



United States
**Office of
Personnel Management**

Washington, DC 20415

**Compensation Claim Decision
Under section 3102 of title 31, United States Code**

Claimant: [name]

Organization: Resources & Plans Division
Directorate of Support
J2/Joint Analysis Center
Headquarters, U.S. European Command
Molesworth, United Kingdom

Claim: Request for Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 05-0022

/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

5/2/2006

Date

The claimant is a former military member hired overseas. He occupies a [position] with Headquarters (HQ), U.S. European Command (USEUCOM), Joint Analysis Center (JAC), in Moles worth, United Kingdom (UK). He requests the Office of Personnel Management (OPM) reconsider the agency's decision regarding his entitlement to receive a living quarters allowance (LQA). We received the claim on January 7, 2005, the administrative report on October 2, 2005, and additional information from the claimant on April 3, 2006. For reasons discussed herein, the claim is denied.

The claimant states that in the summer/fall of 1998, he contacted and "worked with the Reserves Intelligence Area 15, Assistant Reserve Liaison Officer, [name], to investigate reserve opportunities for myself in England." The claimant's wife worked for a company that conducts operations abroad. In January 1999, the claimant accompanied his wife to England, where she had a work permit. After arriving in England he enlisted as a reservist with the Joint Analysis Center.

The claimant states he intermittently served on active duty from February 16, 1999, until November 28, 2002, and that the breaks in his active duty service during this period were due to administrative processing time in the Naval Reserve's order issuing system and Navy policy. He also states that while living in England, he applied for and accepted a hard-to-fill position as a Federal civilian employee, Budget Analyst, GG-0560-11, at the HQ USEUCOM, JAC, in Molesworth, (UK), which he started effective January 26, 2003. He states he later applied for and accepted his current position, [position], at the same installation, which he started on October 17, 2004. As evidence that his "home of record" is in the United States (U.S.), the claimant states he and his wife own a car registered in Virginia and pay property and income taxes to that Commonwealth. According to the claimant, the agency denied his first request for LQA on December 5, 2002, and his second request on September 15, 2003, finding him ineligible for LQA.

The agency denied the claimant's LQA requests based on their determination that he did not meet eligibility requirements as provided under United States Army Europe (USAREUR) Regulation 690-500.592 dated October 17, 2002, and later revised July 1, 2003. The agency found: he was not recruited in the United States by the Armed Forces; did not enter active reserve duty until he was already overseas; and that his intermittent active duty service, as a reservist between February 16, 1999, and November 28, 2002, was not equivalent to "substantially continuous employment" as described in the cited regulation.

USAREUR Regulation 690-500.592, (5)(b), restricts payment of LQA to only those local hires that are selected for pre-identified "hard-to-fill" positions and who meet eligibility criteria of Department of State's Standardized Regulations (DSSR), section 031.12b, and specifies that LQA will be granted for employees selected for hard-to-fill positions when they are either of the following:

- (1) U.S. hires in grades GS-09 (or equivalent), WG-11, WL-09, WS-05, and above. This includes U.S. hires selected for entry-level position with target grades GS-09 and above.

- (2) Federal civilian employees in grades GS-09 (or equivalent), WG-11, WL-09, WS-05, and above who—
- (a) Are transferring to the European region from another overseas Government activity or agency without a break in service. Grade restrictions do not apply to Federal civilian employees transferring to positions identified as hard-to-fill.
 - (b) Meet basic eligibility criteria of DSSR, section 031.11 or 031.12.
 - (c) Were already receiving at the time of selection.

A U.S. hire is defined as a person who permanently resided in the United States, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the former Canal Zone, or a possession of the United States *from the time he or she applied for employment* (emphasis added) until and including the date he or she accepted a formal job offer. USAREUR Regulation 690-500.592, (3)(b), provides the following definition for residence: “For the purpose of determining eligibility for living quarters allowance, the actual physical residence of an applicant, regardless of his or her legal residence or domicile.”

Department of State Standardized Regulations (DSSR), section 031.12, state that quarters allowances “may” be granted to employees recruited outside the United States when:

- a. the employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his employment by the United States Government; and
- b. prior to appointment, the employee was recruited in the United States . . . by
 - (1) the United States Government, including its Armed Forces, . . .
 - (4) . . . and has been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States

DoD Manual 1400.25-M, subchapter 1250.5.1.1.2.1, specifies that, under DSSR section 031.12(b) above, service members and civilian employees shall be considered to have substantially continuous employment for up to one year from the date of separation or when transportation entitlement is lost, or until the retired or separated member uses any portion of the entitlement for Government transportation back to the United States, *whichever occurs first*.

The claimant believes his inquiries concerning reservist opportunities in the UK, prior to leaving the U.S., are synonymous with being recruited in the United States. They are not. Such recruitment efforts are routinely undertaken by organizations attempting to solicit recruits/applicants for hard-to-fill overseas positions. They frequently include an offer of LQA payments as an inducement for candidates in the U.S. to apply for and accept the position prior to traveling overseas. The claimant was not recruited in the U.S. He traveled to England accompanying his wife to her new work assignment, and enlisted as a reservist only after his arrival in the UK. No inducement was offered, or necessary for the claimant to accept his reserve enlistment in the UK.

The claimant, having lived in the UK for approximately four years, then applied for and accepted a Federal civilian Budget Analyst, GG-0560-11, position at the HQ USEUCOM, JAC, in Molesworth, UK, and later his current [position] at the same installation. The claimant does not meet local hire LQA requirements, as described under USAREUR Regulation 690-500.592 (5)(a)(2a & b). Before being appointed he was not recruited in the U.S., nor has he been substantially continuously employed by an employer under conditions that provide for his return transportation to the U.S.

The claimant believes having a vehicle registered in, and paying taxes to the Commonwealth of Virginia establishes his residency for purposes of determining his eligibility for LQA under the governing statutes and regulations. It does not. In accordance with USAREUR Regulation 690-500.592, (3)(b), as stated above, *residency* is defined as the actual physical residence of an applicant, not their legal residence or domicile. For the purpose of determining LQA eligibility the claimant resides in the UK, not The Commonwealth of Virginia.

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. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979).

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, under USAREUR Regulation 690-500-592(5)(b), the claimant was not a U.S. hire because he was a resident of the UK when he applied for both Federal civilian positions in question. Further, at the time of his appointment, he did not meet the criteria for "substantially continuous employment" as defined in DoD Manual 1400.25-M for local hires. Therefore, the claimant is not entitled to LQA. The Department of the Army's decisions of December 5, 2002, and September 15, 2003, regarding the claimant's entitlement to LQA are not arbitrary, capricious, or unreasonable. Accordingly, the claim for LQA is denied. OPM File Number 05-0017, February 3, 2006; OPM File Number 05-0023, 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.