

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

Claimant: [name]

Organization: Defense Contract Management Agency
[city & State]

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied; failure to state a claim upon
which relief may be granted

OPM file number: 13-0012

//Judith A. Davis for

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

3/27/2013

Date

The claimant is a Federal civilian employee of the Defense Contract Management Agency in [city & State]. He requests "\$142,800 as compensation for the United States Army, Europe negligence [sic] in determining I was ineligible for Living Quarters Allowance." We received his claim request on January 22, 2013. For the reasons discussed herein, the claim is denied.

The claimant applied for a position with the Department of the Army's 21st Theater Sustainment Command, duty station Kaiserslautern, Germany, on July 18, 2012, and was officially offered the position on September 7, 2012. On November 8, 2012, the claimant was notified by the agency that they had determined him to be ineligible for LQA. Because of this determination, the claimant declined the job offer on November 15, 2012. The claimant is requesting compensation presumably for the amount of LQA he would have received if he had accepted the position and served the entire associated three-year tour of duty in Germany. He also requests OPM's "guidance" in responding to several questions related to the basis for the agency's LQA denial.

OPM settles compensation and leave claims under section 3702(a)(2) of title 31, United States Code (U.S.C.). This authority is narrow and limited to consideration of whether monies are owed for the stated claim. Under section 178.105 of title 5, Code of Federal Regulations, 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). A Federal employee is entitled only to the salary of the position to which the employee is appointed. *United States v. Testan*, 424 U.S. 392, at 406 (1976). In this case, the claimant does not have a right to payment for an allowance attached to a position he acknowledges he has not occupied. Thus, his request for compensation is premature since he has never occupied the position in question. The Back Pay Act (BPA) (5 U.S.C. 5596) provides for the payment of back pay and interest for an employee who has "been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials" of the employee. Neither the scope of OPM's authority under 31 U.S.C. 3702(a)(2) nor the BPA extend to awarding monetary damages for agency "negligence." Accordingly, the claim is denied.

Further, OPM's authority under 31 U.S.C. 3702(a)(2) relates exclusively to the settlement of compensation and leave claims. Since the claimant did not accept the position for which the agency made its LQA eligibility determination, the "guidance" he requests regarding that determination would be speculative in nature and will not be addressed.

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