

DECISION



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

9481

FILE: B-191144

DATE: March 15, 1979

MATTER OF: Marilyn M. Millikin - [Tour Renewal ~~Tour~~
as a Local Hire]

AGREEMENT

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DIGES

An employee of the Federal Aviation Administration while vacationing in Hawaii applied for a position with that agency in Hawaii. The position was being offered to local applicants only, and upon being accepted the employee signed a statement to the effect that she was a local hire and not eligible for tour renewal agreement travel. Since under section 1.12c(3) of OMB Circular A-56 (now para. 2-1.5h(3)(b) Federal Travel Regulations) such travel may be denied eligible local hires, and since claimant was advised that this travel would not be authorized as required in the regulation, the Government is not liable for the cost of travel to the continental U.S. and return as claimed.

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By a letter dated December 27, 1977, Ms. Marilyn M. Millikin, through her agent, appeals the action of our Claims Division in Certificate of Settlement No. Z-2577311 issued December 14, 1977. In its action the Claims Division denied Ms. Millikin's claim for reimbursement of the cost of a home leave travel allowance for travel from Hawaii to the continental United States.

In April 1971, Ms. Millikin, an employee of the Eastern Region of the Federal Aviation Administration (FAA), applied for a clerical vacancy in the Flight Standards Division of the General Aviation Branch, Pacific Asia Region, FAA. The position, clerk-stenographer GS-312-4, was offered to local applicants only. Ms. Millikin was accepted for the position on the condition that she sign the following statement:

"I understand if I am employed by the Pacific Region, FAA, I will be considered a local hire and, therefore ineligible for PL-737 benefits or restoration and return rights to the Eastern Region, FAA."

Handwritten signature

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At the time of her appointment, April 26, 1971, the FAA determined that Ms. Millikin would not be allowed tour renewal agreement travel and designated her place of residence as Honolulu, Hawaii. On January 3, 1973, Ms. Millikin requested that her residence be redetermined to be Richmond, Virginia. Her request was denied on April 20, 1973.

On March 15, 1974, Ms. Millikin traveled to the continental United States on leave and requested reimbursement for the cost of said travel in the amount of \$476.76, plus per diem, from our Claims Division. This claim, as stated at the outset, was denied by the Claims Division on December 14, 1977, and appealed to the Comptroller General.

Public Law 737, approved August 31, 1954, 68 Stat. 1008, now codified at 5 U.S.C. § 5728, provides for round-trip travel for an employee and his or her immediate family from a duty post outside the continental United States to the employee's place of actual residence for the purpose of taking leave. The travel is authorized only upon the completion of a tour of duty outside the continental United States and the signing of a written agreement to serve another overseas tour. The regulations governing overseas tour renewal agreement travel in effect at the time Ms. Millikin made the trip for which she claims reimbursement were found in OMB Circular A-56, October 1966. Section 7.3(c) of that regulation, now para. 2-1.5h(3)(b)(iii) of the Federal Travel Regulations (FPMR 101-7), is as follows:

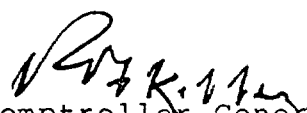
"Under regulations prescribed by the head of the department concerned, the department may, in its discretion, refuse to extend eligibility for allowances under this section to an employee who was hired locally and who did not sign a written agreement as provided under subsection 1.3c, provided that the department notifies the employee of its intention before the employee has completed a period of service equal to the period generally applicable to the employees of the department and serving at the post of duty concerned or in the same geographic area."

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Under the quoted regulation a local hire may be denied tour renewal agreement travel provided he or she is made aware by the agency that this benefit will not be provided. Thus, regardless of whether the local hire has a residence in the continental United States at the time of appointment return travel may be denied.

Ms. Millikin was hired while on vacation in Hawaii in a position open only to local hires. She was fully advised that travel for leave to the conterminous United States would not be authorized. Nevertheless she accepted the position in Hawaii. In the circumstances and in view of the quoted regulation denial of such travel was proper without regard to any determination of her actual residence at the time of appointment.

Accordingly, the action of the Claims Division denying Ms. Millikin's claim is sustained.


Deputy Comptroller General
of the United States