

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

**Claimant:** [name]

**Organization:** [agency component]  
Ramstein Air Base, Germany

**Claim:** Living Quarters Allowance

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 09-0010

//Judith A. Davis for

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

7/17/2009

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Date

In his October 5, 2008, claim request, the claimant seeks review by the U.S. Office of Personnel Management (OPM) of the Department of the Air Force's denial of living quarters allowance (LQA) from March 25, 2002, through January 19, 2008, at the "with family" rate to include interest. Because the last page of the claim request appeared to indicate the claimant had received an agency denial, we requested an agency administrative report (AAR) which we received on March 17, 2009. For the reasons discussed herein, the claim is denied.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) requires an employing agency to have already reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. A claim must be submitted in writing and signed by the claimant (5 U.S.C. 3702(b)(1) and 5 CFR 178.102(a)). The burden of proof is on the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment (5 CFR 178.105). Based on the information submitted in the AAR, we find no record the claimant ever filed a signed, written claim with the agency or received a written agency-level decision. Therefore, we deny this claim as we do not have jurisdiction to adjudicate it as presently postured. However, based on the explanation of the agency's position presented in the AAR by the agency component authorized to render such a decision and in the interests of administrative efficiency, we make the following observations regarding the merits of the claim.

The claimant states he believes "Department of Defense (DoD) Manual 1400.25-M and Subchapter 1250 are invalid references as a means of turning down LQA." He states DoD Manual 1400.25-M and Subchapter 1250 seem to cancel out guidance in DoD Directive Number 1400.6, February 15, 1980, certified as current as of December 1, 2003, which the claimant states "has established that employees serving in overseas areas shall be granted differentials and allowances." The claimant asserts the provisions of DoD Manual 1400.25-M and Subchapter 1250 are "lower precedence guidance" than a directive, are attempting to be directive in nature as opposed to providing standard procedures, and should not be used as a basis to deny LQA. The claimant states 5 U.S.C. § 5923 was designed to authorize and instruct managers and commanders how to handle employees who are not provided with Government-owned or rented quarters. The claimant further states:

The phrase, "one or more of the following quarters allowances may be granted when applicable ..." does not mean to say that it's an option to approve/disapprove LQA. As I stated earlier, Title 5 U.S.C 5923 [sic] was designed to authorize it and gives managers and commanders the various situations for which to justify LQA. Therefore, the word "may" means to say that it is acceptable to use one or more of the options listed for authorizing LQA.

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Department of State Standardized Regulations, Section 130 is being directive, "An LQA grant to a newly appointed or transferred employee shall commence at his/her post as of one of the following dates, whichever is latest... c. the date of entrance on duty, if recruited locally;" which is my situation.

In contrast, the agency states LQA is not automatically a salary supplement attached to a position in a foreign area; it is intended to be a recruitment incentive, not an entitlement, for civilian employees living in the United States to accept overseas Federal employment. The agency further states that under the authority of section 013 of the Department of State Standardized Regulations (DSSR), the Civilian Personnel Flight (CPF) official acting for the appointing authority determines whether LQA is necessary as a recruitment incentive for the position and whether the applicant is eligible. The agency states if the incentive is not necessary, no further determination is required. At the time recruitment was initiated to fill the Transient Aircraft Contract Monitor, GS-1601-9, position for which the claimant was selected, the agency states recruitment was limited to the local commuting area and the vacancy announcement made clear no LQA was authorized. The agency states the claimant retired from active duty in the overseas area (Ramstein AB) on October 1, 2001, remained overseas, and was hired into a Federal civilian position on March 25, 2002. Therefore, the agency concludes the claimant was not recruited from the United States, and his LQA ineligibility determination made at the time of appointment was correct.

The claimant's interpretation of 5 U.S.C § 5923 mandating the granting of LQA is contrary to the language of the statute. LQA has been held to be mandatory once the employee has fulfilled the DSSR conditions which make the allowance applicable to his or her employment. *Adde v. United States*, 81 Fed.Cl. 415 (2008); *Boston v. United States*, 43 Fed. Cl. 220 (1999); *Zervas v. United States*, 28 Fed. Cl. 66 (1993). In other words, LQA has been held to be mandatory only after the DSSR conditions have been met. DSSR, Section 013, revised subsequent to those previously cited cases which evaluated the technical merits of plaintiffs' eligibility for LQA, provides broad authority to agency heads in granting or withholding LQA:

**\*013 Authority of Head of Agency** (effective 4/26/98)

When authorized by law, the head of an agency may defray official residence expenses for, and grant post differential, danger pay allowance, quarters, cost-of-living, representation allowances, compensatory time off at certain posts and advances of pay to an employee of his/her agency and require an accounting therefor, subject to the provisions of these regulations and the availability of funds. Within the scope of these regulations, the head of an agency may issue such further implementing regulations as he/she may deem necessary for the guidance of his/her agency with regard to the granting of and accounting for these payments

It is a cardinal principle of statutory construction that a statute should be construed such that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. *Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001). This principle also applies in interpreting regulations, including the DSSR. Thus, the head of an agency may deny LQA to employees otherwise eligible for LQA, including for financial considerations; i.e., "the availability of funds."

The claimant’s rationale relies on the second sentence of DoD Directive Number 1400.6, February 15, 1980, paragraph 3.8. However, this selective, incomplete citation overlooks DoD’s clear intention, in the first sentence of the paragraph, that the granting of differentials and allowances is not mandatory:

3.8. The Department of Defense recognizes that to obtain and retain the services of DoD civilian employees of the caliber required in its overseas areas, it **may** [emphasis added] be necessary to provide pay differentials and allowances over and above base salary. Therefore, within the provisions of applicable laws and regulations (DoD Instruction 1418.1, reference (f)), DoD civilian employees serving in overseas areas shall be granted differentials and allowances that are appropriate to their places of employment and their employment conditions.

Thus, contrary to the claimant’s rationale, the restrictions in DoD Manual 1400.25-M, Subchapter 1250, on granting overseas allowances and differentials (except the post allowance) comply with DoD policy established in DoD Directive Number 1400.6, February 15, 1980, paragraph 3.8. As stated in DoD Manual 1400.25-M, Subchapter 1250, overseas differentials and allowances are specifically intended to be recruitment incentives for United States 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 not necessary. Individuals authorized to grant overseas allowances and differentials are instructed to consider the recruitment need along with the expense prior to approval. The policy states individuals are not to be automatically granted these benefits simply because they meet eligibility requirements.

Headquarters United States Air Force in Europe LQA policy issued July 31, 1997, refers to DoD Manual 1400.25-M, Subchapter 1250, and states:

The payment of LQA will not be approved for positions normally recruited locally. LQA determinations will not be made on a mechanical grade level basis but will be based on whether LQA is necessary in the recruitment process. The final decision on which positions meet the criteria for LQA remains with the appointing authority.

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All recruitment and vacancy announcements should state whether LQA will or will not be granted. If a position is determined to be appropriate for LQA, the vacancy announcement should state that LQA will be subject to the employee meeting the eligibility criteria.

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Each Civilian Personnel Flight (CPF), acting for the appointing authority, will determine whether LQA is necessary as a recruitment incentive for the position and whether the applicant is eligible to receive LQA. When the incentive is not necessary, no further determination is required.

The record shows the claimant was a local hire subject to this Headquarters United States Air Force in Europe LQA policy. The vacancy announcement for the position to which he was appointed [position & announcement number] restricted the area of consideration to the Ramstein commuting area and specifically stated: "INDIVIDUALS HIRED LOCALLY WILL NOT BE AUTHORIZED LIVING QUARTERS ALLOWANCE (LQA), REGARDLESS OF ELIGIBILITY!"

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, the claimant was residing in Ramstein, Germany, when he applied and was hired for the position. No LQA recruitment incentive was offered as stated in the vacancy announcement. The agency's action conforms to its established LQA policy and is not arbitrary, capricious, or unreasonable. Accordingly, even if we had jurisdiction to review the claim, it would have been denied under these facts.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.