

Date: March 24, 2004  
Matter of: [name]  
File Number: 03-0005  
OPM Contact: Deborah Y. McKissick

The claimant is employed as a [position] with the Department of the Army, and assigned to the Seoul Civilian Personnel Advisory Center (CPAC), part of the 34<sup>th</sup> Support Group, Yongsan Army Garrison, in Seoul Korea. He is requesting living quarters allowance (LQA) for his tour in Seoul, Korea. He also requests that OPM direct the Housing Office to discontinue their Fair Market Value (FMV) practice with Federal civilians until changes are made in the FMV program. OPM received the claim on November 1, 2002, the agency administrative report on May 16, 2003, and the claimant's response to the report on September 9, 2003. For the reasons discussed herein, the claim is denied.

On September 8, 2001, the claimant signed a lease for 24 months, starting September 23, 2001, and ending on September 22, 2003. The lease for Won (Korean currency) 84,000,000 was to be paid to the landlord in advance. The claimant stated, "In accordance with Eighth US Army Pamphlet, 690-4, Section IV, paragraph 13b, ...employees are required to have their leases reviewed and approved by the local military housing office....Generally, the housing office is responsible for checking to make sure the agreement is legal and contains the military clause of being able to terminate the lease if the employee departs Seoul under government orders,... Recently, the housing office took on a mission to control the costs of housing and created the Fair Market Value (FMV) program. ...The housing office, based on this FMV program, allowed only Won 81,600,000, a difference of Won 2,400,000, that I had to pay out of my personal funds."

The agency administrative report states that, on September 14, 2001, the claimant submitted a claim for a lump sum advance LQA payment in the amount of Won 81,600,000 for the period from September 23, 2001 through September 22, 2003. The agency confirmed that Won 81,600,000 was approved for a lump sum advance LQA payment.

The agency referenced the Department of State Standardized Regulations (DSSR), section 113.3 as support of the agency's decision to approve advance payments of LQA of up to two years. Section 113.3 reads, "advance payment of living quarters allowance may be made in localities where local custom necessitates such advance payments for periods of at least 3 months and where the individual lessor requires the customary advance payment of rent."

The agency stated that, “local agency policy in Korea instructs employees “[a]fter locating and negotiating off-post permanent quarters, employees must submit a completed SF-1190, Foreign Allowances Application, Grant and Report, to the servicing Civilian Personnel Office with supporting documentation of expenses, including lease or rental agreements. All lease or rental agreements must be approved by the housing office.” See Eighth U.S. Army Pamphlet, 690-4 (EUSA Pam 690-4).

In addition, the Overseas Differentials and Allowances Act, Pub. L. 86-707 74 Stat. 793, 794 (Sept. 6, 1960), as amended and codified at 5 U.S.C. §§ 5922-5924, provides that, under regulations prescribed by the President, LQAs may be paid to federal employees in foreign areas. The President, by executive order, delegated this authority to the Secretary of State, who issued Standardized Regulations concerning eligibility to receive, and payment of, LQAs. Section 013 of the DSSR further delegates to the heads of Federal agencies the authority to grant LQAs to agency employees. Section 013 of the DSSR specifies that the head of an agency may grant quarters allowances and issue further implementing regulations, as he or she may deem necessary for the guidance of the agency in granting such allowances. The DoD has issued further implementing regulations through its requirements for DoD civilian employment overseas, DoD 1400.25-M, CPM 592.

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. 378 (1979).

Where 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, Mar. 15, 1982. According to the agency, “authorizing reimbursement for rental expenses to [the claimant] in excess of the known market value of the apartment would constitute a waste and misuse of government resources.” The documents submitted by the claimant provide evidence that the claimant was aware that the agency had denied his request for advance LQA payment for any amount above Won 81,600,000. In view of the permissive rather than mandatory language in the applicable statutes and regulations, as noted above, the degree of discretion that heads of agencies have in determining whether to authorize these allowances, and the facts of this claim, we cannot say the agency's application of the DoD regulation in this case was arbitrary or capricious. Accordingly, the claim 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.