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N. McFall

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DECISION

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

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FILE: B-190590 DATE: February 21, 1979

MATTER OF: Mr. Chester E. Whitcomb - Home leave travel expenses

DIGEST: Employee was appointed by the Navy in Hawaii from a local register and advised that he was a local hire and not entitled to tour renewal agreement travel. The agency had authority to deny such travel to local hires under applicable regulations (now FTR para. 2-1.5h (3)(b)(iii)). The fact that he was appointed without break in service from an agency in which eligibility to this travel had been granted (but not used) is not controlling. Further the determination of entitlement by that agency appears questionable since return from leave must be based on employee's actual residence at time of appointment not his "home of record."

This action is in response to a letter dated October 3, 1978, from Mr. Chester E. Whitcomb, an employee of the U.S. Navy, which constitutes an appeal of action by our Claims Division dated August 23, 1977, disallowing his claim for reimbursement of travel expenses incident to returning to the continental United States from Hawaii for home leave during the years 1970, 1972, and 1974.

After retirement from the United States Coast Guard on September 1, 1963, Mr. Whitcomb was employed by the Department of the Interior, Bureau of Fisheries, in Hawaii from October 31, 1963, until he transferred to the Federal Communications Commission (FCC) on February 1, 1965. After inquiring in August 1966 as to his eligibility for payment of transportation expenses to the continental United States for leave purposes, he submitted information indicating that his place of residence was Somerville, Massachusetts, and his temporary address was Kailua, Hawaii. He further submitted a statement dated September 22, 1966, that he agreed to remain in his job for a period of 2 years after return from the mainland on paid leave. Thereafter, he was notified on September 27, 1966, of his eligibility for consideration for paid leave to the continental United States (Somerville, Massachusetts) upon completion of his 2-year tour of duty. On July 14, 1966, he was

named on a FCC eligibility list of employees for paid leave to the mainland. It was indicated at this time that his place of actual residence was Somerville, Massachusetts, and that he entered on duty outside the mainland to establish eligibility for round-trip transportation on February 1, 1965. However, Mr. Whitcomb was unable to take such leave while employed by the FCC.

Mr. Whitcomb was selected by the Department of the Navy for employment as a Communications Specialist, GS-9, from a Certificate of Eligibles provided by the Interagency Board of Civil Service Examiners, Hawaii and Pacific Area, Honolulu, Hawaii, Civil Service Commission (CSC), and transferred with promotion on September 27, 1967, to the Pacific Missile Range Facility, Hawaiian Area, Koehe Bay. His application for this position indicated that his local address was Kailua, Hawaii, and his home of record was Somerville, Massachusetts. In response to his letter dated March 27, 1968, requesting a determination of his eligibility for mainland leave, he was furnished a copy of the first endorsement to the Commanding Officer, Pacific Missile Range, Point Magu, California, dated April 5, 1968, which stated that he was informed at the time of his employment interview that he would be considered a local hire with no transportation agreement eligibility, since he was certified to the Department of the Navy as a local eligible by the CSC. His personnel records further disclose that his selection was made from the top 3 eligibles, while nonresident eligibles were placed at the bottom of the register. In a letter from the Director of Civilian Manpower Management dated May 8, 1968, he was advised of his ineligibility to negotiate a renewal agreement providing him with round-trip travel to the United States for leave purposes due to being hired locally.

Our Claims Division disallowed Mr. Whitcomb's claim on the ground that section 7.3c of Bureau of the Budget (BOB) Circular No. A-56, revised October 12, 1966, in effect at the time he was employed by the Department of the Navy, specifies with regard to an employee hired locally who did not sign a written agreement, that the department may refuse to extend eligibility for home leave travel and transportation expense, provided the department notifies the employee of its intention to do so before the employee has completed a period of service equal to the period generally applicable to the employees of the department serving at the post of duty concerned or in the same geographical area.

Further, since he was hired locally and informed within the period of time allowable that he would not be allowed to negotiate a transportation agreement, the Navy complied with the governing regulation in their refusal to allow him to negotiate a renewal agreement.

Mr. Whitcomb contends in effect that his mainland paid leave was established on February 1, 1967, by his completion of his 2-year tour of duty with the FCC, and that although he was employed from a register, it was in fact a transfer in civil service without a break which should have entitled him to negotiate a transportation agreement.

Section 5728(a) of title 5, United States Code (1976), provides that under regulations prescribed by the President an employee who is appointed or transferred to a post of duty outside the continental United States shall be allowed expenses of round-trip travel for himself and transportation of his immediate family from the posts of duty outside the continental United States to the places of actual residence at the time of appointment or transfer to such overseas posts of duty upon satisfactory completion of an agreed period of service overseas for the purpose of taking leave prior to serving another tour of duty at the same or other overseas post under a new written agreement entered into before departing from the overseas post.

Regarding entitlement to a transportation agreement paragraph C4002-3, change 29, October 1, 1967, effective July 1, 1967, of 2 Joint Travel Regulations (2 JTR) provides in pertinent part:

"3. OVERSEAS LOCAL HIRES

"a. General. Overseas local commands will negotiate an agreement with a locally hired employee if the conditions in subpar. b are met. To avoid misunderstanding and disagreement at a later date, eligibility for return transportation will be determined at the time of appointment and recorded through the execution of an agreement.

"b. Conditions

"(1) Bona Fide Residence in the United States. To be eligible to negotiate an agreement, the employee must be able, at the time of appointment or assignment, to establish to the satisfaction of the appointing official, bona fide place of actual residence * * * in the United States but outside the geographical locality of the post of duty."

Paragraph C4003, JTR, provides that the commanding officer concerned may, in his discretion, refuse to negotiate a renewal agreement with an employee who was hired locally and did not sign a written agreement providing for return travel upon separation. In this connection the Department of Defense component involved will notify the employee of its intention before the employee has completed a period of service equal to the period generally applicable to an employee of the Department of Defense component concerned and serving at the duty station involved, or in the same geographic area.

The certification (CSC Form 1844) submitted by Civil Service examiners for Hawaii and the Pacific area to the Pacific Missile Range Facility dated August 30, 1967, indicating Mr. Whitcomb's selection for employment listed only local residents. Even though no residence address was listed for him, it was not required since his application was attached. Since all three eligibles were found to be unusally well qualified, he would not have been selected if he were considered a nonresident requiring that his name be certified at the bottom of the list. Under the circumstances, the Navy could not have considered him in any category other than being hired based upon maintaining a permanent local residence.

In decision 46 Comp. Gen. 691 (1967), it was held that under section 7.3c of BOB Circular No. A-56 (now, Federal Travel Regulations (FPMR 101-7) para. 2-1.5h(3)(b)(iii) (May 1973)) any agency, within its discretion, may refuse to extend eligibility for home leave travel to a local hire individual, but that section limits the discretionary authority to those cases in which the department gives the required notice of its intention to deny that right. The Navy Department complied with the governing regulations when they refused to extend Mr. Whitcomb a transportation agreement and gave him the required notice of such intention.

Even if Mr. Whitcomb could have retained rights to this travel based on a transfer from FCC, we note that he has remained in Hawaii since his retirement from the Coast Guard in 1963. After 2 months' unemployment following retirement he was employed by the Department of the Interior. Although the details of that employment are not in the file, there is no evidence that he was considered eligible for tour renewal agreement during that period. While he was employed by FCC a determination was made that he was eligible for that benefit. However, the law (5 U.S.C. 5728) provides that return travel will be allowed on the basis of the employee's place of "actual residence at the time of appointment". Mr. Whitcomb claimed a place in the United States as his "home of record", but there is no indication that such place was his actual residence when appointed by FCC. Thus, the determination of the FCC to authorize this benefit was questionable at the least and could not be used to support the employee's claim.

Accordingly, the action taken by our Claims Division is sustained.

R.F. Keller

Deputy Comptroller General
of the United States