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 Stuttgart, Germany
Claim:	Reimbursement for personally owned quarters (POQ) renovations
Agency decision:	Denied
OPM decision:	Denied
OPM file number:	12-0034

/s/ Linda Kazinetz for

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

2/4/14

Date

The claimant is a Federal civilian employee of the Department of the Army (DA) in Stuttgart, Germany. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of reimbursement for renovations made to his personally owned quarters (POQ). We received the claim on August 30, 2012, the agency administrative report (AAR) on May 15, 2013, and the claimant's response to the AAR on June 3, 2013. For the reasons discussed herein, the claim is denied.

To support his claim, the claimant submitted a series of email communications he exchanged with the LQA Branch of the Civilian Human Resources Agency (CHRA) regarding whether he could potentially be reimbursed for the cost of renovations if he purchased an existing older house. His first inquiry on this matter was by a March 17, 2010, email to a CHRA representative, who responded that "[r]enovation fees are not reimbursable" and advised him to "buy a house which does not need renovations or you may even build a house." The claimant followed up on this response by a March 18, 2010, email and asked whether the renovation costs would be reimbursable if the work was completed and billed before he moved in. The CHRA representative responded by asking the claimant to call her; the claimant does not indicate if he did so. The next email submitted by the claimant is dated September 21, 2010, wherein he informed the CHRA representative that he intended to purchase an "incomplete house," listed the costs of some specific proposed construction work, and asked if there were "any problems with this." On September 21, 2010, the CHRA representative responded with "I don't see any problems with the items listed below." The claimant states:

> With the guidance just received in March and September 2010 we believed that it was allowed to buy an existing house, make repairs to it and add on to it as all work was completed and bills were paid prior to moving in and requesting that LQA be started. Therefore we proceeded to purchase an existing house in November 2010 and make similar changes and build additional items as we had previously requested and were given written approval from the LQA office in September 2010.

By email dated July 6, 2012, the claimant was informed by the agency that they were unable to authorize LQA for the "additional work" done to his house. The claimant requests that "the written approval from September 2010 be honored now and the full amount of EURO 348,048.96 be allowed as the reimbursement amount to establish our LQA."

The agency responds that renovation costs are outside the scope of reimbursement by the Government under section 136 of the Department of State Standardized Regulations (DSSR). They further assert the claimant was clearly informed via the March 17, 2010, email that renovation costs were not reimbursable, and that when he approached the CHRA LQA Branch again in his September 21, 2010, email regarding his intent to purchase an "incomplete house," they construed this as meaning "a house that would still be under construction, which may be considered tantamount to building a house and may be reimbursed under the LQA," as the claimant had been advised by the CHRA representative. The agency also submitted a June 15, 2012, email from the claimant to a second CHRA representative wherein he stated he intended to submit "a reasonable and allowable claim for POQ reimbursable amount" and explained:

> … I understood that we could build new additions to the existing house as [the first CHRA representative] told me in here [sic] email (attached) in Sep 2010 that she saw no problems with items I had listed, please attached email for details.[sic] That was for different house but I believe the principle is the same, that we build new items to the existing house as long as all those things were completed and invoices were dated and paid before we moved into the house.

Thus, the claimant apparently considered the purported "written approval" he believed he had received in September 2010 for a specific list of construction work in connection with the purchase of a particular house, to apply equally to a different list of construction work for the purchase of a different house almost two years later.

The Department of State Standardized Regulations (DSSR) contain the governing regulations for allowances, differentials, and defraying of official residence expenses in foreign areas. Section 136 of the DSSR addressing POQ states in relevant part:

> a. When quarters occupied by an employee are owned by the employee or the spouse, or both, an amount up to 10 percent of original purchase price (converted to U.S. dollars at original exchange rate) of such quarters shall be considered the annual rate of his/her estimated expenses for rent. Only the expenses for heat, light, fuel (including gas and electricity), water, garbage trash disposal and in rare cases land rent, may be added to determine the amount of the employee's quarters allowance in accordance with Section 134. The amount of the rental portion of the allowance (up to 10 percent of purchase price) is limited to a period not to exceed ten years at which time the employee will be entitled only to above utility expenses, garbage and trash disposal, plus land rent.

The plain language of the above paragraph makes clear that LQA for POQ is limited to 10 percent of the *original purchase price* of the house. There is no provision for including the cost of renovations not included as part of the original purchase price as the basis for the LQA grant.

Regardless of any miscommunication that may have occurred between the claimant and the CHRA LQA Branch that led to the claimant's belief he would be reimbursed for renovation costs, 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 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 may have been told or otherwise believed that he would be reimbursed for renovations does not confer eligibility not otherwise permitted by statute or its implementing regulations.

The claimant asserts in his response to the AAR that "[t]here is nothing listed in [DSSR section 136] that specifically prohibits purchasing an incomplete house, making it complete, paying all the invoices for the additional work required to meet the definition of LQA in section 131.1 which refers to 'suitable, adequate living quarters', all of that happening before we moved into

the quarters." However, since payments of money from the Federal Treasury are limited to those specifically authorized by statute or its implementing regulations as cited above, any benefit that is not so authorized may not be conferred.

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 OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.