



United States
**Office of
Personnel Management**

Washington, DC 20415

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: 718 Civil Engineer Squadron
Kadena Air Force Base
Department of the Air Force
Okinawa, Japan

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 05-0027

/s/ Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability
Human Capital Leadership
and Merit System Accountability

5/1/2006

Date

The claimant is currently employed in a [position] with the 718 Civil Engineer Squadron, Department of the Air Force, at Kadena Air Base in Okinawa, Japan. He requests the Office of Personnel Management (OPM) reconsider his agency's decision regarding his entitlement to receive a living quarters allowance (LQA). We accepted the claim on August 5, 2005, and received the claim administrative report on January 30, 2006. For the reasons discussed herein, the claim is denied.

The claimant was hired locally for the [previous position] on May 5, 2003, while residing in Okinawa, Japan, following his separation from U.S. military service. The agency asserts that at the time the position was announced, it was determined that LQA was not necessary for recruitment and, therefore, no mention of LQA was made in the vacancy announcement. The vacancy was limited to applicants residing in the local area and stated travel and relocation expenses would not be paid. The claimant requested that an LQA be granted on May 14, 2003. He argues that the position for which he was selected was a hard-to-fill position, which should have justified LQA as a recruitment incentive. He also argues that he is eligible to receive an LQA under the governing regulations.

On September 25, 2003, the Department of the Air Force denied the claimant's request for an LQA, on the basis that because the claimant had previously stated in writing that he intended to remain in the local overseas area, this was evidence that an LQA was not required as a recruitment incentive.

DoD Manual 1400.25-M specifies that overseas allowances are not automatic salary supplements, nor are they entitlements. They are specifically intended as recruitment incentives for U.S. citizen civilian employees living in the United States to accept Federal employment in a foreign area. If a person is already living in the foreign area, that inducement is normally unnecessary. Individuals should not automatically be granted these benefits simply because they meet eligibility requirements.

When the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. See e.g., *Jimmie D. Brewer*, B-205452, March 15, 1982. In this case, there is no question that the claimant was not authorized to receive an LQA when he was hired for the position. At that time, it was determined that the granting of an LQA was not necessary for recruitment purposes and the vacancy announcement did not include a statement that an LQA would be granted. Because an LQA is intended solely as a recruitment incentive, the determination as to whether one will be granted is made in conjunction with the announcement of the position. The basic terms of compensation being offered for an announced position cannot be changed later, after a selection for the position has been made. Whether or not the position was indeed hard-to-fill is not the relevant consideration. The only relevant consideration is how the position was designated when it was announced. The claimant's intentions to remain or not remain in the local overseas area before he applied for the position have no bearing on this determination. Because an LQA was not offered for the position at the time of recruitment, the claimant's eligibility to receive an LQA is not at issue, since eligibility alone does not mandate the granting of an LQA. The agency's action is not arbitrary, capricious, or unreasonable. Accordingly, the claim for an LQA is denied. OPM File Number 05-0017, February 3, 2006; OPM File Number 05-23, April 11, 2006.

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.