



United States
**Office of
Personnel Management**

Washington, DC 20415

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

Claimant: [name]

Organization: [agency component]
Headquarters, 266th Finance Command
U.S. Army in Europe
Schwetzingen, Germany

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 05-0050

/s/ Judith A. Davis for

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

6/26/2006

Date

The claimant is a former military member hired overseas. He occupies a [position] in [agency component], Headquarters, 266th Finance Command, U.S. Army in Europe (USAREUR), Department of the Army (DA), in Schwetzingen, Germany. The claimant requests reconsideration of his agency's decision concerning his eligibility for living quarters allowance (LQA) for the period from September 30, 2002, to July 1, 2003. The U.S. Office of Personnel Management (OPM) received the compensation claim on March 17, 2005, and the agency administrative report on November 16, 2005. For the reasons discussed herein, the claim is denied.

The claimant believes he is entitled to LQA during the cited time period based on his reading of Army in Europe (AE) Regulation 600-500.592, dated October 17, 2002, and Department of State Standardized Regulations (DSSR), because he finds no specification within either which make him ineligible for LQA.

The claimant states: "During my in-processing I was informed by the Civilian Personnel Office in Heidelberg, Germany....that I did not qualify for Living Quarters Allowance (LQA) due to the fact that I was a local hire based on criteria outlined in Army in Europe Regulation 690-500.592." He further states he reviewed AE Regulation 690-500.592, dated October 17, 2002, and finding no basis for his denial of LQA, requested the agency reconsider its LQA decision on January 13, 2003. The agency responded on February 3, 2003, informing him he was not eligible for LQA at the time he accepted his position because he was a local hire.

The claimant again requested his agency reconsider the decision to deny him LQA by letter, dated July 1, 2004, to the USAREUR, Civilian Personnel Operations Center (CPOC) in which he specifically cites AE Regulation 690-500.592, dated October 17, 2002, sections (5)(a)(2)(a, b and c) and DSSR, section 031-12 and provides rationale supporting his belief that he met this criteria at the time he was hired. The CPOC responded by letter, dated February 7, 2005, informing the claimant he was not entitled to LQA because he was hired locally for a position which had not been identified as hard-to-fill (Quality Assurance Officer, GS-501-11), and cited USAREUR Regulation 690-500.592 (5)(b), dated November 8, 2001, as the pertinent regulation in effect at the time of his appointment. The CPOC letter also informed the claimant he had been granted LQA, effective July 1, 2003, based on the issuance of new criteria provided under AE Regulation 690-500.592, dated June 20, 2003, which became effective July 1, 2003.

In his March 7, 2005, letter to OPM, the claimant refers to a DA memorandum dated December 30, 2003, subject: Approval of Appointments of Retired Members of the Armed Forces Within 180 days After Retirement, as supporting his belief that his entitlement to LQA should not have been terminated the day after he retired from active duty with the U.S. Army in Germany and began work as a Federal civilian employee.

The claimant makes statements regarding the manner in which the agency handled his LQA requests. 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.

It is Department of Defense (DoD) policy, articulated in DoD Directive 1400.25, that overseas allowances, including LQA, and differentials (except the post allowance) are not automatic salary supplements; nor are they entitlements. They are specifically intended to be recruitment incentives for U.S. citizen civilian employees living in the United States to accept Federal employment in a foreign area. If a person is already living in the foreign area, that inducement is normally unnecessary.

Conditions for LQA are set forth in USAREUR Regulation 690-500-592, (5)(a)(2)(a, b and c) and (5)(b), dated November 8, 2001, and effective December 3, 2001, which was the governing regulation for LQA eligibility on the date of the claimant's hire. Section 5 (Eligibility), specifies:

(5)(a) LQA Authorization. LQA is authorized for the following types of appropriated-fund employees:

(2) Federal civilian employees in grades GS-9 (or equivalent), WG-11, WL-9, WS-5, and above **who—**

- (a) Are transferring to USAREUR from another overseas Government activity or agency without a break in service. Grade restrictions do not apply to Federal civilian employees transferring to USAREUR positions identified as hard-to-fill.
- (b) Meet basic eligibility criteria of DSSR, section 031.11 or 031.12
- (c) Were already receiving LQA at the time of selection.

(5)(b) Other Authorizations: LQA is authorized for **employees initially selected for hard-to-fill positions when they are “local hires”** and individuals hired from the United States who do not meet the 1-year residency requirement... This authorization may be granted only if LQA was authorized by the head of the funding activity at the time a personnel action was requested.

For the purpose of determining LQA eligibility, the governing regulation for LQA eligibility on the date of the claimant's hire defines a **local hire** as “a person hired to fill a position who is residing in the country in which the position is located, or in any other country outside the United States, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the former Canal Zone, or a possession of the United States. Local hires include, but are not limited to, locally separated military personnel....”

The record shows the claimant was a soldier on active duty with the U.S. Army in Germany until his retirement on September 30, 2002, and on that same day was appointed as a Federal civilian employee to a position in Germany which had not been designated as a hard-to-fill position. The claimant does not meet the criteria provided for either (5)(a) or (5)(b) above. At the time of his appointment he was neither a Federal civilian employee transferring from one overseas Government activity or agency to another, nor was he a local hire selected for a designated hard-to-fill position.

The claimant states he was not given a specific regulatory paragraph or any relevant citation providing the reason for his LQA ineligibility. However, the agency's memorandum, dated February 7, 2005, specifically cites Section (5)(b) of the November 2001, USAREUR Regulation 690-500.592 and informs him he was a local hire, but not eligible for LQA because his position had not been identified as hard-to-fill.

The claimant refers to AE Regulation 690-500-592, dated October 17, 2002, as supporting his belief that he is eligible for LQA. As previously stated, USAREUR regulation 690-500-592 (5)(a and b), dated November 8, 2001 was the governing regulation for LQA eligibility on the date of the claimant's hire and therefore provides the criteria by which this decision must be rendered.

The claimant refers to a DA memorandum dated December 30, 2003, subject: Approval of Appointments of Retired Members of the Armed Forces Within 180 days After Retirement. This memorandum was issued 15 months after the claimant's appointment, addresses issues concerning the appointment of retired members of the U.S. armed forces within 180 days of their retirements, and establishes associated reporting requirements. The memorandum has no bearing whatsoever on eligibility for LQA.

The statutory and regulatory languages are permissive and give agency heads considerable discretion in determining whether to grant LQA 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. The DA decision of February 7, 2005, regarding the claimant's entitlement to a LQA adhered to controlling regulations in force at that time and 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 U.S. Court.