



United States  
**Office of  
Personnel Management**

Washington, DC 20415

JUN 15 2005

Date:

Matter of: [name]

File Number: 03-0025

OPM Contact: Robert D. Hendler

The claimant requests reconsideration of his agency's decision regarding his entitlement to receive a living quarters allowance (LQA) from February 24, 2003, to June 30, 2003. We received the claim on May 9, 2003, and the agency administrative report on December 10, 2004. For the reasons discussed herein, the claim is denied.

The claimant was locally hired overseas for a [position] with the Department of the Army, [agency component]. He wrote that when he applied for the [position], his legal residence was Rowlett, Texas. He stated that his permanent change of duty station (PCS) orders listed his Texas address as his actual residence. He said he paid school taxes, and held a mortgage as proof of his Texas residence. However, he had been working as a contractor for ITT Industries, an American-owned company, in Kuwait for five months prior to beginning employment with the Department of the Army.

Prior to the claimant's appointment, his prospective commander wrote to the agency personnel chief, requesting an exception to U.S. Army in Europe (USAEUR) Regulation 690-500.592 dated October 17, 2002, thus permitting the claimant to receive LQA upon appointment. The agency personnel office denied the request, advising that payment to local hires, i.e., employees who are residing in the country in which a position is located or in any other country outside the United States, is only authorized if they are recruited for pre-identified hard-to-fill positions and meet the eligibility criteria of the Department of State Standardized Regulations (DSSR). They advised the prospective commander that the claimant did not meet the requirements since he was recruited as a local overseas hire into a position that was not pre-identified as hard-to-fill.

On February 24, 2003, the Department of the Army appointed the claimant to the full-time permanent [position] in Mannheim, Germany. He completed a request for LQA, which was disapproved.

The agency administrative report indicated that USAEUR Regulation 690-500.592 was revised on June 20, 2003, and effective July 1, 2003. This expanded the eligibility for certain local hires to receive LQA. The claimant became eligible based on the revised

language and was authorized LQA effective July 1, 2003. The revised regulation was not retroactive, and the agency did not allow retroactive adjustments for employees who became eligible for LQA on July 1, 2003.

Section 031.12 of the Department of State Standardized Regulations (DSSR) provides that living quarters allowances "may" be granted to employees recruited outside the United States, when:

- the employee's actual place of residence in the place to which the quarters allowance applied at the time of receipt shall be fairly attributable to his employment by the United States Government; and
- prior to appointment, the employee was recruited in the United States.... by the United States Government, including its armed forces, a United States firm, organization, or interest... and has been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States . . .

USAEUR Regulation 690-500.592(5)(a)(2) dated October 17, 2002, specifies that LQA is authorized for Federal civilian employees in grades GS-9 and above, who are transferring to the European region from another overseas Government activity or agency without a break in service. Grade restrictions do not apply to Federal civilian employees transferring to positions identified as hard-to-fill.

The revised USAEUR Regulation 690-500.592(5)(a)(2) dated June 20, 2003, specifies that local hire appointments to positions in grades GS-9 and above must meet the following criteria:

- Before being appointed, the employee was recruited in the United States by the U.S. Government, including its armed forces; a U.S. firm, organization, or interest; or an international organization in which the U.S. Government takes part.
- The employee has been in substantially continuous employment by one of the employers listed above under conditions that provide for the employee's return transportation to the United States.

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). The DSSR does not preclude an agency from issuing more restrictive regulations to meet its mission objectives. 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 F. Carrigan*, 60 Comp. Gen. 243,247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979).

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. At the time of the claimant's appointment to a civilian position with the Department of the Army, he did

not meet the requirements outlined in the then controlling USAEUR Regulation 690-500.592, dated October 17, 2002, for receiving an LQA. He was recruited as a local overseas hire into a position that was not pre-identified as hard-to-fill. The claimant's continued ownership of his Texas residence does not affect this determination. Therefore, the claimant is not entitled to an LQA from February 24, 2003, to June 30, 2003. The Department of the Army's decision of April 10, 2003, regarding the claimant's entitlement to an LQA is not arbitrary, capricious, or unreasonable. 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.