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DECISION

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

FILE: B-214066 **DATE:** June 11, 1984

MATTER OF: Virginia M. Borzellere - Tour Renewal Agreement Travel - Home Leave

DIGEST:

1. An employee who had been stationed in Montreal, Canada, for 2 years agreed to serve there for an additional 2-year period and performed renewal agreement travel under 5 U.S.C. § 5728 (1982). After returning to her duty station in Montreal for approximately 18 months, the employee transferred to a position in the United States. Although the employee did not complete the agreed period of overseas service, she may retain renewal agreement travel expenses since she served for more than 1 year under the new agreement. See citations to paragraph 2-1.5h of the Federal Travel Regulations, FPMR 101-7 (September 1981).

2. An employee who had been stationed in Montreal, Canada, for 2 years used home leave to perform renewal agreement travel. She then returned to her duty station in Montreal for approximately 18 months before transferring to a position in the United States. The employee is not indebted for home leave because she met the eligibility requirements set forth in 5 U.S.C. § 6305(a) (1982), and she returned to duty in Montreal immediately following the period of home leave.

3. The General Accounting Office will not consider an agency's hypothetical question concerning the circumstances under which an employee will be indebted for home leave granted under

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5 U.S.C. § 6305(a) (1982). The question is deferred for future consideration in the context of a specific claim.

Mr. Walter G. Lobisser, a certifying officer of the Department of the Treasury, United States Customs Service, requests a decision as to whether Ms. Virginia M. Borzellere must refund home leave and repay renewal agreement travel expenses covering a round trip between her duty station in Montreal, Canada, and the continental (conterminous) United States. This question arises because Ms. Borzellere transferred from Montreal to a position in the continental United States before the expiration of her 2-year tour renewal agreement.

We hold that Ms. Borzellere may retain expenses for renewal agreement travel because she completed more than 1 year of service under the new agreement after returning to her duty station in Montreal. Ms. Borzellere is not indebted for the home leave she used in connection with renewal agreement travel because she satisfied the eligibility requirements for home leave, and, after using the leave, she immediately returned to Montreal for further duty.

BACKGROUND

The relevant circumstances insofar as can be determined from the record and supplementary information furnished by the Customs Service are as follows. Effective December 2, 1979, Ms. Borzellere was assigned to Customs' Preclearance Station in Montreal. After completing 2 years of service, on December 1, 1981, Ms. Borzellere entered into a renewal agreement for an additional 2-year tour of duty.

During the period February 1 to February 13, 1982, Ms. Borzellere performed round-trip renewal agreement travel from Montreal to Elmira, New York. She was allowed home leave for this period, and apparently was authorized travel expenses in an amount not to exceed the cost of round-trip travel to her actual place of residence in Plattsburgh, New York.

On May 16, 1983, Ms. Borzellere requested a transfer from her duty station in Montreal to Customs' office in Rouses Point, New York. Effective August 21, 1983, she was assigned to a position in the New York office. Customs determined that Ms. Borzellere's transfer was in the interest of the Government, and, therefore, notified her that she would be reimbursed for the expenses of her relocation from Montreal to Rouses Point. Additionally, Customs notified Ms. Borzellere that her annual leave account would be charged for the home leave she had used for renewal agreement travel, since she had failed to fulfill her 2-year service commitment terminating on November 30, 1983.

The agency asks whether Ms. Borzellere must repay renewal agreement travel expenses under the applicable provisions of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). Specifically, Customs questions whether there is a relationship between the tour renewal agreement which FTR para. 2-1.5h(1)(b) requires as a condition of eligibility for renewal agreement travel, and an employee's obligation to repay renewal agreement travel expenses in the event he or she does not complete the period of service specified in the agreement.

The agency also expresses some confusion concerning the relationship between the provisions of FTR para. 2-1.5h, governing tour renewal agreement travel, and the provisions of Federal Personnel Manual (FPM) Supp. No. 990-2, bk. 630, S6 (Inst. 48, April 6, 1973), pertaining to home leave. The agency suggests that the guidance contained in the FPM is inconsistent with the FTR because it does not condition the granting of home leave on the execution of a tour renewal agreement, and because it outlines several circumstances under which an employee will not be indebted for home leave even if he fails to return to his overseas duty station after using the leave. For example, Customs notes that Subchapter S6-7c of Book 630, FPM Supp. No. 990-2, provides that an employee who fails to return to his overseas station will not be required to refund home leave if he has completed not less than 6 months of service in the United States following the period of home leave. Customs question whether this exception would apply to an employee who

returns to his overseas duty station after using home leave, but, 1 week later, accepts a transfer to a position in the United States.

DISCUSSION

At the outset, we note that Customs has mistakenly assumed that tour renewal agreement travel and home leave are interdependent benefits which are governed by the same principles. It is important to understand that renewal agreement travel and home leave are independent entitlements, even though these benefits are often provided coincidentally to a qualifying employee who returns to the continental United States. As we explained in Estelle C. Maldonado, B-208908, July 13, 1983, 62 Comp. Gen. ____, an employee may be entitled to renewal agreement travel under 5 U.S.C. § 5728 even if he does not qualify for home leave under 5 U.S.C. § 6305. Likewise, an employee's eligibility for home leave does not necessarily depend upon the execution of or compliance with a tour renewal agreement.

Accordingly, we will discuss Ms. Borzellere's entitlement to renewal agreement travel expenses and her eligibility for home leave under the separate laws and regulations governing each benefit.

Renewal Agreement Travel

Travel and transportation expenses incident to home leave--like those same round-trip travel expenses for employees taking vacation leave in connection with tour renewal agreements--are provided under the following authority in 5 U.S.C. § 5728:

> "(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual

> residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty."

Implementing regulations contained in FTR para. 2-1.5h(1)(b), condition an employee's eligibility for renewal agreement travel on his execution of a new written agreement to serve another tour of duty outside the continental United States. Under FTR para. 2-1.5h(4), an employee who fails to comply with the renewal agreement may or may not be liable for repayment of renewal agreement travel expenses, depending upon the duration of his service under the new agreement. Specifically, under FTR para. 2-1.5h(4)(a), an employee who fails to complete 1 year of service under the new agreement must repay renewal agreement travel expenses unless he violated the agreement for reasons which were beyond his control and acceptable to the agency. See Frank E. Hanson, Jr., B-201256, April 27, 1981. In contrast, FTR para. 2-1.5h(4)(b), provides that an employee who serves for one or more years under the new agreement, but fails to complete the entire period of required service, is not obligated to repay renewal agreement travel expenses.

As indicated previously, Ms. Borzellere completed 2 years of service in Montreal and executed a 2-year tour renewal agreement before performing renewal agreement travel between February 1 and February 13, 1982. After returning to duty in Montreal for approximately 18 months, she accepted a transfer within the Customs Service to a position in Rouses Point, New York. By accepting the transfer, effective August 21, 1983, Ms. Borzellere did not fully comply with her 2-year renewal agreement which was to expire on November 30, 1983. However, since Ms. Borzellere did complete more than 1 year of service under the new agreement, she may retain renewal agreement travel expenses under the authority of FTR para. 2-1.5h(4)(b).

Home Leave

The granting of home leave is governed by 5 U.S.C. § 6305(a) (1982), which provides as follows:

> "(a) After 24 months of continuous service outside the United States (or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government), an employee may be granted leave of absence, under regulations of the President, at a rate not to exceed 1 week for each 4 months of that service without regard to other leave provided by this subchapter. Leave so granted--
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> > "(1) is for use in the United States, or if the employee's place of residence is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico. * * *"

Implementing regulations which further define the eligibility requirements for home leave are codified in 5 C.F.R. §§ 630.601-607 (1984). The provisions of 5 C.F.R. § 630.606(a), reiterate the statutory requirement that an employee must perform 24 months of continuous service outside the United States in order to become eligible for home leave. An additional requirement is imposed by 5 C.F.R. § 603.606(c)(2), which provides that an agency may grant home leave to an employee only when "it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States."

Even if an employee satisfies the statutory and regulatory requirements for entitlement to home leave, he may be required to refund the leave under 5 C.F.R. § 630.606(e), if he does not return to his overseas duty station following the period of home leave or after the completion of an assignment in the United States. See FPM Supp. No. 990-2, bk. 630, S6-7c, which incorporates the provisions of 5 C.F.R. § 630.606(e), and is cited by Customs. However, 5 C.F.R. § 630.606(e)(1)-(3), provides

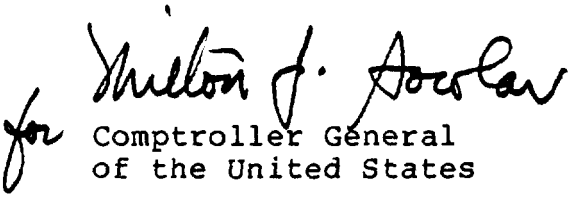
that an employee is not required to refund home leave if (1) he has completed not less than 6 months' service in an assignment in the United States following the period of home leave; (2) the agency determines that the employee's failure to return was due to compelling personal reasons of a humanitarian or compassionate nature; or (3) the agency determines that it is in the public interest not to return the employee to his overseas assignment.

In this case, Ms. Borzellere was eligible to use home leave for her renewal agreement travel since she had served in Montreal for a continuous period of 24 months, and since the agency allowed her to use home leave with the expectation that she would return for further duty in Montreal. Compare Lamoyne J. DeLille, 56 Comp. Gen. 824 (1977). Furthermore, since Ms. Borzellere returned to Montreal immediately after using home leave, she is not indebted for the leave under 5 U.S.C. § 630.606(e).

Accordingly, we find no basis for Customs's determination to charge Ms. Borzellere's annual leave account for the home leave she used in connection with renewal agreement travel. Therefore, the agency should recredit Ms. Borzellere with the appropriate amount of annual leave.

The agency poses an additional question as to whether an employee would be indebted for home leave under 5 U.S.C. § 630.606(e)(1), discussed previously, if he returns to his overseas duty station for only 1 week before transferring to a position in the United States. This question has no connection to the claim of Ms. Borzellere, who returned to Montreal following home leave and served there for approximately 18 months before transferring to a position in the United States. Since the agency's question is purely hypothetical, we will defer the question for future consideration in the context of a specific claim.

For the reasons stated above, we hold that Ms. Borzellere may retain expenses for renewal agreement travel, and that she is not indebted for home leave used in connection with the travel.



for Comptroller General
of the United States