

DOCUMENT RESUME

03541 - [A2633741]

[Miscellaneous Expenses Allowance]. B-188437. September 15, 1977. 4 pp.

Decision re: Albert N. Alexander; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Commerce.

Authority: 5 U.S.C. 5924. 5 U.S.C. 5724. 22 U.S.C. 922. 22 U.S.C. 961. 22 U.S.C. 1136. B-186548 (1977). B-180852 (1974).

Oriel Gottesman, an Authorized Certifying Officer for the Department of Commerce, requested an advance decision with regard to an employee's claim for miscellaneous expenses in transferring back to the United States from an overseas duty station where he was a Foreign Service Reserve officer. Although the employee did not qualify for home service transfer allowance because he may be reassigned overseas, he was not paid miscellaneous expenses allowance under 5 U.S.C. 5724a (b). (Author/SC)

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DECISION



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

FILE: B-188437

DATE: September 15, 1977

**MATTER OF: Albert N. Alexander - Miscellaneous
expenses allowance**

DIGEST: Employee was reinstated in his former General Schedule position in United States with Department of Commerce following overseas assignment as Foreign Service Reserve officer under 22 U. S. C. § 922. Although he does not qualify for home service transfer allowance under 5 U. S. C. § 5924 because it is not anticipated that he will again be assigned overseas, he may not be paid miscellaneous expenses allowance under 5 U. S. C. § 5724a(b). The miscellaneous expenses allowance is not payable to individual whose travel to and from overseas post is effected under chapter 14 of title 22 of the United States Code.

By letter of February 18, 1977, Mr. Uriel Gottesman, an authorized certifying officer for the Department of Commerce, requests an advance decision concerning payment of the \$200 miscellaneous expenses allowance claimed by Mr. Albert N. Alexander. Mr. Alexander was previously assigned to an overseas post of duty under the State-Commerce exchange program, during which assignment he was a Foreign Service Reserve officer. Upon completion of the overseas assignment, Mr. Alexander was reinstated as a General Schedule employee of the Department of Commerce. Because it is not anticipated that he will again be assigned to an overseas post, he was found ineligible for the home service transfer allowance authorized by 5 U. S. C. § 5924 (1970). Therefore, Mr. Alexander claims a miscellaneous expenses allowance under the authority of 5 U. S. C. § 5724a(b) (1970) which, as he points out, does not require a certification that the employee is at a post of assignment in the United States between assignments to posts in foreign areas.

The authority under which Commerce employees are assigned to overseas posts as Foreign Service Reserve officers is contained at 22 U. S. C. § 922 (1970), which provides as follows:

"Whenever the services of a person who is a citizen of the United States and who has been such for at least five years are required by the Service, the Secretary may--

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* * * * *

"(2) assign as a Reserve officer for nonconsecutive periods of not more than five years each a person regularly employed in any Government agency, subject, in the case of an employee of a Government agency other than the Department of State, to the consent of the head of the agency concerned* * *."

Pursuant to that authority and 22 U. S. C. § 961 (1970), the Departments of State and Commerce have agreed to an exchange of personnel. The agreement between those two Departments provides for the appointment of Commerce employees as Foreign Service Reserve officers and provides further that the Department of State will pay salaries, allowances, per diem and transportation costs directly to or for officers from the Department of Commerce.

In Matter of William J. Lynch, B-180852, October 23, 1974, we considered the claim for a home service transfer allowance submitted by another employee incident to his return to the United States as a General Schedule employee of the Department of Commerce following his assignment overseas as a Foreign Service Reserve officer. The question there presented was whether the Department of Commerce could make the necessary certification that the employee would be reassigned to a post in a foreign area in view of the fact that selection of individuals for assignments under 22 U. S. C. § 922 (1970) is a matter for joint determination by the Departments of Commerce and State. For reasons that will not be restated here we held that it would be appropriate for the Department of Commerce to make the finding required for payment of the home service transfer allowance under the following authority of 5 U. S. C. § 5924 (1970):

"The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

* * * * *

"(2) A transfer allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by the employee incident to establishing himself at a post of assignment in--

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* * * * *

"(B) the United States between assignments to posts in foreign areas."

The Department of State's regulations implementing 5 U.S.C. § 5924 (1970) appear at section 250 of the Standardized Regulations (Government Civilians, Foreign Areas) and provide a home service transfer allowance composed of a miscellaneous transfer expense portion, a wardrobe portion, and a temporary lodging portion. Subsection 251.1 specifies that the allowance is payable for "extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment in the United States between assignments to posts in foreign areas."

In Mr. Alexander's case, the Department of Commerce is unable to certify that he will be given a further assignment overseas. Since the miscellaneous transfer expense portion of the home service transfer allowance is similar to the miscellaneous expenses allowance provided by 5 U.S.C. § 5724a(b) (1970) Mr. Alexander claims the latter allowance, noting that it is payable to employees transferring from overseas assignments to posts of duty in the United States without regard to their prospects for further overseas duty. Specifically, 5 U.S.C. § 5724a(b) (1970) provides:

"(b) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, and notwithstanding other reimbursement authorized under this subchapter, an employee who is reimbursed under subsection (a) of this section or section 5724(a) of this title is entitled to--

"(1) an amount not to exceed 2 weeks' basic pay, if he has an immediate family; or

"(2) an amount not to exceed 1 week's basic pay, if he does not have an immediate family.

However, the amounts may not exceed amounts determined from the maximum rate for GS-13."

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We note that the miscellaneous expenses allowance is payable only to an employee who is reimbursed under 5 U. S. C. § 5724a(a) (1970) or under 5 U. S. C. § 5724(a) (1970). Subsection 5724(a) is the general authority for payment of travel and transportation expenses of employees transferred from one official station to another in the interest of the Government. That authority does not extend to individuals transferred under the Foreign Service Act of 1946, as amended, by virtue of the following language of 5 U. S. C. § 5724(g) (1970):

"(g) The allowances authorized by this section do not apply to an employee transferred under chapter 14 of title 22."

The allowances authorized by 5 U. S. C. § 5724a(a) (1970) are payable to employees for whom the Government pays travel and transportation expenses under section 5724(a) and, thus, are not payable to employees transferred under chapter 14 of title 22 of the United States Code. Consequently, the miscellaneous expenses allowance provided for by 5 U. S. C. § 5724a(b) (1970) is not payable to an employee transferred under chapter 14 of title 22.

As indicated above, Mr. Alexander's appointment as a Foreign Service Reserve officer was effected under 22 U. S. C. § 922 (1970). That authority is contained in chapter 14 of title 22, United States Code, as is 22 U. S. C. § 1136 (1970), the authority for payment of the travel and transportation expenses of officers and employees of the Foreign Service. Upon his assignment overseas, Mr. Alexander became a Foreign Service Reserve officer and both his transfer overseas and his return transfer to the United States were effected under the authority contained in chapter 14 of title 22. For this reason, he may not be paid a miscellaneous expenses allowance under 5 U. S. C. § 5724a (1970). See Matter of Department of Agriculture, B-186548, February 28, 1977.

R. F. K. 1/22
Deputy Comptroller General
of the United States