

**U.S. Office of Personnel Management  
Compensation Claim Decision  
Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** Department of the Army  
Stuttgart, Germany

**Claim:** Living quarters allowance

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 11-0037

//Judith A. Davis for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Merit System Audit and Compliance

7/11/2012

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Date

The claimant is a Federal civilian employee of the Department of the Army (Army) in Stuttgart, Germany. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of living quarters allowance (LQA). We received the claim on August 30, 2011, the agency administrative report (AAR) on January 10, 2012, and the claimant's response to the AAR on January 19, 2012, additional information subsequently provided by the claimant, and additional information provided by Army at our request. For the reasons discussed herein, the claim is denied.

The claimant was previously a Federal civilian employee with the U.S. Department of State (State) on a temporary assignment to the U.S. Embassy in Baghdad, Iraq. This assignment commenced on April 17, 2008, and was to be extended in one-year increments until January 31, 2012. This employment was temporary and did not convey eligibility for non-competitive conversion to career-conditional/career appointment. While in Baghdad, the claimant applied and was selected for his current position with Army, to which he was appointed on October 23, 2011, after he had been informed by Army that he was ineligible for LQA as a local hire whose presence in Baghdad was under temporary duty (TDY) orders.

The claimant asserts in his initial claim request that he should be considered a United States hire and thus eligible for LQA under the Department of State Standardized Regulations (DSSR) Section 031.11 because while in Baghdad, he lived and worked "within the United States Diplomatic Mission, which by international convention is considered an extension of the United States." He also asserts he is eligible for LQA under DSSR Section 031.12c, because his willingness to accept the TDY orders to Baghdad was a condition of his employment with State, otherwise he would have failed to "gain or retain employment." Alternatively, in his response to the AAR, he asserts he is eligible for LQA under DSSR Section 031.12b as a local hire because, prior to his employment by Army, he had been recruited in the United States by the U.S. Government, and had been in continuous employment by the U.S. Government with "TDY orders [that] provided for my return transportation back to the United States following the completion of the orders or my resignation."

The agency's rationale for denying the claimant LQA rests entirely on his status in Iraq on long-term TDY. As such, they determined he could not be considered a U.S. hire under Department of State Standardized Regulations (DSSR) Section 031.11 nor could he be considered as an "Employee Recruited Outside the U.S." under DSSR Section 031.12b. However, our review of the claimant's case revealed that the initial disqualifying circumstances derive from his earlier employment history, and our discussion is thus confined to the immediate considerations on which our denial of the claim is based.

The Department of State Standardized Regulations (DSSR) set forth basic eligibility criteria for the granting of LQA. Agency implementing guidance such as that contained in Department of Defense Instruction (DoDI) 1400.25-M, Volume 1250, and Army in Europe Regulation (AER) 690-500.592, may impose additional requirements, but may not be applied unless the employee has first met the basic DSSR eligibility criteria.

DSSR Section 031.11 states LQA may be granted to employees recruited in the United States:

Quarters allowances... may be granted to employees who were recruited by the

employing government agency in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the possessions of the United States.

DoDI 1400.25-M, Volume 1250, defines "U.S. hire" as:

A person who resided permanently in the United States, or the Northern Mariana Islands, from the time her or she applied for employment until and including the date he or she accepted a formal offer of employment.

The claimant does not meet basic LQA eligibility criteria under DSSR Section 031.11 or, by extension, the definition of "U.S. hire" in DoDI 1400.25-M, Volume 25, above. The claimant was residing in Baghdad when he was recruited by Army in 2011. He was not residing in the United States or one of the enumerated territories or possessions as required under Section 031.11. As the agency has noted, the claimant's characterization of U.S. Embassy grounds as "an extension of the United States" is a geopolitical construct within the context of diplomatic and political relations, and may not be imported to the clearly geospatial requirements of DSSR Section 031.11. The plain language of "recruited by the employing government agency in the United States" clearly connotes physical presence in the United States at the time of recruitment, and the specifically-defined extension of this criteria to include the United States territories and possessions reinforces the interpretation that Section 031.11 is intended as a geographically-based provision that does not encompass the many U.S. embassy compounds worldwide.

DSSR Section 031.12 states LQA may be granted to employees recruited outside the United States provided that:

- a. the employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his/her employment by the United States Government; and
- b. prior to appointment, the employee was recruited in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States, by:

(1) the United States Government, including its Armed Forces;

(2) a United States firm, organization, or interest;

(3) an international organization in which the United States Government participates; or

(4) a foreign government

and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States; or

- c. as a condition of employment by a government agency, the employee was required by that agency to move to another area, in cases specifically authorized by the head of agency.

The claimant does not meet basic LQA eligibility criteria under DSSR Section 031.12b because documentation contained in the record indicates that prior to his appointment to a career-conditional position by the Department of the Army, and contrary to assumptions made by the agency in their claim denial, the claimant had not been recruited in the United States by his previous employer, the Department of State.

Information provided by the claimant in his resume, supplemented by additional information provided by Army at our request, presents the following employment history: The claimant separated from the U.S. Coast Guard on May 31, 2004, in the United States. He was subsequently employed at the U.S. Embassy in Ankara, Turkey, by a private firm from July 2004 to July 2005, which segued into employment under a personal services contract from July 2005 to October 2007. His resume shows no employment from October 2007 to April 2008, when he was appointed by State to a Schedule A excepted appointment position effective April 17, 2008, for a position in the Iraq Transition-Ministry Liaison Office in Baghdad, Iraq. He remained in this position until his appointment by Army effective October 23, 2011.

On the "Questionnaire for Living Quarters Allowance (LQA) Determinations" completed and signed by the claimant on May 17, 2011, the claimant listed his most recent residences as follows:

May 6, 2008-Present	U.S. Embassy, Baghdad, Iraq
April 2008-May 2008	Falls Church, Virginia
July 2004-April 2008	U.S. Embassy, Ankara, Turkey

The issue relevant to the claimant's LQA eligibility under DSSR Section 031.12b is his place of residence when he was recruited by the Department of State in 2008. The claimant reported a brief period of U.S. residency from April 2008-May 2008. However, he was appointed to the State position on April 17, 2008, and the official travel orders for his subsequent travel to the work site in Baghdad were dated April 10, 2008, meaning the recruitment for that position had to have occurred at some time prior to the latter date. The travel orders show the claimant's address as "PSC 93, Box 5000, APO AE 09823," the overseas address of the U.S. Embassy in Turkey.

Other pre-employment documentation completed by the claimant and provided by Army at our request confirms he was recruited by State while he was residing in Turkey. One of these documents, Standard Form 144-Statement of Prior Federal Service, completed by the claimant in connection with his impending hiring by State, was signed and dated by the claimant on February 29, 2008. A second document, Civil Service Personnel-Civil Service and Iraq Jobs, All Applicant Data Report, which appears to be the claimant's application for the Schedule A position he later assumed under Announcement Number: IRMO-2208-0022, Position Title: OPA PRT [Office of Provincial Affairs, Provincial Reconstruction Team] Desk Officer (Iraq), is not dated, but in this application the claimant completed the block "Address 1" with "PSC 93, Box 5000" and left "Address 2" blank. Taken in concert, this documentation establishes that the

claimant was residing in Turkey when he was recruited by State and his brief U.S. residency in a close-in suburb of Washington, D.C., occurred after recruitment and was for the purpose of in-processing at the Department of State headquarters in Washington D.C. Therefore, the claimant does not meet the basic threshold under DSSR Section 031.12b of, prior to appointment by Army, having been *recruited in the United States* by one of the qualifying entities (which in this case was State).<sup>1</sup>

The claimant does not meet basic LQA eligibility criteria under DSSR Section 031.12c. This provision relates exclusively to individuals employed by an agency of the Federal Government who are required, as a condition of their (continued) employment by that agency, to accept reassignment to "another" area, meaning a different overseas area than the employee's current overseas posting. This does not apply to an individual's initial posting in an overseas area with the Federal Government, which interpretation by the claimant would nullify all of the preceding LQA criteria in sections 031.12 a and b.

In his response to the AAR, the claimant posits that he was provided housing and was thus receiving the equivalent of LQA in Baghdad, and that he "should be eligible for housing in my new assignment with the Department of the Army," which "does not provide housing to civilians working in Germany and instead provides LQA." We will only note that if the claimant had been receiving LQA in his previous position with State and met basic eligibility criteria in DSSR Section 031.11 or 031.12a and b, he would have been eligible for continuance of that allowance in his subsequent position with Army under AER 690-500.592. However, LQA eligibility cannot be conferred based on hypothetical circumstances. The claimant was not receiving LQA in his position with State and a grant that was not being received cannot by definition be continued.

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. Under 5 CFR 178.105, the burden is upon the claimant to establish the liability of the United States and the claimant's right to payment. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979). Since an agency decision made in accordance with

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<sup>1</sup> "Substantially continuous employment" in DSSR 031.12b must be with an employer (singular) which recruited the employee in the United States and induced the employee to accept overseas employment. The record fails to show whether the claimant's employment by a private firm from July 2004 to July 2005 at the U.S. Embassy in Turkey or his employment under a personal services contract at the Embassy from July 2005 to October 2007 provided for return transportation to the United States or any other enumerated location in DSSR 031.12b. Even assuming, arguendo, his contract with the private firm met the required return transportation conditions, the claimant's leaving the private firm for a personal services contract and his subsequent period with no reported employment from October 2007 to April 2008 ended the required continuous employment with the employer which recruited him in the United States, thus also precluding the granting of LQA.

established regulations as is evident in the present case cannot be considered arbitrary, capricious, or unreasonable, there is no basis upon which to reverse the decision.

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.