



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

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B-178396

June 18, 1973

Mr. John H. Bransby
Finance and Accounting Officer
Baltimore District, Corps of Engineers
Department of the Army
P.O. Box 1715
Baltimore, Maryland 21203

Dear Mr. Bransby:

This is in reference to your letter of February 8, 1973, reference NABCT-F, requesting an advance decision concerning the propriety of Mr. Gilbert E. Mueller's [claim for home purchase expenses and additional temporary quarters expenses] incident to his permanent change of station from the United States Naval Station, Guantanamo Bay, Cuba, to the Army Corps of Engineers Area Office, Wright Patterson Air Force Base, Dayton, Ohio, during the summer of 1972. Your letter was assigned PDTATAC Control No. 73-18 by the Per Diem, Travel and Transportation Allowance Committee and forwarded here on April 4, 1973.

The Naval Station, Guantanamo Bay, Cuba, issued permanent duty travel orders to Mr. Mueller, a civilian employee, on June 27, 1972, authorizing temporary quarters subsistence expenses for a period of 30 days. However, the orders did not authorize real estate expenses. Upon arrival in Dayton, Ohio, on September 17, 1972, he and his family took up residence in temporary quarters. On or about October 2, 1972, Mr. Mueller realized he would be unable to obtain possession of and occupy permanent quarters by October 17, 1972, the end of his authorized 30-day temporary quarters subsistence expenses allowance period and, therefore, requested his orders be amended to authorize both a 10-day extension to the temporary quarters allowance period and real estate expenses. Your office denied the request on the basis that the Naval Station, Guantanamo Bay, Cuba, is not considered a possession of the United States and therefore eligibility for the additional benefits did not exist under the applicable law and regulations.

Subsequently, on January 23, 1973, Mr. Mueller submitted a travel voucher for reimbursement of \$808.67 real estate expenses and \$218.82 for a 10-day extension of temporary quarters subsistence expenses contending that the Naval Station, Guantanamo Bay, Cuba, is in fact a possession of the United States in that the Government owns a leasehold

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in this property. For this reason, he maintains he is entitled under applicable laws and regulations to be reimbursed in the above amounts, notwithstanding the lack of authorization for such expenses.

Relocation expenses of transferred civilian employees is governed by 5 U.S.C. 5724a which provides in pertinent part:

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

* * * * *

(3) Subsistence expenses of the employee and his immediate family for a period of 30 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The period of residence in temporary quarters may be extended for an additional 30 days when the employee moves to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. (Emphasis supplied.)

* * * * *

(4) Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. * * * (Emphasis supplied.)

This statute has been implemented with similar language by section 4, Office of Management and Budget (OMB) Circular No. A-56, revised, dated August 17, 1971, which has been further implemented with similar language by chapter 8, Volume 2, Department of Defense Civilian Personnel Joint Travel Regulations.

The Naval Station, Guantanamo Bay, Cuba, was leased by the Government of the United States from the Government of Cuba in 1903. Article III of the "Agreement for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations" which was signed by the President of Cuba on February 16, 1903, and by the President of the United States February 23, 1903, and is still in force, describes the status of Guantanamo Bay as follows:

While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas.

This article indicates that the United States did not obtain title to Guantanamo Bay, which remained vested in Cuba, a foreign country. The agreement merely granted the United States the right to occupy the base as a tenant under the terms of the lease agreement. Consequently, in our view the United States does not possess Guantanamo Bay, Cuba, but rather has the right as a tenant under the terms of the lease to exclusive use of it. Cf. 35 Op. Atty. Gen. 556, 541 (1929) wherein it was held that Guantanamo Bay was not a "possession" of the United States within the meaning of the Tariff Act of 1922.

The word "possessions" has been employed in a number of statutes and has been given different shades of meaning. However, Guantanamo Bay, Cuba, has never been considered a possession of the United States within the meaning of 5 U.S.C. 5724a, nor, insofar as our Office has been able to determine, has it been considered to be a "possession" as used in the context of territories or possessions of the United States for any of the various statutes relating to travel and transportation expenses of Government employees. We are aware of the fact that the United States Naval Operating Base, Guantanamo Bay, Cuba, has been specifically included within the provisions of 42 U.S.C. 1651(a) as an eligible place of employment for purposes of disability compensation for persons employed at military air and naval bases outside the United States (see also 42 U.S.C. 1701(b)(1)). Nevertheless, the specific inclusion therein may not be considered as a basis for concluding that

B-178396

Guantanamo Bay may be considered a "possession" within the meaning of that word as used in 5 U.S.C. 5724a. Accordingly, we concur with the administrative determination that the items claimed on the voucher submitted by Mr. Mueller are for disallowance.

Since payment of the voucher is not authorized it is being retained in our file.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

✓ cc: Captain William D. Fries, USN, Executive
Per Diem, Travel and Transportation
Allowance Committee
Forrestal Building, Room 7A153
Washington, D.C. 20314

Reference: PDTATAC No. 73-18