

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

Claimant: [name]

Organization: [agency component]
Regional Contracting Office-Seckenheim
U.S. Army Contracting Command-Europe
Seckenheim, Germany

Claim: Living quarters allowance

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 05-0028

/s/ for

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

9/5/2006

Date

The claimant is employed in a [position] with the Regional Contracting Command-Seckenheim, U.S. Army Contracting Command-Europe, in Seckenheim, Germany. He requests the Office of Personnel Management (OPM) review his agency's decision regarding the amount of living quarters allowance (LQA) he was granted for the purchase of privately owned quarters (POQ) and a subsequent adjustment to that LQA for rental income. We received the claim on March 22, 2005, and the agency administrative report on July 18, 2006.

The claimant purchased a 50 percent interest in his POQ in January 1999. Shortly thereafter, the co-owner of the house began extensive renovations. In August 1999, the claimant purchased the remaining 50 percent interest in the house, reimbursed the former co-owner for the renovations completed to date, and assumed the costs of the remaining construction work, which was completed in September 2003. In the interim, the claimant had entered on duty in his current position in June 2002 and applied for an LQA in October 2002.

The claimant was granted an LQA but based only on the actual value of the two purchase contracts. He requests his LQA be based on both the purchase price of the house and the cost of the renovations, including the payment made to the former co-owner separate from the purchase contract as reimbursement for the cost of the renovations, plus the later costs for completing those renovations, and the computation of his LQA be adjusted to include these additional costs. He contends that the money he remitted to the former co-owner as reimbursement for the earlier renovations was in effect part of the purchase price of the house and that since this construction work was already underway when he assumed full ownership, he was compelled to complete it. The claimant states since LQA is defined in Department of Defense regulations as allowance granted for "suitable, adequate living quarters," and his house was uninhabitable at the time of purchase because of the ongoing construction, then completion of the renovations was necessary to render the property "suitable and adequate" and should therefore be included in the LQA computation.

The claimant had subleased a portion of the house from September 2000 to January 2003. He contends that the agency deducted this rental income (commencing in June 2002) from his LQA erroneously using the currency exchange rate in effect at the time the house was purchased rather than the rate in effect either at the time of his LQA eligibility or time of lease execution.

Section 136(a) of the Department of State Standardized Regulations (DSSR) states that:

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.

U.S. Army in Europe Regulation 690-500.592(6)(b) dated November 29, 2001, states:

Employees eligible to receive LQA who purchase and reside in a home at the official post of assignment are entitled to receive the rental portion of the LQA equal to 10 percent of the purchase price for a maximum of 10 years. . . . Conversion of the purchase price to U.S. dollars will be at the local exchange rate in effect at the time of the purchase.

The purchase price of a house is commonly accepted to be the price stated and paid on the purchase contract as a legal document. There is no provision in the regulations for including the cost of renovations in this computation. Although the claimant separately reimbursed the former co-owner for renovation costs incurred prior to the sale, this was not part of the purchase price of the house, nor were the subsequent costs for completion of the construction. He may consider these costs to be part of his overall monetary outlay for the purchase of the house, but from a regulatory standpoint they are not covered expenses.

There is likewise no provision in the regulations for using anything other than the exchange rate in effect at the time of purchase to determine an LQA for a privately owned residence. When adjusting the LQA for rental income, this income (in local currency) is deducted from the original purchase price of the house (in local currency), with the remainder then converted to U.S. dollars at the original POQ currency exchange rate to derive the adjusted LQA. Thus, only the original exchange rate is applied as exclusively permitted by the governing regulations and the LQA adjustment is made relative to the actual costs incurred at the time of purchase.

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, the agency's determination in regard to the claimant's LQA entitlement was not unreasonable, arbitrary, or capricious but rather granted the claimant the maximum LQA rate permitted by regulation. Payments of money from the Federal Treasury are limited to those authorized by law and regulation, even where this may cause hardship in individual cases. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990).

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.