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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-171786

MAR 2 - 1971

MAR 2 - 1971

Mr. David E. Wells
Chief Counsel
Federal Highway Administration
United States Department of Transportation

Dear Mr. Wells:

This refers to your letter of January 21, 1971, reference CC-30, enclosing correspondence from Mr. Richard A. Anderson concerning his claim for overtime compensation during the period of May 1942, to March 5, 1945, as an employee of the Alaska Road Commission, Department of the Interior. You say that you would appreciate it if our findings could be reported directly to your office for transmittal to the claimant through the office of Senator Fred R. Harris.

By our Office settlement of November 28, 1949, an amount of \$267.30 was certified as due Mr. Anderson as additional compensation under section 23 of the act of March 28, 1934, 5 U.S.C. 673c (now codified in 5 U.S.C. 5544(a)) for overtime services rendered as an employee of the Commission during the period May 1942, to March 5, 1945.

Since no balances remained in the applicable appropriation accounts for which payment of the settlement was to be made, the settlement, together with similar claims by employees of the Commission, were reported to the Secretary of the Interior as being necessary for a deficiency appropriation if payment was to be made. The settlements were submitted by the Secretary of the Interior for a deficiency appropriation. However, Congress failed to appropriate the necessary funds to pay the claims.

Information regarding these claims is included in the House Hearings on the Second Supplemental Appropriation Bill, 1950, pages 503-517 and the Senate Hearings on the same bill, pages 79-84. Also, Senate Hearings on the Interior Department Appropriations for 1951, pages 1243-1246 and Senate Report No. 1941 on the General Appropriation Bill, 1951, page 165 and House Report No. 1797 on the same bill, page 180. The latter report reads in part as follows:

"The committee has denied the estimate for \$525,000 for payment of claims stated to be due as overtime compensation for work performed in 1945 and prior fiscal years for the

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Alaska Road Commission. The committee has thoroughly reviewed this request and is not convinced that the equities of these claims are sufficient to warrant approval of the requested appropriation. These matters should be presented to the Court of Claims where judicial processes are available to weigh all relevant considerations and to ascertain the equities involved. The court can also establish whether or not any offsets might be due the Government. The action of the committee in denying this appropriation should not be considered as prejudicial to any litigation which might ensue."

Because of the action by the Committee that the claims be reduced to judgment by the Court of Claims before an appropriation therefor would be made, our Office canceled the settlements including that in favor of Mr. Anderson. Thereafter approximately 300 of the individuals on whose claims settlements were issued but later canceled by our Office, as described above, have been awarded judgments in the Court of Claims under decisions of that Court holding that our issuance of a settlement and the claimant's acquiescence therein constituted an "accord" which gave rise to a cause of action upon which the court was empowered to render judgment, aside from the merits of the original claim. Marr v. United States, 123 Ct. Cl. 474, certiorari denied, 345 U.S. 956; Andrews v. United States, 126 Ct. Cl. 571; Albin v. United States, 128 Id. 204; id. 782, 783 (statistical entry). We have no record of any claim by or on behalf of Mr. Anderson being included in the group of 300 or more who obtained such judgments. Of course, the statute of limitations applicable to the Court of Claims (6 years) would also preclude any action at this time in that Court based upon the holding in the cases cited above. Several bills have been introduced in the Congress to confer jurisdiction upon the Court of Claims to render judgment upon these claims without regard to the statute of limitations, however, none of these bills was ever enacted into law.

Since no funds are available for the payment of the claim of Mr. Anderson by our Office and since no suit appears to have been filed by or on behalf of him in the Court of Claims within the prescribed time limitation, there is no means whereby payment of his claim can be effected at this time.

We trust that the foregoing will be of assistance to you in preparing a reply to Mr. Anderson and, also, that it will serve to explain why the settlement in his favor has been canceled and may not now be paid.

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The enclosures forwarded with your letter are returned.

Sincerely yours,

RF.KELLER

Assistant Comptroller General
of the United States

Enclosures

RECEIVED
GENERAL INVESTIGATIVE
DIVISION
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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20548

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SEP 26 1969

Mrs. Edith Albrittain
Authorized Certifying Officer
Environmental Science Services Administration
U. S. Department of Commerce
Rockville, Maryland 20852

Dear Mrs. Albrittain:

This is in reply to your letter of August 8, 1969, reference AD571x17, requesting our decision as to whether you may certify for payment a voucher in favor of Mr. George A. Lepiens, Jr., an employee of the Coast and Geodetic Survey, for reimbursement of expenses incurred in sailing his residence at Largo, Florida, a suburb of St. Petersburg, incident to his transfer of official station from Norfolk, Virginia, to Miami, Florida, pursuant to Travel Order No. 69-EE27-040, dated August 22, 1968. The claim was administratively disallowed because Norfolk was regarded as the employee's permanent station whereas the residence was not located within commuting distance of that station.

While for operational and administrative purposes the home port of a vessel is regarded as the official duty station of employees assigned to such a vessel, in the instant case no permanent change of station orders were issued to the employee transferring him to Norfolk, Virginia. The failure to transfer the employee apparently was intentional, because the heavy commissioning and decommissioning program made it impossible to determine where the permanent assignment of the employee ultimately would be. In the absence of permanent change of station orders, the employee could not have been reimbursed real estate transaction expenses had he sold his residence at Largo incident to his Norfolk assignment.

In late 1966 the employee was attached to the vessel "HYDROGRAPHER" which sailed from St. Petersburg, Florida, to Norfolk, Virginia, where it was decommissioned shortly after its arrival. The employee was then assigned to the "WASHER" which was also scheduled to be decommissioned and was, in fact, decommissioned in Louisiana in June 1968. In the meantime, the employee had spent several months in school in Washington, D. C., and had traveled on the "WASHER" to New England, but never remained in any one city on that voyage for more than 30 days. After that the "WASHER" returned to Norfolk for a 3-month period of overhauling. It then departed

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OFFICERS AND EMPLOYEES
Transfers

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Relocation expenses
House sale

B-167708

Actual residence at time of official
transfer requirement

for Louisiana in February 1968 and remained in Louisiana from the time of its arrival until it was decommissioned. Thereafter, the employee was assigned to the vessel "TERRAL." This ship, too, was to be home ported in Norfolk. However, prior to its sailing from Louisiana to Norfolk, the employee was permanently transferred to the Atlantic Oceanographic Laboratories at Miami, Florida.

In view of the unusual circumstances in the instant case it is not unreasonable to view each of the various assignments of the employee occurring after his departure from St. Petersburg, Florida, until he was permanently assigned to the Atlantic Oceanographic Laboratories of Miami as temporary duty assignments so that now he may be reimbursed otherwise proper real estate transaction expenses incident to the sale of his residence at Largo, Florida. In such connection no more than the usual loan origination fee, which from the correspondence transmitted here appears to be 1 percent, would be reimbursable. The \$841.90 shown on the closing statement appears primarily to represent points or a charge for the use of the money loaned which under the applicable regulations is not reimbursable.

The voucher, with attachments, is returned herewith for handling in accordance with the foregoing.

Sincerely yours,

R. F. Keller

For the Comptroller General
of the United States

Enclosure