

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

Claimant: [name]

Organization: Detachment 1
2nd Air Postal Squadron
Frankfurt International Airport
U.S. Air Force in Europe
Department of the Air Force
Frankfurt, Germany

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied; Time Barred

OPM contact: Robert D. Hendler

OPM file number: 05-0037

/s/ for

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

9/5/2006

Date

The claimant is a former military member and non-appropriated funds (NAF) Federal employee hired overseas. He currently occupies a [position] with the U.S. Air Force in Europe (USAFE). The claimant requests reconsideration of his agency's decision concerning his eligibility for living quarters allowance (LQA). The U.S. Office of Personnel Management (OPM) received the compensation claim on September 13, 2005, and the agency administrative report on April 12, 2006. For the reasons discussed herein, the claim is time barred.

The claimant retired from active military duty in Germany on June 1, 1988, and with no break in service, accepted a NAF civilian position as a Recreational Assistant at the C-3, Bowling Center Pro Shop, Rhein Main Air Base in Germany. He remained in this job until December 12, 1994, when he started work in his current position, again with no break in service.

By memorandum dated May 26, 2005, the claimant's supervisor (Commander, 2nd Air Postal Squadron) requested the Human Resources Office (HRO), 435th Air Base Wing, USAFE to approve LQA for the claimant. As justification, the Commander stated:

[Claimant] and his family have gotten by financially in the high cost area of Frankfurt based on the dual incomes of him and his wife. With the closure of Rhein Main and loss of employment for his wife it will be tough to keep [claimant]...

He further stated:

[Claimant] is needed to sustain postal operations at the Frankfurt International Airport; his position is hard to fill; the work requires special skills that only a handful of personnel possess; and the loss of his services would greatly degrade the mission.

The memorandum also stated the squadron failed to seek an LQA determination in 1994 when [claimant] was initially hired.

The HRO memorandum of July 18, 2005, denied the Commander's request stating:

Claimant's] appointment...effective 12 Dec. 94 was handled by the Rhein Main CPF. Unfortunately our office does not have access to the recruitment history. However, in our past practice local hires have been consistently denied LQA unless the position was considered hard to fill. Apparently, [claimant's] position did not meet the required criteria and therefore a determination for a LQA payment was unnecessary at the time.

The memo also informed the Commander that [claimant]n could file a claim with OPM, should he wish to pursue the matter further.

On August 25, 2005, the claimant e-mailed the HRO, regarding their July 18, 2005, memorandum to his supervisor, and requested a meeting to discuss his LQA situation and petition for reconsideration of their denial. His e-mail referred to the vacancy announcement for his current position, included in the record, which does not identify the position as hard to fill. Ms. Susanne Lombard replied to the claimant by e-mail for the HRO stating: "The denial was

based exclusively on the fact that your position was not eligible at the time of your appointment” and “Your only option now is to file an appeal with OPM.”

In his August 26, 2005, letter to OPM, the claimant stated:

I was denied this consideration (i.e., LQA) due to the fact that I was an overseas hire. Even though this position had set vacant for 18 months before I applied for and was accepted to fill it. I feel that asking for consideration for LQA now should be honored as an individual consideration under “Personal Eligibility.” I am also not looking for anything in the past in the way of compensation...but only the possibility of what can be provided in the future.

He also stated he planned to remain in his current position regardless of the outcome of his claim.

In accordance with the Barring Act in 31 U.S.C. § 3702(b)(1), every claim against the United States is barred unless such claim is received within six years after the date such claim first accrued. *Robert O. Schultz*, B-261461, November 27, 1995. A claim can be received by OPM or the agency within six years from the date the claim accrued to satisfy the statutory limitation. The Barring Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. *Nguyen Thi Hao*, B-253096, August 11, 1995. OPM does not have any authority to disregard the provisions of the Barring Act, make exceptions to its provisions, or waive the time limitation that it imposes. See *Matter of Nguyen Thi Hao, supra*; *Matter of Jackie A. Murphy*, B-251301, April 23, 1993; and *Matter of Alfred L. Lillie*, B-209955, May 31, 1983.

The six-year statutory limitation begins running from the date a claim accrues. LQA determinations for locally hired employees in foreign areas are made at the time of initial appointment. The claimant’s appointment to his current position became effective December 12, 1994, which means he had until December 12, 2000, to file a claim with either his agency or OPM. The record does not show he filed a LQA claim during the allotted time. Therefore, this claim is time barred and we are precluded by law from considering it.

We note, the agency denied the claimant LQA based on consideration of the merits of the case and referred him to OPM for further redress of his concerns, when in fact, they also are bound by the statute of limitations for claims against the United States which limits the period to six years.

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. See *Frank A. Barone*, B-229439, May 25, 1988.

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 U.S. Court.