

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

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FILE: B-211880**DATE:** February 8, 1984**MATTER OF:** William J. Shampine**DIGEST:**

- (1) An employee of the U.S. Geological Survey assigned to Saudi Arabia under the Foreign Assistance Act whose travel was governed by the Foreign Service Travel Regulations may not be reimbursed for temporary quarters expenses under the Federal Travel Regulations upon his return to the United States. However, the employee is eligible for a "home service transfer allowance" under section 250 of the Standardized Regulations (Government Civilians, Foreign Areas), as amended, under authority contained in the Foreign Service Act of 1980.
- (2) The home service transfer allowance, under 5 U.S.C. 5924(2)(B) prescribed in the Standardized Regulations (Government Civilians, Foreign Areas), provides reimbursement for subsistence and miscellaneous expenses for employees (including Foreign Service members) only when they are transferred to the United States "between assignments to posts in foreign areas". Under authority of the Foreign Service Act of 1980 the restriction "between assignments" in foreign areas was removed from the regulations. That change is valid as to Foreign Service members and others whose relocation allowances are authorized under the Foreign Service Act, but the restriction still applies to other employees not covered by the Act.

The question presented in this case is whether Mr. William J. Shampine, an employee of the U.S. Geological Survey, Department of the Interior, may be reimbursed temporary quarters and subsistence expenses incident to his

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transfer from Riyadh, Saudi Arabia, to Atlanta, Georgia.¹ We find that while Mr. Shampine is not eligible for reimbursement of temporary quarters expenses under the Federal Travel Regulations, he is eligible for a "home service transfer allowance" under section 250 of the Standardized Regulations (Government Civilians, Foreign Areas).

Background

Mr. Shampine, an employee of the Geological Survey formerly stationed in Indianapolis, Indiana, completed an overseas assignment with the United States/Saudia Arabia Joint Commission on Economic Cooperation. We understand that his assignment was made under the authority of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. chapter 32. His travel incident to this assignment was governed by the Foreign Affairs Manual, presumably pursuant to 22 U.S.C. 2385(d)(1982), which provides that employees so assigned are to receive allowances and benefits under the Foreign Service Act of 1980, 22 U.S.C. 3901 et seq. (1982).

Upon return to the United States Mr. Shampine accepted a position with the Geological Survey in Atlanta, Georgia, and traveled directly to Atlanta from Saudi Arabia in December 1982. It appears that upon his return to the United States Mr. Shampine was returning to permanent employment in the United States, and there is no indication that his assignment in Atlanta is an interim assignment with the contemplation that he will be later reassigned overseas. He incurred expenses for temporary quarters upon arrival in Atlanta, and the certifying officer has requested a decision on whether there is a legal basis upon which to reimburse Mr. Shampine.

Specifically, the certifying officer refers to the Comptroller General's decisions B-177277, February 12, 1973, and B-163639, March 27, 1968, in which it was held that an

¹ The question was presented together with a voucher for payment of the allowance by Posey B. Howell, Branch of Financial Management, Geological Survey, U.S. Department of the Interior, Reston, Virginia. The voucher is returned, but prior to payment the adjustment indicated in this decision must be made.

employee entitled to relocation expenses under the Foreign Affairs Manual may not be reimbursed under the Federal Travel Regulations (FPMR 101-7). The question is whether these decisions would preclude reimbursement of Mr. Shampine for temporary quarters expenses in these circumstances.

Analysis

Our decisions in B-177277 and B-163639 were affirmed in Matter of Vincent, B-194741, February 19, 1981. In Vincent we stated:

"Section 5724(a) of title 5, United States Code, is the general authority for payment of travel expenses of employees incident to a transfer in the interest of the Government. That authority does not extend to individuals transferred under the Foreign Service Act of 1946, as amended. In this regard 5 U.S.C. 5724(g) provides:

"(g) The allowances authorized by this section do not apply to an employee transferred under chapter 14 of title 22.²

"The allowances authorized by 5 U.S.C. 5724a(a) (1976), including reimbursement for temporary quarters subsistence expenses and the miscellaneous expenses allowance, 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, United States Code. See Albert N. Alexander, B-188437, September 15, 1977.

² The provisions contained in chapter 14 of title 22, U.S.C., were repealed by the Foreign Service Act of 1980. Section 5724(g) of title 5 U.S.C. (1982) now states: "(g) The allowances authorized by this section do not apply to employees transferred under the Foreign Service Act of 1980."

Furthermore, our Office has held that where an agency has transferred an employee to a foreign duty station under the Foreign Service Travel Regulations, the employee is not entitled to reimbursement of relocation expenses under the Federal Travel Regulations incident to his return to the United States. B-163639, March 27, 1968; and B-177277, February 12, 1973, and May 3, 1973.

"In decision B-186548, February 23, 1977, we held that where employees were transferred to overseas positions under the provisions of the Foreign Service Travel Regulations, the Department of Agriculture did not have discretion to authorize benefits provided under the Federal Travel Regulations issued pursuant to 5 U.S.C. 5721-5733 when such employees are transferred back to the United States.* * *"

For the same reason, Mr. Champine is not eligible for reimbursement of temporary quarters expenses under the Federal Travel Regulations. However, for the reasons set forth below he may be reimbursed for these expenses, if otherwise proper, under section 250 of the Standardized Regulations (Government Civilians, Foreign Areas) which provides for a "home service transfer allowance."

The home service transfer allowance is a cost-of-living allowance granted to an employee for expenses incurred incident to establishing himself at a post of assignment in the United States "between assignments to posts in foreign areas." 5 U.S.C. 5924(2)(B). It is prescribed under regulations of the Secretary of State (the Standardized Regulations (Government Civilians, Foreign Areas)) and is authorized for all Federal employees including Foreign Service officers. 5 U.S.C. 5921(3); Section 040i, Standardized Regulations (Government Civilians, Foreign Areas).

The home service transfer allowance is made up of three parts: (1) the "miscellaneous transfer expense portion" which is similar to the miscellaneous expense allowance

authorized under the Federal Travel Regulations, (2) the "wardrobe expense portion," and (3) the "subsistence expense portion" which is similar to the temporary quarters subsistence expense allowance authorized by the Federal Travel Regulations. Until September 1981, the Standardized Regulations, in section 251.1a, included a restatement of the statutory restriction that a home service transfer allowance was available only to an individual who is assigned to a post in the United States "between assignments to posts in foreign areas."³ Thus, we held in Matter of Alexander, B-188437, November 15, 1977, that an employee did not qualify for the allowance following an overseas assignment when it was not anticipated that he would be reassigned overseas. This is Mr. Shampine's situation. See also Matter of Lynch, B-180852, October 23, 1974.

The Foreign Service Act of 1980 provided new authority to pay travel and relocation expenses of Foreign Service members and their families transferred to or within the United States under the provisions of section 901(14) of that Act as long as the member of the Service agreed to remain in Government Service for at least 12 months. Pub. L. 96-465, § 901, October 17, 1980, 94 Stat. 2124 (22 U.S.C. 4081 (1982)). Reimbursement of relocation expenses of the type Mr. Shampine incurred for assignment to the United States had not been authorized under the previous Foreign Service Act. The only available reimbursement was under 5 U.S.C. 5924(2)(B) which, as is indicated above, only applies to assignments in the United States between assignments to posts in foreign areas.

Section 901(14) (22 U.S.C. 4081(14)) provides in general language that the Secretary of State may pay "travel and related expenses of members of the Foreign Service and their families", including costs incurred for their "travel

³ The "home service transfer allowance" was defined at section 251.1a of the Standardized Regulations (TL:SR-297, April 9, 1978) as "an allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him/herself at a post of assignment in the United States (sec. 040a) between assignments to posts in foreign areas."

and relocation" when the member is "assigned to or within" the United States. The legislative history of this section shows that it:

"* * * authorizes payment of travel and relocation expenses of members of the [Foreign] Service and their families in connection with assignments to or within the United States, including assignments to state and local governments.* * * It also permits reimbursement of relocation expenses incurred by members of the Service on other assignments to or within the United States for which they are not now authorized to be reimbursed and for which other employees of the Government are reimbursed under 5 U.S.C. 5724(a).* * *" Senate Rept. No. 96-913, August 22, 1980, pages 77-78 (reprinted in U.S. Code and Admin. News, Vol. 4, 96th Cong., Second Sess. 1980, page 4495).⁴

Regulatory provisions to authorize separate allowances under section 901(14) for miscellaneous expenses and temporary quarters subsistence expenses for Foreign Service members transferred to or within the United States when the transfer was not between foreign assignments were not promulgated. But the Secretary amended the home service transfer allowance regulation to remove the restriction that this allowance could be paid only between assignments in foreign areas. The effect of this was to authorize an allowance similar to the temporary quarters subsistence allowance since the reimbursement provisions of the home service transfer allowance are similar to the provisions for payment of the temporary quarters subsistence expense allowance and the miscellaneous expense allowance (allowances authorized

⁴ The reference to 5 U.S.C. § 5724(a) in the quotation was apparently intended to refer to 5 U.S.C. § 5724a which provides for the relocation expenses being discussed.

other Federal employees by 5 U.S.C. 5724a when travel allowances are authorized under 5 U.S.C. 5724).⁵ Thus, section 251.1 of the Standardized Regulations was amended effective September 25, 1981, to read:

"251.1 Definitions

- "a. 'Home service transfer allowance' means an allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him/herself at a post of assignment in the United States (Sec. 040a) or in any territory or possession of the United States or the Commonwealth of Puerto Rico as authorized by 5 U.S.C. 5924(2)(B) and Sec. 901(14) of the Foreign Service Act of 1980.
- "b. 'Transfer' in subchapter 250 means a reassignment that involves travel from a post in a foreign area to a post in the United States (Sec. 040a) or other non-foreign area with an understanding certified (See Sec. 077.32c) to by the employee that he/she will, complete twelve months in U.S. Government service following the effective date of transfer."

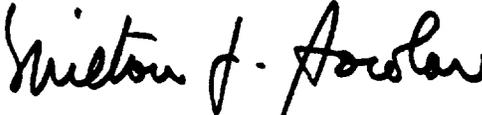
Conclusion

This method of implementing section 901(14) to provide relocation expense reimbursements is acceptable as it

⁵ We note that under current regulations the wardrobe expense portion of the home service transfer allowance is not authorized to Foreign Service members transferring between assignments in the United States. Standardized Regulations, sections 251.2b and 242.22. This is consistent with the Federal Travel Regulations which provide no wardrobe reimbursement for a transfer within the United States.

applies to Foreign Service members and other employees who by statute are authorized travel and relocation allowances provided to Foreign Service members. Therefore, for such persons, the holdings in Matter of Alexander and Matter of Lynch, referred to above, do not apply for relocation after the date of amendment to the regulations, September 25, 1981. However, since the specific statutory restriction in 5 U.S.C. 5924(2)(B) has not been removed, there is no authority to grant the home service transfer allowance to other employees who are not covered by section 901(14) of the Foreign Service Act and are transferred to the United States other than between assignments to foreign areas. The holdings in the Alexander and Lynch decisions remain applicable to these employees. The regulations should be clarified in that regard.

Regarding Mr. Shampine, as noted previously, his assignment was made under the Foreign Assistance Act, and thus he was authorized by statute to receive allowances and benefits under the Foreign Service Act of 1980, including section 901(14). See 22 U.S.C. 2385(d) (1982). Accordingly, the Geological Survey may reimburse him under section 250 of the Standardized Regulations (Government Civilians, Foreign Areas) for properly allowable relocation expenses incurred incident to his transfer from Saudi Arabia to Atlanta, Georgia, provided he otherwise meets the requirements of section 250. Since the provisions of section 250 are not identical to the Federal Travel Regulations, the certifying officer may direct the employee to file a new voucher if necessary.

for 
Comptroller General
of the United States