" grant LQA and issue further implementing regulations as he or she may deem necessary.

Contrary to the claimant's assertions, eligibility does not confer entitlement. The Department of Defense (DoD) Civilian Personnel 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 DoD Manual also indicates individuals shall not automatically be granted LQA benefits just because they meet eligibility requirements.

The AAR states, in accordance with USAFE policy, LQA will normally not be approved for an individual currently residing in the country where the position being filled is located and, in all cases, an actual PCS move must take place for LQA to be payable. It is a long standing Spangdahlem AB policy that LQA is not granted to local hires. LQA is authorized only when it is needed as a recruitment incentive. The AAR indicates the position for which the claimant was selected had a recruitment certificate with 159 applicants; therefore, PCS and LQA payments were not necessary recruitment incentives.

In his response to the AAR, the claimant appears to assert he was not a local hire since his permanent residence was still in New York and not an "ordinary resident" under the provisions of AFAN36-204, 11 April 2007; i.e., "[w]ithout a permit I cannot be considered as residing in the country." Host country laws and regulations do not define or control the meaning and application of Federal Government regulations regarding the granting of LQA. The fact the claimant was residing in Germany when he applied for and accepted the position in question is sufficient to establish he was a local hire for purposes of LQA.

The terms of the relevant statutory and regulatory provisions 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 the circumstances justify such action, and the agency's action will not be questioned unless it is determined 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). This approach also applies to the establishment of LQA policies which are more restrictive than those of the DSSR.

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, under controlling agency policy in effect at the time the claimant was hired (USAFE Memorandum, Subject: Living Quarters Allowance, 31 Mar 2003), we find the employing activity acted in accordance with agency policy in declining to provide the claimant with LQA because he was selected as a local candidate on an overseas employment appointment for which the LQA incentive was not necessary. Therefore, USAFE's October 9, 2007, decision denying the claimant's request for LQA is not arbitrary, capricious, or unreasonable since it acted within the confines of well-

established LQA policy authorized by the DSSR and DoD Manual. 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.