

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

Claimant: [name]

Organization: [agency component]
Department of the Army
Wiesbaden, Germany

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 06-0034

/s/ Robert D. Hendler

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

March 5, 2007

Date

The claimant is a former military member hired overseas and currently employed in a [GS-9] position with the [agency component], United States Army, Europe (USAREUR), in Wiesbaden, Germany. He requests reconsideration of his agency's decision finding him ineligible to receive a living quarters allowance (LQA) and seeks retroactivity of the LQA to June 05, 2000, the date of his most recent Federal appointment. The Office of Personnel Management (OPM) received the compensation claim on February 24, 2004, and additional information from the claimant on June 28, 2006. For the reasons discussed herein, the claim is denied.

The claimant makes various statements relating to the handling of his claim and the injustice of the agency's decision. He states that he and his family have suffered severe financial, mental, and social hardship as a result of his situation. 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 responsibility under OPM's authority in these matters is to make an independent decision about eligibility for premium pay by applying Federal law, regulations, and other Federal guidelines to the facts in the case. Therefore, we have considered the claimant's statements only insofar as they are relevant to making that comparison. Section 3702 does not include any authority to settle claims based on financial hardship.

The claimant's rationale references the unusual circumstances of his situation and states he had been continuously employed with the Federal government and incurred a nine months break in service, resulting in the loss of LQA, through no fault of his own. Prior to the break in service, he received LQA while employed in his previous position with DA in Germany. The claimant indicates that without the break in service, the grandfather clause in the USAREUR LQA regulation under which he was originally hired would have allowed him to continue receiving LQA even though the position to which he was subsequently appointed was not designated as "hard-to-fill" and did not make him eligible for the allowance.

The claimant separated from active military duty in Wiesbaden, Germany, on December 1, 1993. From November 1994 until August 1999, he was employed in various temporary Federal civilian positions within USAREUR. While employed in a temporary position, receiving LQA, in Wiesbaden, Germany, the claimant was arrested in November 1998 by the German authorities and detained in pre-trial confinement for 13 months. He was later acquitted of all charges. However, during that time period, in August 1999, the claimant's appointment expired, the claimant was terminated, and his LQA ceased. The claimant provides a statement from his former supervisor, the hiring authority for his organization, stating she could not secure the claimant's continued employment because of his inappropriate incarceration. He later received a term appointment on June 5, 2000, to a [GS-7] position with the [agency component], DA, in Bad Kreuznach, Germany, and was not granted LQA.

The Acting Director of Civilian Personnel, USAREUR, denied the claimant's LQA request on July 27, 2001, based on the determination that the claimant did not meet eligibility requirements as provided under USAREUR Regulation 690-500.592, dated

March 1, 1999, which was in effect at the time of June 5, 2000, appointment. The agency found the claimant was recruited as a local overseas hire into a position that was not pre-identified as “hard-to-fill,” as required by the regulation for granting LQA.

Entitlements to LQAs are governed by the Department of State Standardized Regulations (DSSR) which are the overriding regulations for allowances and benefits available to all United States Government civilians assigned to foreign areas. The DSSR delegates, in Section 013, to the heads of Federal agencies the authority to grant LQAs to agency employees and specify that the head of an agency “may” grant quarters allowances and issue further implementing regulations as he or she may deem necessary.

USAREUR Regulation 690-500-592(5)(b), dated March 1, 1999, restricts payment of LQA to only those local hires who are selected for pre-identified “hard-to-fill” positions and who meet eligibility criteria of DSSR, section 031.12b. This section of the DSSR specifies one of two requirements for granting LQA for local hires:

...prior to appointment, the employee was recruited in the United States,...by the United States Government, including its Armed Forces,...and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States....

Part 5(f) of the USAREUR LQA regulation also provides a grandfather provision for locally hired employees who were receiving LQA on June 2, 1998, and had met the eligibility criteria for it at that time, but did not meet the criteria of the 1999 regulation. Under this provision, employees would continue to have a LQA as long as they remained employed, without a break in service of more than three days, in a position subject to the USAREUR LQA regulation.

The claimant did not meet either of the applicable USAREUR criteria when he was re-appointed in 2000 to Federal service. He was not hired into an identified “hard-to-fill” position and he had a break in service of more than three days, from August 16, 1999, to June 5, 2000.

The Department of Defense (DoD) Civilian Personnel Manual, 1400.25-M, specifies 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. If a person is already living in the foreign area, that inducement is normally unnecessary. The DoD Manual also indicates individuals shall not automatically be granted LQA benefits because they meet eligibility requirements.

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 the circumstances justify such action, and the

agency's action will not be questioned unless it is determined 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 the controlling USAREUR Regulation 690-500-592(5)(a), the claimant was not eligible for LQA because he was not hired into a "hard-to-fill" position and had a break in service of over three days between Federal appointments. The Department of the Army's decision of July 27, 2001, regarding the claimant's entitlement to a LQA is not arbitrary, capricious, or unreasonable. Accordingly, the claim for 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.