

Date: March 27, 2006

Matter of: [name]

File Number: 05-0005

OPM Contact: Robert D. Hendler

The claimant is a former employee of the Department of the Navy in Rota, Spain, who retired from the Federal Service in April 2004. He requests the Office of Personnel Management (OPM) reconsider his agency's decision regarding a retroactive increase in his personally-owned quarters (POQ) allowance for the period June 2, 1999, to July 10, 2002. We received the claim on June 10, 2004, and the claim administrative report on September 29, 2005. For the reasons discussed herein, the claim is denied.

The claimant was authorized payment of a POQ allowance for the period July 10, 1992, to July 10, 2002, while employed by the [department], U.S. Naval Station, in Rota, Spain. This allowance was based on his having acquired interest in a condominium apartment which was owned by his wife at the time of their marriage on June 6, 1992. He later purchased a larger home within daily commuting distance of his post for the stated reason that the original home had become too small for him, his wife, and his stepdaughter. They commenced occupancy of the new home on June 2, 1999.

The claimant states that before he purchased the new home, he was informed by a staff member in the Naval Station's human resources (HR) office that his POQ allowance could be recalculated based on the higher purchase price of the new home. However, his subsequent request for this recalculation was denied; and he continued to receive his POQ allowance based on his continued ownership of the original home. The claimant also states that in February 2003, he was again advised by a staff member of the HR office that that there were circumstances in which an employee could "trade up" and draw a POQ allowance on a higher-valued home as long as the total entitlement did not exceed ten years. He requests payment for the difference in the POQ allowance that he actually received based on the purchase price of the original home and the increased POQ allowance that he believes should have been paid for the period June 2, 1999, to July 10, 2002, based on the purchase price of the new home.

On May 31, 2004, the Department of the Navy denied the claimant's request for a retroactive increase in his POQ allowance. The agency wrote that, in the absence of any specific statutory authority, additional POQ allowance cannot be paid for the purchase of a larger home within a local commuting area.

Section 136a of the Department of State Standardized Regulations (DSSR) states that:

When quarters occupied by an employee are owned by the employee or the spouse, or both, an amount up to 10 percent of original purchase price (converted to U.S. dollars at original exchange rate) of such quarters shall be considered the annual rate of his/her estimated expenses for rent. Only the expenses for heat, light, fuel (including gas and electricity), water, garbage and trash disposal and in rare cases land rent, may be added to determine the amount of the employee's quarters allowance ....

Department of Defense Manual 1400.25-M specifies that 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.

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, there is no specific statutory authority to increase an employee's POQ allowance for any expenses other than those specified in the DSSR above. A POQ allowance is intended as a recruitment incentive and cannot be later increased to subsidize the purchase of a higher priced home. The agency's action is not arbitrary, capricious, or unreasonable. It is also well settled that the erroneous advice of agency officials may not form the basis for the payment of a claim otherwise barred by law. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990). Accordingly, the claim for a retroactive increase in POQ allowance 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.