

**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  
Zama, Japan

**Claim:** Living quarters allowance

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 13-0037

/s/ Linda Kazinetz for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Agency Compliance and Evaluation  
Merit System Accountability and Compliance

3/6/14

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Date

The claimant is a Federal civilian employee of the Department of the Army (DA) in Zama, Japan. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's termination of his living quarters allowance (LQA). We received the claim on May 9, 2012, and the agency administrative report on September 10, 2013. For the reasons discussed herein, the claim is denied.

The claimant's first relocation overseas was in 1996, when he states on his initial Application for Federal Employment that he left his position with the Florida Department of Corrections because he "joined spouse in Republic of Panama." He obtained his first Federal position effective March 11, 1997, on an overseas limited appointment under the authority of section 301.201 of title 5, Code of Federal Regulations, with the U.S. Army Garrison, Fort Clayton, Panama, with a duty station of Tegucigalpa, Honduras. These appointments are authorized only for U.S. citizens recruited overseas for positions overseas. The record includes a copy of the travel request and authorization executed on behalf of the claimant on March 11, 1997, wherein he was authorized permanent duty travel from his "place of residence" in Panama to his "first duty station" at "Soto Cano AFB, Honduras," in connection with this appointment. The record also includes the transportation agreement signed by the claimant on March 11, 1997, in connection with this appointment, making him eligible for return transportation to his "place of actual residence at time of appointment," which was identified as "Republic of Panama, Panama." The claimant remained duty-stationed in Honduras until he accepted a career-conditional appointment to a DA position in Bad Kreuznach, Germany, effective September 18, 2000, when he states he first began receiving LQA. He states that since that time, he has served in Iraq, Italy, Afghanistan, and his current position in Japan.

In May 2013 the claimant was notified that, as a result of a Department of Defense (DoD)-directed LQA audit, it was determined he did not meet the LQA eligibility provisions in the Department of State Standardized Regulations (DSSR), sections 031.12a or b, or the implementing regulations in DoD (Department of Defense) 1400.25-V1250, in that he was a locally hired candidate who was not originally recruited from the U.S. The agency states in the AAR:

... [Claimant] does not meet section 031.12a because his presence in Panama cannot be attributable to any employment. His resume specifically states he resigned from employment CONUS [Continental United States] to join his spouse in Panama. He does not meet 031.12b because prior to appointment, he was not employed.

[Claimant] indicates in his appeal package that he was realigned to Puerto Rico and then subsequently hired to Germany. From his overseas limited appointment on March 11, 1997 to his career conditional appointment on September 18, 2000, [claimant's] duty station was Tegucigalpa, Honduras.

The claimant states that at the time he was selected for his position in Germany, he was informed by the Fort Buchanan CPAC [Civilian Personnel Advisory Center] that "I would be considered a CONUS hire as I was recruited in Puerto Rico, a Commonwealth of the United States." He included a copy of a letter dated August 16, 1999, and signed by the "Command Safety Officer," Fort Clayton, Panama, whom the claimant identifies as his manager at the time, to the U.S. Embassy, Panama, stating he was "assigned to the Ft. Clayton, Panama, Garrison TDA [Table of Distribution and Allowances], with duties in Honduras," but that his "position will revert to the

Fort Buchanan, Puerto Rico TDA in September 1999." He also included a copy of a Standard Form (SF) 50, Notification of Personnel Action, dated January 28, 2000, showing the "realignment" of his position from Fort Clayton, Panama, to Fort Buchanan, Puerto Rico, with no change in his duty station of Tegucigalpa, Honduras. In addition, he included a copy of the transportation agreement signed by him on August 16, 2000, in connection with his career-conditional appointment in Germany, making him eligible for return transportation to his "actual residence at time of appointment," which was identified as "Panama City, Republic of Panama," although the "last PDS [permanent duty station]" was identified as "Fort Buchanan, Puerto Rico." He also included a copy of the travel request and authorization issued on his behalf on August 15, 2000, wherein he was authorized permanent duty travel from his "home address" in Panama to his new official station and location in Bad Kreuznach, Germany.

The DSSR are the governing regulations for allowances, differentials, and defraying of official residence expenses in foreign areas. Within the scope of these regulations, the head of an agency may issue further implementing instructions for the guidance of the agency with regard to the granting of and accounting for these payments. Thus, DoD 1400.25-M, subchapter 1250, dated December 1996 and in effect when the claimant was appointed, implement the provisions of the DSSR but may not exceed their scope; i.e., extend benefits that are not otherwise provided for in the DSSR.

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

Quarters allowances prescribed in Chapter 100 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.

Relative to these criteria, DoD 1400.25-M defines "U.S. hire" as follows:

SC1250.3.7. U.S. Hire. A person who resided permanently in the United States, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the former Canal Zone, or a possession of the United States from the time he or she applied for employment until and including the date he or she accepted a formal offer of employment.

Thus, an employee's status as a "U.S. hire" is based on *physical residency* in the U.S. or one of its territories or possessions at the time of recruitment for the position in question. As such, the claimant did not meet LQA eligibility criteria under DSSR section 031.11 when he received his overseas limited appointment with DA effective March 11, 1997, at Fort Clayton, Panama, with duty station Tegucigalpa, Honduras, because he was residing in Panama at that time.<sup>1</sup> That his position was later realigned to Fort Buchanan, Puerto Rico, with no change in duty station, does not alter this fact. Similarly, he did not meet DSSR section 031.11 when he received his career-

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<sup>1</sup> The place of residence supplied by the claimant on his application for the position under "city" was "Panama, Republic of Panama." Panama City was excluded from the former U.S. territory referred to in DoD 1400.25-M as the "former Canal Zone." In addition, we note that the former Canal Zone is not one of the territories identified in DSSR section 031.11 as constituting "recruited in the United States."

conditional appointment with DA in Germany effective September 18, 2000, because he was still physically duty-stationed in Honduras, not Puerto Rico, at that time, regardless of where his position was assigned organizationally on a TDA for budget purposes.

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

The claimant met LQA eligibility criteria under DSSR section 031.12a when he received his overseas limited appointment with DA effective March 11, 1997, at Fort Clayton, Panama, with duty station Tegucigalpa, Honduras, because his actual place of residence in Honduras, the place to which the quarters allowance would have applied, could have been fairly attributable to his employment by the U.S. Government. However, he did not meet DSSR section 013.12b because prior to that appointment, he was not recruited in the U.S. or one of the enumerated territories or possessions by one of the employing entities listed. Rather, he was unemployed and residing in Panama.

Similarly, the claimant met LQA eligibility criteria under DSSR section 031.12a when he received his career-conditional appointment with DA in Germany effective September 18, 2000, as his place of residence there was attributable to his employment by the U.S. Government. However, he did not meet DSSR section 031.12b because prior to that appointment, he was employed by the U.S. Government on a limited overseas appointment in Honduras for which he had been recruited in Panama (outside the former Canal Zone), rather than in the U.S. or one of the enumerated territories or possessions. Further, his appointment in Honduras did not afford him return transportation back to the U.S. or one of its territories or possessions but rather to his "place of actual residence at time of appointment," which was identified on his return transportation agreement as "Republic of Panama, Panama." Thus, the claimant has not

demonstrated that when he received his career-conditional appointment in Germany, DA recruited him from a previous employment which had in turn recruited him from the U.S. or one of its territories or possessions and which provided for his return transportation to the U.S. or one of its territories or possessions. The claimant's employment history shows he was never recruited overseas from the U.S. or one of its territories or possessions because he had already relocated and been residing overseas when his first overseas employment began, and he has produced no documentation showing he has ever been afforded return transportation benefits to the U.S.

It is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials, such as that resulting in DA's erroneous granting of LQA to the claimant. Payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice given by a Government employee cannot estop the Government from denying benefits not otherwise permitted by law. See *OPM v. Richmond*, 496 U.S. 414, 425-426 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed.Cir. 1997); and 60 Comp. Gen. 417 (1981). Therefore, that the claimant was erroneously determined to be eligible for LQA upon his career-conditional appointment and had received LQA based on that determination does not confer eligibility not otherwise permitted by statute or its implementing regulations.

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). As discussed previously, the claimant has failed to do so. Since an agency decision made in accordance with 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 the OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.