

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

Claimant: [name]

Organization: Defense Logistics Agency
Okinawa, Japan

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 13-0062

/s/ Linda Kazinetz for

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

1/7/14

Date

The claimant is a Federal civilian employee of the Defense Logistics Agency in Okinawa, Japan. He requests the U.S. Office of Personnel Management (OPM) grant him a waiver to continue receiving living quarters allowance (LQA) for the duration of his current tour. OPM received the claim request on September 23, 2013, and the agency administrative report on November 14, 2013. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

As a result of a Department of Defense (DoD) directed, DOD-wide LQA audit, the claimant was notified by agency memorandum dated June 2, 2013, that he did not meet the LQA eligibility requirements under section 031.12b of the Department of State Standardized Regulations (DSSR) because prior to appointment, he had been recruited overseas and had been employed by more than one employer in the overseas area and that accordingly, the agency's previous determination finding him eligible for LQA was erroneous. The memorandum also stated that DoD had authorized a one-year waiver of DSSR section 031.12b for employees whose LQA grants were being terminated under these circumstances. The claimant requests that the waiver be extended for the duration of his current tour for hardship reasons and because he states he would not have accepted the position or the subsequent two-year tour extension if he had been informed he would not get or would lose his housing allowance.

OPM adjudicates compensation claims for certain Federal employees under the authority of section 3702(a)(2) of title 31, United States Code (U.S.C.). The authority in 31 U.S.C. § 3702(a)(2) is narrow and limited to determining if monies are owed the claimant under the controlling statutes or regulations. Section 3702 does not include the authority to waive provisions of the DSSR, which determine LQA eligibility. The applicable regulation in this case, DSSR section 031.12c, authorizes the head of the employee's agency to waive section 031.12b upon determination that unusual circumstances in an individual case justify such action. Therefore, OPM may not consider the claimant's request for a waiver within the context of the claims adjudication function it performs under section 31 U.S.C. § 3702(a)(2) and the claim is denied for lack of jurisdiction.

Further, it is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials. Payments of money from the Federal Treasury are limited to those authorized by law, and erroneous advice or information provided by a Government employee cannot bar the Government from denying benefits which are not otherwise permitted by law. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990). Therefore, that the claimant had erroneously been found eligible for LQA and had initially received LQA based on that erroneous determination does not confer eligibility not otherwise permitted by statute or its implementing regulations.

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.