

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

Claimant: [name]

Organization: [agency component]
Department of the Army
Vilseck, Germany

Claim: Living Quarters Allowance

Agency decision: Denied

OPM decision: Denied

OPM file number: 10-0002

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

9/2/10

Date

The claimant is a Federal civilian employee of the Department of the Army (DA) at [agency component], in Vilsack, Germany. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of living quarters allowance (LQA). We received the claim on December 2, 2009, and the agency administrative report on February 24, 2010. For the reasons discussed herein, the claim is denied.

The claimant was residing in Germany as a retired military member when he applied for and was subsequently offered the position of Supervisory Human Resources Technician, YC-203-01 (GS-8 equivalent), with DA at the [agency component], in Hohenfels, Germany. When the position offer was tendered, a human resources staff member at the Grafenwoehr Civilian Personnel Advisory Center (CPAC) informed him that the position was designated as hard-to-fill and he would thus be authorized LQA, and completed an LQA Eligibility Checklist indicating such. Based on the information submitted, LQA was officially approved by the Civilian Personnel Operations Center (CPOC) - Europe, by letter dated April 30, 2008. The claimant began receiving LQA when he entered on duty and continued to do so until July 23, 2009, when it was terminated by the agency upon discovery that, contrary to the information that had been provided by the CPAC, the claimant's position had not been designated as hard-to-fill and the LQA had thus been erroneously granted. The claimant subsequently accepted a reassignment to the position of Human Resources Technician, YB-203-02 (GS-7 equivalent), in Vilseck, Germany, effective August 16, 2009.

The claimant states he accepted the Hohenfels position on the basis of LQA being authorized and that he had declined a concurrent offer, for a Human Resources Specialist, YA-201-02, position (GS-9 equivalent) in Vilseck, Germany, which also included LQA (not contingent on the position being designated as hard-to-fill). He asserts he should not be penalized for the agency's error and requests the LQA be restored.

The agency found the claimant met basic LQA eligibility requirements under Department of State Standardized Regulations and Department of Defense Instruction Number 1400.25, Volume 1250, as a locally separated military member considered to have "substantially continuous employment" in that his date of separation was within one year of his initial civilian appointment and he had not used any portion of his return transportation entitlement back to the United States. However, he did not meet additional LQA requirements imposed by Army in Europe Regulation 690-500.592, paragraph 7.a.(2), which authorizes the granting of LQA to:

Employees who are recruited from outside the United States or its possessions for positions in grades GS-09 (or equivalent), WG-11, WL-09, WS-05, and above. This includes employees selected for entry-level positions with target grades at and above these grade levels. Grade restrictions do not apply to applicants selected for hard-to-fill positions or career-program positions below the GS-09 (or equivalent) level. NAF employment will be considered in determining "substantially continuous employment" as long as DSSR provisions are met. Former military members and civilian employees will be considered to meet the DSSR, section 031.12, eligibility requirement of "substantially continuous employment" if they are appointed within 1 year after the date of separation or when the transportation entitlement is lost, whichever occurs first.

The claimant's position did not meet these requirements since it was classified at the GS-8 equivalent level and was not designated as hard-to-fill. The vacancy announcement did not

identify the position as hard-to-fill and did not state that LQA would be authorized. Information submitted by the agency indicates the position was not and has not to-date been designated as hard-to-fill. Therefore, the position was not eligible for LQA and the claimant was erroneously granted LQA for that position.

It is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials. Payments of money from the Federal Treasury are limited to those authorized by law, and erroneous advice or information provided by a Government employee cannot bar the Government from denying benefits which are not otherwise permitted by law. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990).

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.