## 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

Camp Humphreys, South Korea

**Claim:** Living quarters allowance

**Agency decision:** N/A

**OPM decision:** Denied; lack of jurisdiction

**OPM file number:** 14-0010

/s/ Linda Kazinetz for

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

1/14/14

Date

The claimant is currently employed in an [NF-03] position at the U.S. Army Garrison, Camp Humphreys, South Korea. 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 November 21, 2013. For the reasons discussed herein, the claim is denied.

The claimant occupies a nonappropriated fund (NAF) position. As discussed in OPM File Number S004184 (March 21, 2000), quarters allowance claims for Department of Defense (DoD) NAF employees are not reviewable by OPM and do not fall under the claim provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.), which limits OPM's claims adjudication authority to "claims involving Federal civilian employees' compensation and leave." Title 31 does not define "Federal civilian employee" in association with the claims adjudication authority it grants to OPM in section 3702(a)(2). However, title 5, U.S.C., concerns government organization and employees, and 5 U.S.C. 2105 defines the term "employee" for the purposes of that title. According to section 2105(c)(1)(B), an employee of a DoD NAF activity is "deemed not an employee for the purpose of laws administered by [OPM] except as otherwise specifically provided in [title 5, U.S.C.]." Thus, OPM's jurisdiction to adjudicate claims for compensation and leave does not extend to the claims of employees of NAF activities unless a provision in title 5, U.S.C., specifically authorizes OPM to consider their claims.

Chapter 59, subchapter III of title 5, U.S.C., governs foreign allowances, and section 5921 defines the terms in subchapter III. According to section 5921(3), the term "employee" means "an employee in or under an agency, and more specifically defined in regulations prescribed by the President." Section 101 of Executive Order 11137, dated January 10, 1964, as amended, specifies that "[t]he term 'employee' as defined in 5 U.S.C. 5921(3) is . . . further defined as including civilian employees, compensated from non-appropriated funds, of the instrumentalities of the United States under the jurisdiction of the armed forces covered by 5 U.S.C. 2105(c)." Therefore, Executive Order 11137, as amended, declares DoD employees of NAF activities to be employees of the United States for the purposes of the provisions in 5 U.S.C. Chapter 59, subchapter III, including the quarters allowance provisions of 5 U.S.C. 5923. However, the Executive Order does not declare employees of DoD NAF activities to be employees within the meaning of 5 U.S.C. 2105, or for the purposes of considering their claims under 31 U.S.C. 3702. Moreover, title 5, U.S.C., does not include any provision that authorizes OPM to consider claims from employees of DoD NAF activities concerning their entitlement to a quarters allowance. See OPM File Numbers 08-0098, 09-0045, and 11-0011. Therefore, we do not have jurisdiction to consider this claim.

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

<sup>&</sup>lt;sup>1</sup> Section 2105(c) includes other exceptions that are not relevant to the question of OPM's authority to consider NAF employees' claims for LQA.