

**Compensation Claim Decision**  
**Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** HQ 266th Finance Command  
[agency component]  
Baumholder, Germany

**Claim:** Request for Living Quarters Allowance

**Agency decision:** Denied

**OPM decision:** Denied

**OPM contact:** Robert D. Hendler

**OPM file number:** 05-0031

/s/ Judith A. Davis for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability  
Human Capital Leadership  
and Merit System Accountability

4/11/2006

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Date

The claimant is employed in a [position] hired locally overseas by the Department of the Army. The claimant is requesting a reconsideration of his agency's decision regarding his eligibility to receive a living quarters allowance (LQA). The Office of Personnel Management (OPM) received the compensation claim on February 7, 2005, and the agency administrative report on September 27, 2005. For the reasons discussed herein, the claim is denied.

The claimant asserts that he should be treated as a United States (U.S.) hire at the time of his job offer and acceptance and, thus, eligible for LQA. He provides evidence of that residency, e.g., rental information on his New Mexico house, household goods shipment forms. He states he was on leave without pay (LWOP) to visit his sister-in-law in Belgium who had cancer and was officially in a tourist status at the time of his position appointment because he had not yet registered in Belgium as a resident. The claimant indicates that he purchased a one-way ticket for travel to Belgium because of the cost and return travel flexibility it allowed.

The record shows that while employed as a Federal civilian employee by the Air Combat Command at Holloman Air Force Base, New Mexico, he applied for a position with the Headquarters 266<sup>th</sup> Finance Command, 8<sup>th</sup> Finance Battalion, located in Shape, Belgium. His resume, dated April 24, 2004, indicates his permanent address as Belgium and includes both a Belgium and a U.S. phone number as home phone numbers. Effective June 1, 2004, the claimant was placed on LWOP not to exceed July 16, 2004, by his agency. The claimant left the U.S. on June 1, 2004, and arrived in Belgium the next day. He was offered his current position on June 9, 2004, and accepted it while in Europe.

The administrative report states the agency initially considered the claimant for the position as a VEOA eligible residing in Europe. When the formal job offer was made, the agency verified that the claimant was physically residing in Belgium. It also determined he was not VEOA eligible. The agency appointed the claimant, effective June 27, 2004, as a locally-hired noncompetitive transfer eligible on LWOP. The initial SF-50 appointing document inaccurately reflected home leave accrual eligibility and was subsequently corrected.

The claimant's request for LQA was denied by the European Region Civilian Personnel Operations Center, Department of the Army, on January 26, 2005. The agency denied the request on the basis that the claimant's resume identified a local Belgium permanent address and the claimant received a formal job offer and accepted the position while residing in Belgium. He was not considered an employee recruited from the U.S.

Conditions for LQA are set forth in USAREUR Regulation 690-592(5)(b), dated June 20, 2003, which was the governing regulation on the date of the claimant's hire. It specifies that LQA will be granted for the following types of appropriated fund employees:

- (1) U.S. hires in grades GS-9 (or equivalent), WG-11, WL-9, WS-5, and above.
- (2) Local-hire appointments to positions in grades GS-9 (or equivalent), WG-11, WL-9, WS-5, and above. To be eligible they must meet two criteria:

- (a) Before being appointed, the employee was recruited in the United States by the U.S. Government, a U.S. firm, organization, or interest; or an international organization in which the U.S. Government takes a part.
  - (b) The employee has been in substantially continuous employment by one of the employers in (a) above under conditions that provided for the employee's return transportation to the U.S.
- (3) Federal civilian employees selected for positions in grades GS-9 (or equivalent), WG-11, WL-9, WS-5, and above who meet *all* (emphasis added) of the following criteria:
- (a) Are transferring to the European region from another overseas Government activity or agency without a break in service.
  - (b) Meet basic eligibility criteria of Department of State Standardized Regulations, section 031.11 or 031.12. Section 031.11 specifies that LQA may be granted to employees who were recruited by the employing Government agency in the U.S.... Section 031.12 specifies the LQA may be granted to employees recruited outside the U.S., 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 U.S. Government; and prior to employment, the employee was recruited in the U.S.
  - (c) Were already receiving or eligible to receive LQA at the time of selection.

Generally, LQA is intended to be a recruitment incentive for U.S. citizen civilian employees, living in the U.S., to accept Federal employment in a foreign area. A U.S. hire is defined as a person who permanently resided in the United States, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the former Canal Zone, or a possession of the United States *from the time he or she applied for employment* (emphasis added) until and including the date he or she accepted a formal job offer. For the purpose of determining local-hire status, physical residence is the actual physical presence of an applicant overseas for more than tourist purposes regardless of the applicant's home of record or legal residence.

The claimant states that he supplied a Belgium address and phone number on both his resume and on his in-processing paperwork for his position based on guidance from the agency's human resources staff and identifies mistakes the agency made in hiring him. However, it is well established that a claim may not be granted based on misinformation that may have been provided by Federal employees. *See Richmond v. OPM*, 496 U.S. 414, 425-426 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed Cir. 1997); and 60 Comp. Gen. 417 (1981). *Carl H.L. Barksdale*, B-219505 (November 29, 1985); *E. Paul Tischer, M.D.*, 61 Comp.Gen. 292 (1982).

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. 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. In this case, under USAREUR Regulation 690-500-592(5)(a), the claimant was not a U.S. hire because he identified Belgium as his permanent residency in his resume for the subject position, was offered and accepted the appointment while residing in Belgium, and verified that residency at the time of appointment. He was offered and accepted the position as a local hire at the time of his appointment. The Department of the Army's decision of January 26, 2005, regarding the claimant's entitlement to a LQA is not arbitrary, capricious, or unreasonable. Accordingly, the claim for an LQA is denied.

The claimant makes various statements relating to his agency and states, "I am retired military and disabled and feel that I am being discriminated against." OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. §3702 which is narrow and restricted to those matters. In adjudicating this claim, our only concern is to make our own independent decision about eligibility for LQA by comparing the facts in the case to criteria in Federal regulations and other Federal guidelines. Therefore, we have considered the claimant's statements only insofar as they are relevant to making that comparison.

This settlement is final. No further administrative review is available within OPM. 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.