



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lagatta and Shaffer - Home Leave - Mandatory
Mobility Assignments

File: B-226306

Date: May 12, 1988

DIGEST

The Army has requested our decision concerning its interpretation of the home leave regulation, 5 C.F.R. § 630.606(c)(2) (1987). The Army may grant home leave during an employee's period of service abroad, or within a reasonable period after the employee's return from service abroad when it is contemplated, i.e., expected, that the employee will return to service abroad immediately or on completion of a permanent assignment in the United States.

DECISION

The Chief, United States Army Civilian Personnel Center (Army), has requested our decision concerning its interpretation of the home leave regulation, 5 C.F.R. § 630.606(c)(2) (1987), in light of questions raised by different Army commands on the granting of home leave to employees who are transferred from overseas to United States duty stations. For the following reasons, we hold that the Army may grant home leave within a reasonable period after the employee's return from service abroad when it is expected that the employee will return to service abroad immediately or on completion of a permanent assignment in the United States.

BACKGROUND

According to the Army's submission, a question has arisen in connection with the authorization and use of home leave for groups of Army civilian employees who are employed under mandatory mobility agreements and who spend a considerable part of their careers on overseas assignments. Most of these employees are classified as Quality Assurance Specialists (Ammunition Surveillance) (QASAS) and serve under mobility agreements which allow for their assignment anywhere in the world according to the Army's need for their skills.

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The Army's submission further explains that in the course of a career with the Army, QASAS employees serve on a number of overseas assignments. Unlike other civilian employees serving on overseas assignments, however, QASAS employees generally do not have the option of remaining at the overseas post of assignment upon completion of the initial tour of duty. Rather, the QASAS employees are transferred to another duty location, generally in the United States, making it impossible for them to use home leave by the most usual method, tour renewal agreement travel. This has been a problem for some time because, by virtue of their mobility agreements, QASAS employees earn home leave entitlement at the rate of 15 days per year but almost never are able to remain overseas upon completion of the tour of duty.

The Army's submission notes that the U.S. Army Europe has applied the provisions of 5 C.F.R. § 630.606(c)(2) to QASAS employees returning to the United States on a change of duty station because they are as likely to be given another overseas assignment upon completion of their stateside assignment as they are to be given another stateside assignment. Thus, when the appropriate Army official certifies to this likelihood, these employees have been authorized to use home leave before reporting to duty at their stateside assignment. However, this practice has been questioned by some civilian personnel officers in the U.S. Army Materiel Command to the extent that some employees who were granted and have used such authorized home leave have had it cancelled after the fact, with annual leave substituted in its place. This also had the effect of reducing their 45-day maximum accumulation ceilings for annual leave authorized by 5 U.S.C. § 6304(b) (1982).

As examples of the problems it has encountered, the Army has forwarded the files on two pending grievances, those of Messrs. Gregory N. Lagatta and Walter Shaffer. In its submission, the Army has informed us that it has suspended action on these two grievances pending our decision on the legal issue involved. We note that these grievances were filed under the Army's administrative grievance system, and by our decision here we are responding to the Army's request for a resolution of the legal issue involved. We also note that our Office normally will not inquire into or review matters relative to a grievance since they are within the jurisdiction of the agency involved and the Office of Personnel Management. See Donald J. Tate, B-203622, Jan. 19, 1982; Samuel H. Stern, B-202098, Apr. 22, 1982; 5 C.F.R. Part 771 (1987).

The relevant facts in the two cases which the Army has presented are as follows. Mr. Lagatta is a QASAS employee who was transferred from an overseas assignment to Seneca Army Depot, Romulus, New York, in July 1984. In anticipation of his permanent change of station to New York, he requested and was granted home leave. Despite two Army officials' certifications that Mr. Lagatta would be reassigned to an additional overseas assignment at the end of his New York assignment, the Army Materiel Command advised Mr. Lagatta that he was not entitled to the home leave taken, and it was disallowed.

Mr. Shaffer is a Logistics Management Specialist who is assigned to the Army's Logistic Assistance Office - Europe, and is required to sign a mandatory mobility agreement. He requested home leave in conjunction with his transfer to the Logistic Assistance Office at Ft. Irwin. His request for home leave was denied because the Army Materiel Command believed that it could not allow home leave in conjunction with a transfer to the United States. In Mr. Shaffer's case, the appropriate Army official has certified that the Army can predict that Mr. Shaffer will be reassigned to another overseas assignment after completing his 2 or 3 years at Ft. Irwin.

OPINION

The accrual and granting of home leave are provided for under 5 U.S.C. § 6305(a) (1982) and the regulations promulgated by the Office of Personnel Management (OPM) in 5 C.F.R. Part 630, subpart F (1987). The specific regulation in question, 5 C.F.R. § 630.606(c)(2) (1987), provides:

"(c) Limitations. An agency may grant home leave only:

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"(2) During an employee's period of service abroad, or within a reasonable period after his return from service abroad when it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States.

"Home leave not granted during a period named in paragraph (c)(2) of this section may be granted only when the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may

not be less than the tour of duty prescribed for the employee's post of assignment, except when the agency determines that an earlier grant of home leave is warranted in an individual case."

The provision for refund of home leave when the employee fails to return to service abroad is set forth in 5 C.F.R. § 630.606(e) (1987).

An employee's accrual of home leave, as provided for in 5 C.F.R. § 630.604, must be distinguished from the agency's discretionary authority to grant home leave. Thus, the determination as to when and in what amount home leave will be granted is a matter for administrative determination. Estelle C. Maldonado, 62 Comp. Gen. 545, 549 (1983). However, an agency may grant home leave only during an employee's period of service abroad, or within a reasonable period after his return from service abroad "when it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States," as the text of 5 C.F.R. § 630.606(c)(2) provides. We interpret the word "contemplated" as meaning that the employee is expected to receive another overseas assignment, i.e., that it is more likely than not that the employee who has applied for home leave will return to service abroad either immediately or on completion of an assignment in the United States. Where it is not contemplated that an employee will return overseas, home leave may not be granted. Paul Peter Woronecki, B-192199, Jan. 31, 1979.

As noted above, the U.S. Army Europe has applied the provisions of 5 C.F.R. § 630.606(c)(2) (1987) to QASAS employees returning to assignments in the United States because they are "as likely" to be given another overseas assignment upon completion of their stateside assignment as they are to be given another stateside assignment. In accordance with our discussion above, we believe that the regulation requires a somewhat higher standard of "more likely than not."

Turning now to the two cases which the Army has presented, in Mr. Lagatta's case the record shows that an appropriate Army official certified that it was reasonable to assume that Mr. Lagatta would be reassigned to another overseas assignment. In Mr. Shaffer's case, the record shows that an appropriate official certified that the Army can predict that Mr. Shaffer will be reassigned to another overseas assignment after completing his assignment at Ft. Irwin.

Thus, we believe that the standard of 5 C.F.R.
§ 630.606(c)(2) (1987) has been met in these cases.
We have no objection, therefore, to the Army granting
these employees home leave.

A handwritten signature in black ink, reading "Milton J. Foster". The signature is written in a cursive style with a long horizontal flourish at the end.

Acting Comptroller General
of the United States