

**U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: Department of the Army
Schweinfurt, Germany

Claim: Personally owned quarters

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0037

//Judith A. Davis for

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

4/22/2013

Date

The claimant is a Federal civilian employee of the Department of the Army (DA) in Schweinfurt, Germany. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of the rental portion of living quarters allowance (LQA) for a residence asserted as personally owned quarters (POQ). We received the claim on September 26, 2012, and the agency administrative report on February 1, 2013. For the reasons discussed herein, the claim is denied.

The claimant separated from active duty military service in Schweinfurt, Germany, in November 2002, and continued to reside in the overseas area, in part in Germany and at other times in Afghanistan and Iraq, as an employee with a contractor firm. In October 2007, he was appointed to a Federal civilian position with DA in Schweinfurt, Germany, without LQA eligibility as an employee hired outside the United States. He returned to the United States to a DA position at Fort Lewis, Washington, in September 2010, and subsequently returned to Germany upon acceptance of his current position effective June 3, 2012. Upon his return to Germany, the claimant requested full LQA for POQ in connection with a residence he was occupying that was owned by another individual (identified by the agency and hereafter referred to as his companion).

The record shows the residence in question was purchased in 1996 by the companion and her then-husband, as documented by a property title in her and the husband's name. On February 23, 2001, the claimant co-signed a loan document with this companion for the amount of approximately \$125,000, which he asserts was for refinancing of the property. On that same date, he signed another document, titled "Assumption of Debt," wherein he agreed to assume the debt for all accrued interest and mortgage payments for the property, immediately upon the companion's (by then) ex-husband transferring his co-ownership of the property to her, thereby releasing the ex-husband of any further loan obligation. On July 11, 2008, the claimant co-signed a second loan document with his companion, which he asserts was for renovation of the property. On July 18, 2012, the claimant entered into a contract with said companion which conveyed half ownership of the property to him, at no cost except for associated legal fees, but with the proviso that his portion of the property would immediately revert to the companion should their relationship dissolve at any given time.¹

The agency denied the claimant's request for the rental portion of LQA applied towards the POQ because his co-ownership of the property was obtained by conveyance at no cost and "no actual purchase of the property by [claimant] took place," although they granted the utilities portion of the LQA. The agency also notes that even if the POQ request were allowable, the claimant would not be eligible for the full amount as the property's co-owner is not his spouse.

The claimant states:

The house was not a gift. I have the bank loan for the house with my signature on it... It was my option during the purchase not to be on the title... I am legally responsible for the payments and costs for the house... I have paid all mortgage payments, renovations and utilities since 2001.

¹ The referenced documents submitted either by the claimant or the agency are written in German. We rely on the agency's translation of these documents, which is not disputed by the claimant.

I have proven expenses for suitable living quarters. I purchased the house 11 years ago, and have 50% ownership.

The Department of State Standardized Regulations (DSSR) set forth basic eligibility criteria for the granting of LQA to U.S. Government civilian employees. Although agency implementing guidance such as that contained in DoD Instruction (DoDI) 1400.25, Volume 1250, further define the conditions under which allowances may be granted, they may not disturb the fundamental eligibility criteria of the DSSR and may not be applied unless the employee has first met these basic DSSR eligibility criteria.

There is no dispute the claimant is eligible for LQA under DSSR Section 031.11, wherein LQA may be granted to employees recruited in the United States by the employing agency. The claimant was residing in the United States when he was recruited by DA for his current position.

The claimant is requesting LQA for POQ under DSSR Section 136(a), which states:

When quarters occupied by an employee are owned by the employee or the spouse, or both, or by the employee or the domestic partner, 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. Only the expenses for heat, light, fuel, (including gas and electricity), water, garbage and trash disposal and in some rare cases land rent, may be added to determine the amount of the employee's quarters allowance in accordance with Section 134. The amount of the rental portion of the allowance (up to 10 percent of purchase price) is limited to a period not to exceed ten years at which time the employee will be entitled only to above utility expenses, garbage and trash disposal, plus land rent.

The above paragraph must be considered within the context of DSSR Section 013, which states in relevant part:

When authorized by law, the head of an agency may defray official residence expenses for, and grant post differential, difficult to staff incentive differential, danger pay allowance, quarters, cost-of-living, representation allowances, compensatory time off at certain posts and advances of pay to an employee of his/her agency and require an accounting therefor, subject to the provisions of these regulations and the availability of funds.

Since DSSR Section 013 stipulates that the purpose of LQA is to "defray official residence expenses," then Section 136(a) must be construed as requiring that the POQ owned by an employee must have been purchased by the employee such that "official residence expenses" directly associated with the POQ are actually incurred. Ownership of a property is documented by the property title.

The claimant asserts he purchased the POQ in question in 2001 when he co-signed the loan, ostensibly for refinancing, with his companion. However, he has not produced a property title (or equivalent German document) reflecting his ownership of the POQ in connection with this transaction. In fact, the February 23, 2001, "Assumption of Debt" document submitted by the

claimant states that his companion's ex-husband was at that time transferring his portion of the property to her. Thus, the POQ remained under the sole ownership of the companion until July 18, 2012, when she conditionally conveyed half ownership of the property to the claimant. Although the claimant asserts he paid the mortgage on the property this entire time (although he has provided no documentation of such), this does not confer legal ownership. Regardless of whatever financial arrangements he and his companion may have had during this period, large portions of which he was not residing in Germany, his failure to have his name placed on the property title undermines any assertion of "purchase" at the time of the 2001 refinancing. Rather, his assumption of the debt associated with the loan served the purpose of financially assisting his companion to pay for the house which was legally owned solely by her. When the companion conditionally conveyed half ownership of the property to the claimant eleven years later, it was at no cost to the claimant except for legal fees associated with the transaction. Because this purported ownership change did not occur as a result of purchase of the house, the underlying assumption of DSSR Section 136(a) that the POQ owned by the employee have been purchased by the employee is not met. Therefore, the claimant's request for the rental portion of LQA for POQ under Section 136(a) is denied.

We note that even if the claimant had purchased the POQ in question, he would only be eligible for fifty percent of the potential rental portion of the LQA grant for the POQ unless the co-owner were his spouse.

We also note that Section 136(a), in the structure of its payment provisions, refers to POQs that have been purchased as a direct consequence of the Federal employment to which the LQA eligibility attaches. These provisions allow for "up to 10 percent of original purchase price" to be considered the annual rate of the estimated expenses for rent, "limited to a period not to exceed ten years." No such restriction applies to LQA for rental rather than purchase expenses presumably because after that period, the employee will have been reimbursed sufficient to have fully paid for the POQ. There is no explicit provision in the DSSR to receive LQA for a POQ purchased many years before commencement of the Federal employment, where the employee has already partially or even wholly paid for the POQ. Since the purpose of LQA is to "defray official residence expenses," LQA for POQ may not be granted in cases where such expenses do not exist nor may they exceed the actual expenses incurred.

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. Under 5 CFR 178.105, the burden is upon the claimant to establish the liability of the United States and the claimant's right to payment. *Joseph P. Carrigan*, 60 Comp. Gen. 243, 247 (1981); *Wesley L. Goecker*, 58 Comp. Gen. 738 (1979). Since an agency decision made in accordance with established regulations as is evident in the present case cannot be considered arbitrary, capricious, or unreasonable, there is no basis upon which to reverse the decision.

This settlement is final. No further administrative review is available within the OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.