

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

Claimant: [name]

Organization: [agency component]
Landstuhl Regional Medical Center
HMEDDAC Heidelberg Hospital
Department of the Army
Heidelberg, Germany

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 06-0056

/s/ Robert D. Hendler

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

3/23/2007

Date

The claimant is a Federal civilian employee of the Department of the Army at the Heidelberg Military Hospital in Heidelberg, Germany. He requests the Office of Personnel Management (OPM) reconsider his agency's decision regarding his entitlement to receive a living quarters allowance (LQA). We received the claim on September 11, 2006, and the claim administrative report in mid-November 2006. For the reasons discussed herein, the claim is denied.

The claimant was hired for the [position] on March 24, 2003, while residing and working in Germany. The position was designated as hard-to-fill. The claimant subsequently requested that an LQA be granted. On July 24, 2004, the Department of the Army denied the claimant's request for an LQA, stating because the claimant applied for and accepted the position while physically residing in Germany, he was considered a local hire and therefore was not eligible for an LQA.

The claimant argues that he was not permanently residing in Germany at the time he applied for the position at Heidelberg. He states he arrived in Germany on November 1, 2002, in effect on an extended visit with family. He was technically still on the payroll at his previous place of employment at Kettering Medical Center Network (KMCN) in the United States, from which he continued to receive a paycheck until March 2003 using accrued leave. During this period, he learned of the impending position at Heidelberg and began working at another position in Germany while he was waiting for the Heidelberg position to be posted. He believes that he should be granted an LQA because during his entire time in Germany prior to his employment at Heidelberg, he was employed with KMCN, drew a paycheck from them until his final termination in March 2003, and maintained a residence in the United States. He states that his local management has told him that an LQA for him is fully supported by their budget.

On the date of hire, Army in Europe Regulation 690-500.592, dated October 17, 2002, was in effect. It restricted payment of LQA to local hires selected for pre-identified hard-to-fill positions if, before the appointment, the employee met the following criteria:

- (a) the employee was originally recruited in the United States by the U.S. Government, including its Armed Forces; a U.S. firm, organization, or interest; or an international organization in which the U.S. Government takes part; and
- (b) the employee was in substantially continuous employment by one of the employers above under conditions that provided for the employee's return transportation to the United States.

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.

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, the claimant was not authorized to receive an LQA when he was hired for the position. He had already been residing in Germany for several months when the position was advertised and when he applied and was selected for it. In the interim, he had begun working at another part-time position in Germany. Although he was still on the employment rolls for his previous position in the U.S., the paychecks he was receiving were for his accrued leave which he was using before

his actual resignation from that position. We do not find his arguments persuasive that he was not actually residing in Germany at the time of appointment to his current position and, based on the facts presented, he was not eligible for LQA based on the controlling agency regulation. Because an LQA is not an entitlement or a form of performance award, his employing installation having budgeted for it and requesting he be granted LQA have no bearing on the actual LQA determination. The agency's action is not arbitrary, capricious, or unreasonable. Accordingly, the claim for an LQA is denied.

OPM has no authority to grant a waiver to these requirements. Under Department of State Standardized Regulations (DSSR) section 013.12b, these conditions may be waived by the head of the agency upon determination that unusual circumstances in an individual case justify such action. Therefore, this aspect of the claimant's request is denied for lack of jurisdiction.

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.