



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Dennis H. Shimkoski--Claim for Home Service  
Transfer Allowance

File: B-233936

Date: September 21, 1989

## DIGEST

An employee was assigned to a United States-Saudi Arabian Commission under the Foreign Assistance Act and his travel was governed by the Foreign Service Travel Regulations. Upon his return to the United States, he is eligible for a home service transfer allowance even though he was not between assignments to posts in foreign areas. See William J. Shampine, 63 Comp. Gen. 195 (1983).

## DECISION

This decision is in response to an appeal filed by Dennis H. Shimkoski from a determination reached by our Claims Group denying his claim for temporary quarters subsistence expenses and miscellaneous expenses.<sup>1/</sup> We find that while Mr. Shimkoski is not eligible for reimbursement of temporary quarters subsistence expenses under 5 U.S.C. § 5724 (1982), he is eligible for a home service transfer allowance under 22 U.S.C. § 4081(14) (1982 & Supp. IV 1986).

## BACKGROUND

Mr. Shimkoski was employed by the Department of the Treasury from February 1983 to June 1987, and was assigned to the United States-Saudi Arabian Joint Commission on Economic Cooperation in Riyadh, Saudi Arabia. His assignment was made under the authority of the Foreign Assistance Act of 1961, as amended, 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).

At the end of his assignment in Saudi Arabia, the Department of the Treasury issued Mr. Shimkoski travel orders under the

<sup>1/</sup> Settlement Certificate Z-2865838, Nov. 15, 1988.

authority of the Foreign Service Travel Regulations (FSTR, 6 F.A.M. § 134) authorizing "end of tour" travel, per diem, and shipment of household goods for Mr. Shimkoski and his family from Riyadh, Saudi Arabia to San Francisco, California.

Upon his return to the United States, Mr. Shimkoski accepted a position with the Food Safety and Inspection Service, United States Department of Agriculture, in Alameda, California. He signed a 12-month service agreement, and he was authorized temporary quarters expenses by Agriculture for a period of 15 days. Mr. Shimkoski claimed \$4,149.88 in temporary quarters and miscellaneous expenses, but Agriculture denied his claim. Agriculture contends that he was not entitled to reimbursement of relocation expenses under the Federal Travel Regulations incident to his return to the United States and that he was not entitled to payment of a home service transfer allowance. Our Claims Group upheld the agency's denial of Mr. Shimkoski's claim. We disagree with that determination and reverse our Claims Group.

#### OPINION

Since Mr. Shimkoski was appointed to his overseas position under the authority of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2385(d), with allowances and benefits authorized under the Foreign Service Act of 1980, 22 U.S.C. §§ 3901 et seq. (1982), he is not eligible for relocation expenses under 5 U.S.C. chapter 57 for his return to the United States. Subsection 5724(g) of title 5, United States Code, specifically provides that the allowances authorized by section 5724 do not apply to an employee transferred under the Foreign Service Act of 1980. See Charles R. Vincent, B-194741, Feb. 19, 1981; Albert N. Alexander, B-188437, Sept. 15, 1977; Department of Agriculture, B-186548, Feb. 23, 1977.

Similarly, there appears to be no authority to reimburse Mr. Shimkoski for relocation expenses under title 5, United States Code, after his return to the United States. Mr. Shimkoski was not transferred between duty stations upon his appointment with Agriculture since Treasury authorized his return travel to San Francisco, California, where Agriculture hired him. The report from Agriculture states that it authorized him temporary quarters expenses under the mistaken belief that his return travel from overseas was

under title 5, United States Code, and the Federal Travel Regulations.<sup>2/</sup>

The remaining question is whether Mr. Shimkoski is entitled to a home service transfer allowance as authorized under 5 U.S.C. § 5924(2)(B) or 22 U.S.C. § 4081(14) (1982 & Supp. IV 1986). The home service transfer allowance is granted to an employee for expenses incurred incident to establishing the employee at a post of assignment, and it includes a "miscellaneous transfer expense portion" which is similar to the miscellaneous expense allowance authorized under the Federal Travel Regulations and a "subsistence expense portion" which is comparable to the temporary quarters expense allowance authorized by the Federal Travel Regulations. See William J. Shampine, 63 Comp. Gen. 195 (1984).

Section 5924(2)(B) of title 5 limits payment of the home service transfer allowance at a post of assignment in the United States to instances where the employee is between assignments to posts in foreign areas. However, there is no similar limitation contained in 22 U.S.C. § 4081(14). Thus, in Shampine, supra, a case involving the return travel of an employee from the same United States-Saudi Arabian Joint Commission, we held that since the employee was authorized travel and relocation expenses under the Foreign Service Act, he was entitled to a home service transfer allowance under 22 U.S.C. § 4081(14) even though he was not between assignments in foreign areas. 63 Comp. Gen. at 199.

Following our decision in Shampine, the Standardized Regulations were amended in 1984 to distinguish between employees under 5 U.S.C. § 5924 and employees under the Foreign Service Act. The amended regulations confirm that employees are eligible for a home service transfer allowance in the United States under 5 U.S.C. § 5924 only if they are between foreign assignments. No such limitation is imposed upon employees under the Foreign Service Act of 1980. Instead, these employees need only agree to serve 12 months in the government.<sup>3/</sup>

Since Mr. Shimkoski was transferred overseas under the authority of the Foreign Service Act of 1980 and since he agreed to remain in government service for 12 months upon his return to the United States, he is eligible for a home

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<sup>2/</sup> FTR (Supp. 1, Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1987).

<sup>3/</sup> Standardized Regulations, TL:SR 404, June 22, 1986.

service transfer allowance under 22 U.S.C. § 4081(14).  
Shampine, supra. Accordingly, we conclude that Agriculture  
may allow Mr. Shimkoski a home service transfer allowance  
incident to his transfer from Saudi Arabia to the United  
States.

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