

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

**Claimant:** [name]

**Organization:** Department of the Army  
Hohenfels Training Area  
Hohenfels, Germany

**Claim:** Request for Waiver for Overpayment of  
Living Quarters Allowance

**Agency decision:** Denied

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

**OPM contact:** Robert D. Hendler

**OPM file number:** 07-0006

/s/ for

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

11/1/2006

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Date

The claimant, currently employed in a Federal civilian position by the Department of the Army (DA) in [installation & State], requests the Office of Personnel Management (OPM) assist him in the recovery of \$27,466.02 he paid to the Defense Finance and Accounting Service (DFAS) in 2006 for overpayment of living quarters allowance (LQA) for the period of January 18, 1997, through November 12, 2005. He received the LQA at issue when he was employed in a Federal civilian position by DA in Hohenfels, Germany, living in personally owned quarters in Parsberg, Germany. OPM received this claim on September 25, 2006. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant wrote to OPM on this matter based on information provided to him in a June 6, 2006, "Administrative Report" from DFAS stating LQA indebtedness is ineligible for waiver consideration:

Although we cannot consider your debt for waiver under Public Law 92-453 and 5 U.S.C. 5584, another possible avenue of relief would be to contact your employing agency at the time you were receiving LQA. Under 5 U.S.C. Section [sic] 5922(b), the head of your employing agency may make a determination that an employee does not have to refund the LQA overpayment, if it is shown that the recovery would be against equity and good conscience or against public interest. This claim can ultimately be decided by the Office of Personnel Management (OPM). OPM has the authority over all compensation and allowance claims for Federal employees.

Part 178 of title 5, Code of Federal Regulations, concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims as well as the documentation that should accompany a claim. Paragraph (a)(3) of section 178.102 specifies this documentation should include a copy of the final written agency denial of the claim. Therefore, paragraph (a)(3) denotes that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. In the instant case, the documentation submitted does not include any decision from the claimant's employing agency, DA. Rather, it includes a DFAS "Administrative Report" denying a waiver for LQA indebtedness and, as quoted previously, advising the claimant of his right to request a waiver from DA. The record shows DFAS functions as the payroll provider to DA. Therefore, it is not clear whether the claimant has filed a formal written claim with his employing agency, DA. OPM may decline to review a claim where the employing agency has not issued a final written decision denying the claim. In addition, however, OPM's response to this request can be rendered on other jurisdictional grounds, as follows.

The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation or, in the case of claimants who have been issued a notice of indebtedness, a means to challenge the propriety of the underlying debt. The claimant does not contest the underlying debt, but seeks relief from that debt by means of a waiver. He believes the failure of his agency to periodically reconcile his LQA advance is an act "against the equity and good conscience of the government and place me in an unjustifiable state of indebtedness through no fault of my own."

It appears the claimant interpreted the above quoted DFAS "Administrative Report" as giving OPM the authority to waive his indebtedness. As a result of legislative and executive action, the

authority to waive overpayments of pay and allowances now resides with the heads of agencies, regardless of the amount. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996, and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. Neither Pub. L. No 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances. Accordingly, OPM does not have jurisdiction to consider, or issue a decision on, the request for a waiver of the claimant's indebtedness to the United States. Therefore, the claimant's request is dismissed for lack of jurisdiction.

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. *See Frank A. Barone*, B-229439, May 25, 1988. Where 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, as cited in *Philip M. Brey, supra*.

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.