

**DECISION**

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

**FILE:** B-218523

**DATE:** October 15, 1985

**MATTER OF:** J. Brice Chastain

**DIGEST:**

On September 8, 1982, 5 U.S.C. § 5728 was amended to restrict tour renewal travel for employees assigned to Alaska and Hawaii to situations in which travel was necessary to recruit or retain an employee for a tour of duty in Alaska or Hawaii. Regulations implementing this change were published on July 15, 1983, to be effective retroactive to September 8, 1982. An employee who was recruited for an assignment to Alaska, with a commitment for tour renewal travel, before the implementing regulations were published may be granted tour renewal travel in these circumstances since it appears that this benefit was necessary for recruitment.

Mr. J. Brice Chastain, an employee of the Department of Labor, accepted a position with the Occupational Safety and Health Administration in Alaska in May 1983. At the time he was given the assignment the agency informed Mr. Chastain that he would be entitled to tour renewal travel. In view of changes in the applicable provision of law the agency asks whether such travel may now be allowed.<sup>1/</sup>

Tour renewal travel for Federal employees stationed overseas is authorized by 5 U.S.C. § 5728 as implemented by the Federal Travel Regulations. Prior to September 8, 1982, employees stationed outside the continental United States including those stationed in Alaska and Hawaii were eligible for tour renewal travel upon completion of an agreed period of service overseas and the signing of a written agreement to serve another period of service at the same or another overseas location. However, section 351 of the Omnibus Budget Reconciliation Act of 1982, Public Law 97-253, 96 Stat. 763, 800, September 8, 1982, amended 5 U.S.C.

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<sup>1/</sup> Mr. Thomas C. Komarek, Assistant Secretary of Labor for Administration and Management, has requested an advance decision on Mr. Chastain's eligibility for tour renewal travel.

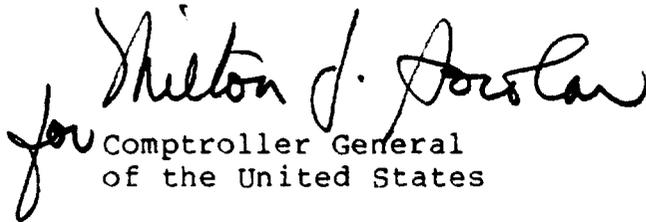
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B-218523

§ 5728 to change the conditions under which tour renewal agreement travel could be authorized for Federal employees assigned to Alaska and Hawaii. The amendment provided that, under regulations prescribed by the President, tour renewal travel could be allowed employees assigned to Alaska and Hawaii after September 8, 1982, when such travel was necessary for recruiting or retaining an employee for a tour of duty in Alaska or Hawaii.

The General Services Administration, under delegation from the President,<sup>2/</sup> amended paragraph 2-1.5h of the Federal Travel Regulations to authorize tour renewal agreement travel under that amendment. However, that regulation was not promulgated until July 15, 1983, although it was made effective from September 8, 1982. Under the revised regulations, each agency was delegated authority to prescribe regulations allowing tour renewal travel when necessary for the purpose of recruiting or retaining an employee for service for a tour of duty in Alaska or Hawaii under certain conditions. The Department of Labor did not issue its policy on this matter until September 20, 1983, following receipt of the July 1983 amendment to the Federal Travel Regulations.

In our opinion, the fact that Mr. Chastain was assigned during the period when no specific regulation governing the grant of tour renewal travel rights was in force need not be considered as defeating his eligibility, because regulations were thereafter promulgated having a specific retroactive effect. Since the Department of Labor did in fact offer tour renewal travel to Mr. Chastain and since he accepted the transfer under those terms it appears that granting him such travel was necessary to his recruitment--a condition required by the statute and regulations. Accordingly, tour renewal travel may be allowed.

  
for Comptroller General  
of the United States

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<sup>2/</sup> Sections 1(10) and 10, Executive Order No. 11609, July 22, 1971, as amended.