

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

Claimant: [name]

Organization: U.S. European Command
Department of the Army
Bonn, Germany

Claim: Waiver of Indebtedness for Living
Quarters Allowance

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 08-0018

/s/ for

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

4/2/2008

Date

In his January 17, 2008, letter which the U.S. Office of Personnel Management (OPM) received on January 31, 2008, the claimant asks OPM to substitute its judgment for that of the Defense Office of Hearings and Appeals (DOHA) with regard to its August 28, 2007, reconsideration decision denying the claimant's request for a waiver of indebtedness under 5 U.S.C. § 5584, resulting from a Living Quarters Allowance (LQA) overpayment. The claimant previously filed an LQA claim with OPM. The claim was subsequently resolved by his employing agency, the U.S. Army in Europe (USAEUR), and led to the overpayment at issue in this claim request. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant seeks a waiver of \$8,858.06 which he believes DOHA incorrectly concluded was "not the result of an erroneous miscalculation on the part of the government [sic]." In essence, the claimant argues he was not at fault in USAEUR's reconciliation of retroactive LQA payments which he asserts emanated from the resolution of his previous LQA claim: "**I was overpaid LQA by a string of misinterpretation, misrepresentation, intransigence, and administrative errors made by USAEUR officials that started when they erroneously denied LQA for my house.**" The claimant argues DOHA should have waived his ensuing indebtedness under 5 U.S.C. § 5584, since he was "**overpaid through no fault of my own, without any indication of fraud, misrepresentation, fault or lack of good faith on my part.**" In its February 11, 2005, letter to the claimant, his payroll provider, the Defense Finance and Accounting Service (DFAS), stated he could seek a waiver of indebtedness under 5 U.S.C. § 5584:

You may also request a waiver of repayment of the debt if you acknowledge the validity of the debt, but believe you should not be required to repay it...Detailed guidance regarding waiver of claims for erroneous payments under the authority of 5 USC 5584 are contained in the regulations of the employing agency.

It appears DFAS denied the waiver which subsequently was denied by DOHA when it concluded the record did not indicate, and the claimant did not prove, "the LQA payments were erroneous when made." Rather, DOHA concluded the debt involved the overpayment of LQA payments, such payments are governed by 5 U.S.C. §§ 5922-5923, and indicated DFAS had previously advised the claimant the head of the agency (Secretary of the Army) had the authority to waive the excess amount after reconciliation under 5 U.S.C. § 5922(b) and its implementing regulations. Information submitted by the claimant does not indicate whether he has filed such a request with his agency, the Department of the Army (DA).

As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies, regardless of the amount. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996; and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. Neither Pub. L. No. 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision on, the request for a waiver of a claimant's indebtedness to the United States, because the authority to waive the claimant's indebtedness is vested in his employing agency, DA.

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.