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

Claimant: [name]

Organization: Headquarters, U.S. European Command
Stuttgart, Germany

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0006

/s/ Judith A. Davis for

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

9/27/2012

Date

The claimant is a Federal civilian employee of the U.S. European Command (USEUCOM) in Stuttgart, Germany. He requests the U.S. Office of Personnel Management (OPM) review "an arbitrary denial" of his eligibility for living quarters allowance (LQA). We received the claim on December 13, 2011, and the agency administrative report (AAR) on April 2, 2012. For the reasons discussed herein, the claim is denied.

The claimant was originally recruited in the United States by the private U.S. firm Lockheed Martin for employment in Stuttgart, Germany. His employment with Lockheed Martin commenced on November 2, 2009. The claimant subsequently entered the Federal service on October 11, 2011, with Headquarters, USEUCOM, in Stuttgart, Germany. The claimant states: "At the time of my hiring I was told that I would be eligible for LQA if I could provide documentary evidence of four conditions of Section 031.12 of the DSSR [Department of State Standardized Regulations]."

The agency states the claimant is ineligible for LQA. Specifically, they state he was considered an employee recruited outside the United States, also known as a local hire, and his employment with Lockheed Martin did not provide for his return transportation back to the United States.

The claimant counters that as part of his employment with Lockheed Martin, he was fully entitled to all of the benefits detailed in the Lockheed Martin Compensation Plan, EUCOM Network Warfare Center Cyber Operations Support; Stuttgart, Germany, SOFA – TESA, LM IS&GS – Defense/Operational Services, N09-00260, which included "repatriation expenses."

The DSSR sets forth basic eligibility criteria for the granting of LQA to U.S. Government civilian employees. All individuals appointed to the Federal service overseas in appropriated fund positions are subject to these criteria in determining their LQA eligibility. Although an agency may offer LQA as a potential benefit for any individual position, the employee selected for the position must be determined eligible before this allowance may be granted. This applies equally to former contractors selected for civilian positions as for any other individuals appointed to the Federal service.

DSSR section 031.12 states LQA may be granted to employees recruited outside the United States provided that:

a. the employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his/her employment by the United States Government; and
b. prior to appointment, the employee was recruited in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States, by:

   (1) the United States Government, including its Armed Forces;

   (2) a United States firm, organization, or interest;

   (3) an international organization in which the United States Government participates; or

> (4) a foreign government
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> and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States; or

In its description of circumstances surrounding an employee's recruitment and employment occurring immediately "prior to appointment" as the basis for LQA eligibility, the DSSR makes clear that eligibility is established at the time of appointment; i.e., based on the circumstances existing prior to the employee's initial appointment to the Federal service. Within this context, the claimant did not meet basic LQA eligibility criteria under DSSR section 031.12(b) at the time of his appointment to the Federal service on October 11, 2011. Prior to his appointment, he had been recruited in the United States by the U.S. firm Lockheed Martin and had been in continuous employment by that firm. However, his employment with Lockheed Martin was not "under conditions which provided for his return transportation to the United States" or one of its enumerated territories or possessions.

The claimant submitted a letter dated October 29, 2009, from Lockheed Martin offering him an Information Systems Analyst Manager position. Attached to the offer letter was an "Appendix," which identified the claimant by name. Among other benefits unrelated to this claim, the "Appendix" stated the claimant was entitled to "Relocation – actual expenses up to $25,000." We interpret this particular reference to mean the claimant's relocation expenses from the U.S. to Germany.

The claimant also submitted the aforementioned Lockheed Martin Compensation Plan which describes their benefits in further detail, including "repatriation expenses:"

> Lockheed Martin agrees to reimburse up to $25,000 for expenses related to relocation to include the shipment of household goods and travel related expenses at the end of the employee's employment contract. Lockheed Martin will arrange and pay the lowest authorized airfare to the country of assignment. No shipment of pets offered.
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> Upon arrival in Home country, 1 days full per diem at home city and rental car reimbursement for one month will be provided.

The claimant's employment with Lockheed Martin commenced on November 2, 2009. However, the Compensation Plan's cover sheet, titled "Contract Practices - Compensation Plan Review," was signed and approved by the "Sr. Mgr, Government Compliance" on September 22, 2010, almost one year after the claimant was hired. The Compensation Plan itself was signed and approved by the "Program Manager" on October 30, 2009, but was not subsequently signed and approved by the "VP, Human Resources Business Unit" until May 10, 2010, and the "IS & GS Compensation Director" on June 9, 2010, also well after the claimant's hiring. This Compensation Plan does not identify the claimant by name as a covered employee, and it had not yet been approved and therefore was not in effect for purposes of the claimant's employment when he began working for Lockheed Martin. Further, the promise of a "repatriation" payment does not ensure return transportation to the United States or one of the enumerated locations with

the specificity required by DSSR section 031.12(b), but rather stipulates that Lockheed Martin will pay airfare to the "country of assignment" and subsequent expenses in the "home country." The ambiguity in verbiage leaves Lockheed Martin with the option to send the employee to any requested location, not specifically the United States, which would have rendered the claimant ineligible for LQA under DSSR section 031.12(b).

In support of his LQA claim, the claimant submitted an email, dated August 16, 2011, from a Cartus representative "sent to coordinate [his] repatriation at the end of the contract." Cartus is a supplier of travel services to Federal government agencies. Although the email from Cartus designated the claimant's home of record as Colorado Springs, Colorado, this does not serve as enforceable documentation of any relocation benefits that may have been provided by the claimant's employer, Lockheed Martin.

The claimant also submitted a letter dated September 30, 2011, signed by a Senior Program Manager and a Senior Operations and Engineering Manager for Lockheed Martin stating: "As part of his employment with Lockheed Martin [the claimant] is fully entitled to all the benefits and Repatriation Expenses detailed in the Lockheed Martin Compensation Plan." A letter from Lockheed Martin program managers, who may or may not be authorized to speak for the firm regarding its employee benefit obligations and purporting benefits that were not specifically provided by the firm at the time of hiring, does not establish that Lockheed Martin was bound under the agreement to provide return transportation to the United States and is not acceptable for purposes of LQA determination.

Department of Defense Instruction 1400.25, Volume 1250, Overseas Allowances and Differentials, states the Department of Defense policy that overseas allowances and differentials 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.

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). Since an agency decision made in accordance with established regulations as is evident in the present case cannot be considered arbitrary, capricious, or unreasonable, there is no basis upon which to reverse the decision.

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.