

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

**Claimant:** [name]

**Organization:** [agency component]  
U.S. Army Installation Management  
Command Headquarters  
U. S. Army Garrison  
Baumholder, Germany

**Claim:** Personally Owned Quarters (POQ)

**Agency decision:** Denied

**OPM decision:** Denied; Lack of jurisdiction

**OPM file number:** 11-0011

//Judith A. Davis for

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

3/4/2011

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Date

The claimant is currently employed in a [position] in the [agency component], U. S. Army Garrison, in Baumholder, Germany. In his November 17, 2010, letter received by the U.S. Office of Personnel Management (OPM) on December 8, 2010, the claimant seeks to appeal the U.S. Army, Europe's, decision to deny his request for continuance of a personally owned quarters (POQ) allowance. For the reasons discussed herein, the claim is denied.

On August 20, 2010, the claimant requested a continuance of POQ allowance from the Wiesbaden Civilian Personnel Advisory Center (CPAC) based on what he deemed as "unusual circumstances." These unusual circumstances arise from the purchase of a new home in June 2008. The claimant states he bought this home under the impression he would be granted a continuance of the POQ allowance. In a decision dated October 14, 2010, the Director, Civilian Personnel Advisory Center – Wiesbaden, disapproved the claimant's request on the basis that it was not permitted by Section 136(b) of the Department of State Standardized Regulations (DSSR).

On October 15, 2010, the claimant elevated his request to U.S. Army, Europe. In a decision dated November 10, 2010, the Chief, Employment and Compensation Branch, Civilian Personnel Directorate, stated that DSSR "136b(2) explicitly prohibits the grant of full LQA for periods beyond the initial 10 year period for a second POQ within the daily commuting distance" and declined to grant an exception as authorized by the DSSR because the claimant's:

case is not of the unusual circumstance as we are unable to follow your assertion that you suffered a substantial loss when you sold your first POQ and entered into a purchase contract for your second POQ; further, the grant of LQA for an additional 10-year period for a second POQ at your duty station that you have not departed since at least 1987 would be inappropriate and not in the best interest of the government.

This decision further advised the claimant that "[a]s an employee assigned to a non-appropriated fund [NAF] activity, your matter does not fall within the claims adjudication authority of the U.S. Office of Personnel Management."

As discussed in OPM File Number S004184 (March 21, 2000), quarters allowance claims for Department of Defense (DoD) NAF employees are not reviewable by OPM and do not fall under the claim provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.), which limits OPM's claims adjudication authority to "claims involving Federal civilian employees' compensation and leave." Title 31 does not define "Federal civilian employee" in association with the claims adjudication authority it grants to OPM in section 3702(a)(2). However, title 5, U.S.C., concerns government organization and employees, and 5 U.S.C. 2105 defines the term "employee" for the purposes of that title. According to section 2105(c)(1)(B), an employee of a DoD NAF activity is "deemed not an employee for the purpose of laws administered by [OPM] except as otherwise specifically provided in [title 5, U.S.C.]."<sup>1</sup> Thus, OPM's jurisdiction to

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<sup>1</sup> Section 2105(c) includes other exceptions that are not relevant to the question of OPM's authority to consider NAF employees' claims for LQAs.

adjudicate claims for compensation and leave does not extend to the claims of employees of NAF activities unless a provision in title 5, U.S.C., specifically authorizes OPM to consider their claims.

Chapter 59, subchapter III of title 5, U.S.C., governs foreign allowances, and section 5921 defines the terms in subchapter III. According to section 5921(3), the term "employee" means "an employee in or under an agency, and more specifically defined in regulations prescribed by the President." Section 101 of Executive Order 11137, dated January 10, 1964, as amended, specifies that "[t]he term 'employee' as defined in 5 U.S.C. 5921(3) is . . . further defined as including civilian employees, compensated from non-appropriated funds, of the instrumentalities of the United States under the jurisdiction of the armed forces covered by 5 U.S.C. 2105(c)." Therefore, Executive Order 11137, as amended, declares DoD employees of NAF activities to be employees of the United States for the purposes of the provisions in 5 U.S.C. Chapter 59, subchapter III, including the quarters allowance provisions of 5 U.S.C. 5923. However, the Executive Order does not declare employees of DoD NAF activities to be employees within the meaning of 5 U.S.C. 2105, or for the purposes of considering their claims under 31 U.S.C. 3702. Moreover, title 5, U.S.C., does not include any provision that authorizes OPM to consider claims from employees of DoD NAF activities concerning their entitlement to a POQ allowance. Therefore, we do not have jurisdiction to consider 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.