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DECISION

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

FILE: B-213742 **DATE:** August 5, 1985

MATTER OF: Dr. Tommye Cooper - Relocation Expenses - Transfer from Overseas Duty Station

DIGEST:

1. Employee of the Office of International Cooperation and Development (OICD), Department of Agriculture, served a 2-year tour of duty overseas, and was issued a travel authorization to travel from Riyadh, Saudi Arabia, to Fort Collins, Colorado, by way of Washington, D.C., for debriefing. The travel authorization was effectively cancelled when OICD established a position for the employee in Washington, D.C., thus making Washington his permanent duty station. Employee is entitled to reimbursement of travel and transportation expenses incurred in anticipation of and prior to cancellation of the travel authorization.

2. Employee served a 2-year tour of duty overseas and was issued a travel authorization to travel from Saudi Arabia to Fort Collins, Colorado, by way of Washington, D.C., for debriefing. While serving a short-term detail in Washington, D.C., agency agreed to establish a position for him there and he signed an agreement to remain in government service for 1 year. Since employee was notified, while at a temporary duty station (Washington, D.C.), that it had been changed to a permanent duty station, he may be reimbursed for round-trip travel and transportation expenses incurred between Washington, D.C., and Fort Collins for the purpose of arranging for the movement of his family and household effects and assisting in other matters incident to the relocation.

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3. Upon completion of tour of duty overseas, employee was issued a travel authorization to travel from Saudi Arabia to Fort Collins, Colorado, by way of Washington, D.C., for debriefing. Several months after his return, and following much confusion as to his duty station in the United States, employee was permanently assigned to Washington, D.C. Under the unusual circumstances presented, Fort Collins may be treated as employee's old duty station at time of his transfer to Washington, thereby making employee eligible for real estate expenses reimbursement as provided in 5 U.S.C. § 5724a(a)(4). Record shows genuine confusion by agency over employee's duty station at time of Washington, D.C., transfer, but no intent to circumvent statutory requirements. B-172594, March 27, 1974, distinguished.

BACKGROUND

This decision is in response to a request by Mr. W. D. Moorman, Authorized Certifying Officer, National Finance Center, United States Department of Agriculture, for a decision as to whether certain relocation expenses incurred by Dr. Tommye Cooper, an employee of the Office of International Cooperation and Development (OICD), Department of Agriculture, may be certified for payment. The expenses were incurred in connection with his reassignment of official station from Riyadh, Saudi Arabia, to Fort Collins, Colorado, by way of Washington, D.C. For the reasons hereafter stated, the claimed relocation expenses may be certified for payment.

FACTS

Dr. Cooper was never on the rolls of OICD during his assignment to Saudi Arabia and retained reemployment rights with Agriculture's Office of Operations and Finance upon completion of his foreign duty assignment. Near the conclusion of Dr. Cooper's assignment in Saudi Arabia, OICD issued a travel authorization dated April 21, 1982, for his return to Fort Collins. The issuance of this authorization was based upon the best information available to OICD at that time since it had not received any official

information from the Office of Operations and Finance that Dr. Cooper would be returning to an official duty station other than Fort Collins. Dr. Cooper actually departed Saudi Arabia on June 27, 1982. He was scheduled to travel to Fort Collins via Washington, D.C., where he was to undergo debriefing. He arrived in Washington, D.C., on July 6, 1982. Dr. Cooper has been reimbursed for the costs of this travel.

Upon the employee's arrival in Washington, D.C., Dr. Cooper and OICD became aware that there were serious questions being raised in connection with his permanent duty station and that no decision had been made by the Office of Operations and Finance as to his reassignment. For example, a personnel action was issued by the Office of Operations and Finance reassigning Dr. Cooper to the National Finance Center in New Orleans, Louisiana. However, it was subsequently cancelled. The OICD further states that the Department's Office of Personnel issued a personnel action effective July 23, 1982, reassigning Dr. Cooper to Fort Collins. The OICD says that although Dr. Cooper received a copy of this personnel action, there is no indication that it was ever processed.

Dr. Cooper was in Washington, D.C., from July 6 through July 13, 1982, for post departure physical examinations and debriefing. Since his home agency, the Office of Operations and Finance, had made no permanent arrangements for his reassignment, Dr. Cooper requested and received approval to take annual leave. In addition, OICD requested a short-term detail for Dr. Cooper in Washington, D.C., to enable him to complete additional work in support of the Saudi Arabian project. The OICD issued a travel authorization dated July 12, 1982, authorizing Dr. Cooper to travel from Fort Collins to Washington (and return to Fort Collins) to perform temporary duty. The period of the detail was from July 20 through August 6, 1982. Dr. Cooper's travel voucher shows that he departed from Washington, D.C. on August 6, 1982, for Louisville, Kentucky, and Fort Collins. He arrived in Fort Collins on August 9, 1982. Dr. Cooper has been reimbursed for the expenses incurred during this travel.

On August 5, 1982, prior to the conclusion of the detail in Washington, D.C., and in anticipation of the formal establishment of a position with OICD and the employee's reassignment, OICD issued a travel authorization to Dr. Cooper reassigning him from Fort Collins to Washington, D.C. The position was officially established and Dr. Cooper's reassignment to OICD became effective on August 22, 1982.

The travel voucher now under consideration discloses that Dr. Cooper and his family left Fort Collins on August 23, 1982, and arrived in Sterling, Virginia, on August 26, 1982. He is claiming reimbursement of travel and per diem expenses for himself and his family, transportation of his household effects[1/], and miscellaneous expenses. Thus, the certifying officer asks the following questions:

"1. Since such a short time elapsed between the time Mr. Cooper returned to the United States and the time he was transferred to Washington, D.C., would it appear that the intent was to make Washington, D.C., his permanent duty station, thus limiting his costs for relocation expenses?

"2. If the answer to the above is in the affirmative, should we recompute the claims already paid and collect the overpayment from Mr. Cooper?

"3. If transfer is determined to be from Saudi Arabia to Washington, D.C., would Mr. Cooper be entitled to reimbursement for the actual costs he paid for shipment of his household goods from Fort Collins to Washington, D.C.?

"4. If a claim for real estate expenses is received, would Mr. Cooper be entitled to any costs he might claim?"

The certifying officer also requests our decision as to whether Dr. Cooper's official station was Fort Collins or Washington, D.C., upon his return from Saudi Arabia and what entitlements he has with regard to this travel.

1/ Dr. Cooper's household goods had been shipped from Saudi Arabia to Fort Collins at no expense to the government.

DISCUSSION

Travel and Transportation Entitlements of Employee Transferred Overseas

Under the provisions of 5 U.S.C. § 5724(d) (1982), an employee who transfers to a post of duty outside the continental United States is entitled to travel and transportation expenses to and from the post to the same extent and with the same limitations prescribed for new appointees under 5 U.S.C. § 5722. In accordance with 5 U.S.C. § 5722, an agency may pay the travel and transportation expenses of the employee from his or her place of actual residence at the time of appointment to the place of employment outside the United States. It may pay the employee's travel and transportation expenses for return to his or her place of actual residence when the employee has served the minimum tour of duty prescribed by the head of the agency, not less than 1 year nor more than 3 years, unless the employee is separated for reasons beyond his or her control which are acceptable to the agency concerned. See 5 U.S.C. § 5722(c).

However, whether or not the employee has served the prescribed tour of duty, an employee who accepts a transfer of official station from a point outside the continental United States to one within the United States, is entitled only to travel and transportation expenses to his or her new official station and not to his or her place of residence. The employee's acceptance and consummation of a transfer extinguishes the rights he or she may have earned to transportation to his or her place of residence, except for the purpose of establishing his or her liability upon breach of a service agreement executed in connection with that transfer. Johnny R. Dickey, 60 Comp. Gen. 308 (1981); Roger E. Dexter, B-214904, September 5, 1984.

The rule, as stated in Dexter, supra, does not preclude the reimbursement of travel and transportation expenses incurred by Dr. Cooper from his overseas post of duty to Fort Collins, by way of Washington, D.C. Here, the record shows that, prior to his departure from Saudi Arabia, Dr. Cooper was unaware that Fort Collins would not be his duty station in the United States or that he would be permanently reassigned to Washington, D.C. Consequently, there was no prior acceptance of a reassignment, and, therefore, no extinguishment of the rights Dr. Cooper had earned to travel and transportation to Fort Collins, his place of residence.

Cancellation of Travel Authorization of April 21, 1982

Reconstructing the facts and circumstances as they apparently occurred, after Dr. Cooper's arrival in Washington, D.C., he and OICD became aware that there were serious questions as to the location of his permanent duty station. Officially, Dr. Cooper had been reassigned to the National Finance Center in New Orleans. When Dr. Cooper became aware of this reassignment, he declined to accept the position in New Orleans and never reported for duty at that location. After the debriefing process, which began on July 6 and ended on July 13, 1982, Dr. Cooper, still uncertain of his permanent duty station assignment, departed Washington, D.C., on July 13 on annual leave and traveled to Kentucky with his family. He returned to Washington, D.C., on July 20 to complete his temporary duty detail with OICD.

It was during the course of his detail with OICD from July 20 through August 6, 1982, that OICD agreed to establish a position for Dr. Cooper with that agency in Washington, D.C. This decision by OICD was manifested by its issuance on August 5, 1982, of a travel authorization to Dr. Cooper authorizing him and his family to travel from Fort Collins to Washington, D.C., in a change of official station. The travel order shows that on August 5, 1982, Dr. Cooper signed a service agreement to remain in government service for 1 year. His stated position title was Special Assistant to the Administrator, and his new official station was Washington, D.C.

We conclude that the net effect of these actions was the cancellation of the travel authorization of April 21, 1982, for the return of Dr. Cooper and his family from Saudi Arabia to Fort Collins. We would point out, however, that where a transfer has been cancelled and certain relocation expenses would have been reimbursable had the transfer been effected, the employee may be reimbursed for expenses incurred in anticipation of the transfer and prior to its cancellation. William E. Weir, B-189900, January 3, 1978. Therefore, the cancellation of the April 21, 1982, travel authorization does not preclude reimbursement of the travel and transportation expenses incurred by Dr. Cooper from Saudi Arabia to Fort Collins, by way of Washington, D.C.

Further, the fact that a short period of time elapsed between the time Dr. Cooper returned to the United States and his transfer to Washington, D.C., for permanent duty, does not affect the result here since it does not appear that OICD or Dr. Cooper intended to make Washington, D.C., his permanent duty station at the time of his return from Saudi Arabia. Thus, reimbursement of the travel and transportation expenses from Saudi Arabia to Fort Collins, by way of Washington, D.C., for debriefing purposes, was appropriaate. Questions 1 and 2 are answered accordingly.

Temporary Duty Station Made Permanent

Turning to Question 3, where, as here, an employee is on temporary duty at a place which is to become his permanent duty station and at which he is to remain, that place, in fact, becomes his permanent duty station when he receives notice of the impending transfer. Under the provisions of 5 U.S.C. § 5702 (1982), he may not thereafter be paid per diem while at that location. However, incident to transfer to a place within the United States or other designated area, an employee and his family may be authorized temporary quarters subsistence expenses. 5 U.S.C. § 5724a(a)(3) (1976).

Under sections 5724 and 5724a of title 5 of the United States Code, generally, a transferred employee has various entitlements, including transportation for his family and household effects to the new duty station and reimbursement of certain real estate transaction expenses. We have recognized that many necessary arrangements for relocating an entire household cannot always be accomplished from the new duty station and may be done more satisfactorily when the employee is physically present at his old duty station. Here, since Dr. Cooper was notified, while performing temporary duty at Washington, D.C., that his temporary duty station had been changed to his permanent duty station, he may be reimbursed the roundtrip travel and transportation expenses incurred between Washington, D.C., and Fort Collins, Colorado, for the purpose of arranging for the movement of his family and household effects and assisting in other matters incident to the relocation. Steven F. Kinsler, B-169392, October 28, 1976; NOAA Ship DISCOVERER, B-167022, July 12, 1976.

Shipment of Household Effects - Commuted Rate vs. Actual Expense Basis

In Question 3, the certifying officer inquires as to whether reimbursement of the costs of shipment of Dr. Cooper's household goods from Fort Collins to Washington, D.C., should be made on the commuted rate basis or the actual expense basis. The commuted rate method was authorized in Dr. Cooper's August 5, 1982, travel order. Dr. Cooper's temporary duty station became his permanent duty station while he was performing temporary duty in Washington, D.C., and he thus became entitled to reimbursement of roundtrip travel and transportation expenses incurred between Washington, D.C., and Fort Collins. Accordingly, transportation of his household effects may be made on the commuted rate basis as authorized.

Reimbursement of Real Estate Expenses

Finally, in Question 4, the certifying officer asks whether Dr. Cooper would be entitled to reimbursement of real estate expenses in the sale of his residence in Fort Collins and the purchase of a residence in the Washington, D.C., area, if a claim is made.

Subsection 5724a(a)(4) of title 5, United States Code, provides that an employee transferred in the interest of the government from one official station to another for permanent duty, may be reimbursed the expenses of the sale of his residence at the old station and the purchase of a home at the new official station when the old and new official stations are located within the United States and other designated areas, not applicable here. See also paragraph 2-6.1a, Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR).

This Office has consistently held that 5 U.S.C. § 5724a requires that both the old and new duty stations be located within the areas listed. 54 Comp. Gen. 1006 (1975); 47 Comp. Gen 93 (1967). The requirement that both the old and new duty stations be located in the United States or the other areas listed is controlling even when the travel order shows the employee is to be assigned to a different duty station within the United States upon completion of the overseas tour of duty. Hugh C. Miller, B-182002, May 29, 1975. Nor is the requirement avoided by a short tour of duty at the old station in the United States between the overseas tour and the final duty station, where the clear purpose of the intervening short tour of duty is only to qualify the employee for reimbursement of real estate expenses. B-172594, March 27, 1974.

Applying the principles described above, Dr. Cooper's eligibility for reimbursement of real estate expenses turns on the factual question of what his old duty station was at the time of his transfer to Washington, D.C. This is a difficult question to answer with any degree of certainty in light of the general confusion over where he should be assigned upon his return to the United States, which apparently began even before he left Saudi Arabia and persisted until his eventual transfer to Washington,D.C. While the matter is not free from doubt, we are inclined to accept the agency's assertion that Fort Collins may be treated as Dr. Cooper's old duty station. As the Administrator of OICD puts it in a letter to us:

> "In our view, Dr. Cooper was legitimately, although inefficiently, reassigned from Saudi Arabia to a duty station somewhere other than Washington, D.C. At the time of his transfer from the Office of Operations and Finance to the Office of International Cooperation and Development, Dr. Cooper had received orders from his home agency to report to Fort Collins, Colorado, where he was indeed working and residing. We therefore believe that although there were inefficiencies involved in Dr. Cooper's transfer from Fort Collins, Colorado to Washington, D.C., it was a legitimate action entitling Dr. Cooper to full reimbursement of his expenses. * * *"

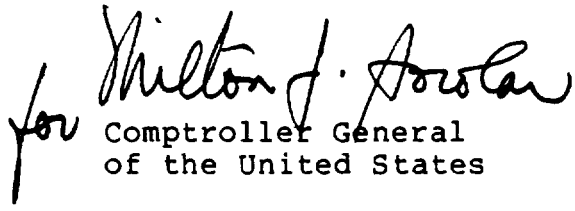
In accepting Fort Collins as Dr. Cooper's old duty station, we are influenced in particular by two factors. First, we find nothing in the record to indicate that the actions and problems in this case stemmed from any intent by the agency to circumvent the requirements of 5 U.S.C. § 5724a(a)(4), which would have disqualified Dr. Cooper from reimbursement of real estate expenses if he had been transferred directly from Saudi Arabia to Washington, D.C. Compare B-172594, supra. Unlike the situation presented

in B-172594,[2] it appears here that the agency had no intent to reassign Dr. Cooper to Washington, D.C., at the time he left Saudi Arabia. Rather, as far as we can tell, there was genuine confusion as to Dr. Cooper's duty station upon his return to the United States. Second, we find nothing to indicate that Dr. Cooper was responsible for this confusion. Rather, it seems clear that the problem arose primarily from the failure of the Office of Operations and Finance to determine promptly whether there was a position at Fort Collins for Dr. Cooper.

Given the unusual circumstances of this case, we believe that Dr. Cooper is entitled to the benefit of the doubt as to his duty station at the time of his transfer to Washington, D.C. Accordingly, in answer to question 4, we believe Dr. Cooper may be allowed reimbursement of real estate expenses, if otherwise appropriate, incident to the sale of his former residence at Fort Collins and the purchase of a new residence in the Washington, D.C. area.

CONCLUSION

The travel vouchers submitted by Dr. Cooper for reimbursement of relocation expenses incurred incident to his travel from Riyadh, Saudi Arabia, to Washington, D.C., to Fort Collins, Colorado, and return to Washington, D.C., may be certified for payment in accordance with the principles and conclusions set forth in this decision.



for Comptroller General
of the United States

2/ We held in B-172594 that where an agency's explicit intent was to reassign employees from an overseas location (Saigon) to a duty station in the United States (Washington) other than the employees' former United States residences (California and Mississippi), it could not circumvent the requirements of 5 U.S.C. § 5724a(a)(4) and thereby qualify the employees for real estate expense reimbursement by giving them a brief intervening transfer to their former residences.