

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

Claimant: [name]

Organization: [agency component]
Department of Defense Dependents
Schools-Europe (DoDDS-E)
Department of Defense Education
Activity (DoDEA)
Department of Defense
Ramstein, Germany

Claim: Waiver of the Seven Year Rule
for living quarters allowance (LQA)

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 09-0037

//Judith A. Davis for

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

10/20/2009

Date

On July 13, 2009, the U.S. Office of Personnel Management's (OPM) Center for Merit System Accountability received a living quarters allowance (LQA) claim from [claimant] which had been transferred by the U.S. Civilian Board of Contract Appeals (CBCA) on June 29, 2009, for review. CBCA included a copy of its decision on the claim (CBCA 1510-RELO, June 23, 2009) finding it did not have jurisdiction. The claimant is a civilian employee at the [agency component], DoDDS-E, DoDEA, in Ramstein, Germany. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The record shows the claimant is seeking "waiver to receive benefits under the Seven Year Rule" including LQA and related travel and relocation benefits. As noted in CBCA 1510-RELO, LQA is an overseas allowance. As such, it is properly construed as Federal civilian employee compensation covered by the compensation and leave claim provisions of 31 U.S.C. 3702(a)(2) and OPM's claims adjudication regulations codified in 5 CFR part 178. However, OPM cannot take jurisdiction over compensation and leave claims of former Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) between the employee's agency and labor union for any time during the claim period, unless that matter is or was specifically excluded from the agreement's NGP. The Federal courts have found Congress intended such a grievance procedure to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452, 1454-55 (Fed. Cir. 1990) (en banc), *cert. denied*, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). Section 7121(a)(1) of title 5, United States Code, mandates the grievance procedures in negotiated collective bargaining agreements be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord*, *Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

The record shows the claimant has occupied a bargaining unit position during the period of the claim. The bargaining unit (Overseas Education Association (OEA)) is represented by the Federal Education Association. The CBA between the OEA and DoDDS, entered into under the provisions of 5 U.S.C. 7101, et seq. (Article 1-Preamble) covering the claimant during the period of the claim does not specifically exclude compensation issues from the NGP (Article 12). Therefore, the claimant's LQA request must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate this claim.

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.