

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

**Claimant:** [name]

**Organization:** Department of the Air Force  
Ramstein Air Base, Germany

**Claim:** Living quarters allowance

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 13-0017

/s/ Linda Kazinetz for

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

2/20/14

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Date

The claimant is a Federal civilian employee of the Department of the Air Force (AF) at Ramstein Air Base, Germany. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of living quarters allowance (LQA). We received the claim on March 15, 2013, and the agency administrative report on April 23, 2013. For the reasons discussed herein, the claim is denied.

The claimant retired from military service at Ramstein effective July 1, 2011, accepted contractor employment at Ramstein effective October 2, 2011, and was appointed to his current position effective May 21, 2012. The agency denied his request for LQA for the stated reason that he worked for more than one employer in the overseas area before his appointment to the Federal service. He states he "did not use [his] military retirement move entitlement and the contract position provided both LQA and a Transportation Agreement." He presents no further rationale for his LQA eligibility beyond stating that he is "personally aware of individuals on Ramstein Air Base who were hired under the exact same circumstances who receive LQA" and that "the rules are not equally/consistently applied" between the Department of the Army (DA) and AF, and he requests "OPM make a determination regarding [his] claim for LQA."

The DSSR set forth basic eligibility criteria for the granting of LQA. Section 031.11 states LQA may be granted to employees recruited in the United States:

Quarters allowances prescribed in Chapter 100 may be granted to employees who were recruited by the employing government agency in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the possessions of the United States.

The claimant does not meet LQA eligibility criteria under DSSR section 031.11 because he was residing in Germany when he was recruited for his current position.

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

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

Prior to appointment, the claimant was employed by the U.S. firm Booz Allen Hamilton, as permitted under DSSR section 031.12b(2). However, this firm had not recruited him in the United States or one of the enumerated territories or possessions but rather in Germany where he was residing following his military retirement. The claimant did not provide documentation to support his assertion that his employment with Booz Allen Hamilton provided return transportation meeting the conditions under section 031.12b.<sup>1</sup> However, this would have no bearing on our determination given that they had not recruited him in the United States. Therefore, he does not meet LQA eligibility criteria under DSSR section 031.12b that prior to appointment, he was *recruited in the United States* by one of the listed employers, and was in substantially continuous employment by such employer (singular) under conditions providing for his return transportation back to the United States by that employer.<sup>2</sup> Accordingly, his claim is denied. *See* OPM File Numbers 08-0009, 09-0021, 10-0018, 10-0037, 11-0005, 11-0012, 12-0019, and 12-0020 at <http://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/decisions/>.

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 limited to deciding if the governing statutes and regulations have been properly interpreted and applied in determining the pay and/or benefits which an employee may be entitled to or granted. Therefore, the claimant's assertions of inequity in the interpretation of the governing regulations by AF or inconsistency in their interpretation by AF and DA have no bearing on our claim determination.

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). As discussed previously, the claimant has failed to do so. 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.

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<sup>1</sup> Whether the claimant's employment with this firm provided LQA has no bearing on his LQA eligibility under the DSSR for a Federal service position.

<sup>2</sup> An employee's retention of military return transportation does not substitute for the provision of such by a separate qualifying employer which recruited him or her in the United States.

This settlement is final. No further administrative review is available within the OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.