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DECISION

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

REQUEST for EXPENSES and

FILE: B-195180 **DATE:** March 10, 1980

MATTER OF: Cathryn P. Seaburn - Expenses of Return Travel and Transportation from Alaska - Failure to Fulfill Government Service Agreement

DIGEST:

1. U.S. Customs Service requires employee transferred to Alaska to serve 24 months there in order to be entitled to reimbursement of travel and transportation expenses to place of actual residence at time of transfer unless he returns earlier for reasons beyond his control and acceptable to agency. Claim of former employee of Customs Service was properly denied where agency presented reasonable basis for finding that employee's premature return and separation in circumstances presented was for reasons within her control and not acceptable to Government.

2. Although U.S. Customs Service granted employee in Alaska leave without pay to return to actual residence for personal reasons, employee is not entitled to reimbursement of travel and transportation expenses. There was reasonable basis for agency determination that employee did not return to Alaska to complete required 24 months of service there for personal reasons which were not acceptable to it and GAO will uphold such determination absent evidence of arbitrary or capricious action by agency.

In this action we consider the claim of Mrs. Cathryn P. Seaburn, a former employee of the U.S. Customs Service, Department of the Treasury, for return travel and transportation expenses following a period of official duty in Alaska. AGC00156

The record indicates that Mrs. Seaburn [the former Cathryn P. White] was transferred on March 26, 1978, from Tampa, Florida, to Anchorage, Alaska, in connection with her continued employment with the Customs Service. Mrs. Seaburn reported to her new duty station effective March 27, 1978. In January 1979, Mrs. Seaburn requested and was granted leave without pay (LWOP) for 3 months effective beginning January 28, 1979. Subsequently, Mrs. Seaburn returned to her actual residence in Florida and resigned from Government service effective April 30, 1979.

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In Cathryn P. White, B-195180, October 24, 1979, we considered whether, in the circumstances presented, Mrs. Seaburn had fulfilled the 12-month Government service agreement in connection with her official transfer of station to Alaska which was required by sections 5724(a) and 5722(b)(2) of title 5, United States States Code, and para. 2-1.5a(1)(b) of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). We held that a period of LWOP was a period of creditable service and that Mrs. Seaburn did in fact fulfill the applicable 12-month Government service agreement. Therefore, we concluded that she was entitled to reimbursement for certain travel and transportation expenses incident to her transfer from Tampa, Florida, to Anchorage, Alaska, in accordance with 5 U.S.C. § 5722(a)(1), and reimbursement for specified relocation expenses pursuant to 5 U.S.C. § 5724a.

Later, Mrs. Seaburn claimed entitlement to travel and transportation expenses incident to her return from Alaska to Tampa. The Customs Service disallowed the claim on the ground that Mrs. Seaburn did not complete a required tour of 2 years in Alaska for a reason beyond her control and acceptable to it. Mrs. Seaburn appeals the disallowance. She contends that since the Customs Service granted her request for LWOP to return to Tampa to resolve personal problems that she is entitled to reimbursement of the expenses incident to the return.

Section 5724(d) of title 5, United States Code, provides that when an employee transfers to a post of duty outside the continental United States--which, pursuant to section 5721(3) of that title, includes Alaska--his or her expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of title 5, United States Code. Section 5722 of title 5 of the United States Code provides in pertinent part:

> "(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations--
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> > "(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal

effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States; and

"(2) these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States.

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"(c) An agency may pay expenses under subsection (a)(2) of this section only after the individual has served for a minimum period of--

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"(2) not less than one nor more than 3 years prescribed in advance by the head of the agency, if employed in any other position;

unless separated for reasons beyond his control which are acceptable to the agency concerned. These expenses are payable whether the separation is for Government purposes or for personal convenience."

Pursuant to sections 1(4) and (6) of Executive Order No. 11609, July 22, 1971, the authority of the President under 5 U.S.C. § 5722(a) and 5724 was delegated to the Administrator of General Services. Regulations implementing the above statutory provisions appear in the FTR, and the service requirements relative to Mrs. Seaburn's entitlement to return travel and transportation expenses are contained in the following pertinent parts of FTR para. 2-1.5a(1)(b):

"(b) Transfers, appointments, and separations involving posts of duty outside the conterminous United States. * * * Except as precluded by these regulations upon separation from service the expenses for return travel,

> transportation, moving, and/or storage of household goods shall be allowed whether the separation is for the purposes of the Government or for personal convenience. However, such expenses shall not be allowed unless the employee transferred or appointed to posts of duty outside the conterminous United States shall have served for a minimum period of not less than 1 nor more than 3 years prescribed in advance by the head of the agency * * * or unless separation is for reasons beyond the control of the individual and acceptable to the agency concerned. * * *"

The Customs Service has implemented the provisions of FTR para. 2-1.5a(1)(b), in regard to the minimum service period for return travel and transportation expense entitlement, by establishing a 24-month Government service requirement. See U.S. Customs Service Policy and Procedures Manual, section 4333.5B2. Thus Mrs. Seaburn was required to serve in Alaska for a period of 24 months before she would be entitled to the enumerated travel and transportation expenses upon her return to her actual residence in Tampa. As the administrative record clearly indicates, Mr. Seaburn's total period of creditable Government service incident to the official transfer in question amounted to less than 14 months.

However, consistent with the provisions of FTR para. 2-1.5a(1)(b), Customs Service requirements in regard to the 24-month Government service committment also allow for separation before completion of the 24-month service period--and entitlement to the return travel and transportation expenses--when the reasons for the premature separation are beyond the employee's control and otherwise acceptable to the agency. Relying upon this authority, Mrs. Seaburn has stated that her failure to fulfill the 24-month Government service requirement for return travel and transportation expenses to Tampa is directly attributable to a series of factors, all of which she alleges were beyond her control. More specifically, Mrs. Seaburn offers as examples financial difficulties relating to her home in Florida, her inability to secure Federal employment in the Tampa area, and additional matters touching certain difficulties in her domestic relations. Mrs. Seaburn further points out that these reasons and concerns were presented to Customs Service officials to

substantiate her request for leave without pay on November 20, 1978, and that her request was approved by agency action effective December 1, 1978. Thus, Mrs. Seaburn contends that the reasons for her failure to fulfill the 24-month service agreement were beyond her control, and the agency's acceptance of her request for leave without pay, which was predicated on those same concerns, indicates that those reasons were ultimately acceptable to the agency within the meaning of FTR para. 2-1.5a(1)(b) and the Customs Service implementing orders.

The Customs Service does not concur in this view. By letter dated November 30, 1979, the Regional Commissioner of Customs, San Francisco, California, denied Mrs. Seaburn's claim for return travel and transportation expenses. He stated in part that her request for leave without pay made it clear that she had financial problems primarily related to the house she owned in Florida and since she sold the house within 2 weeks after she entered the leave-without-pay status, it had been determined that she could have returned to her duty station in Alaska. Accordingly, the Regional Commissioner concluded that Mrs. Seaburn's reasons for not returning to Alaska were personal in nature and hence subject to her control, and as a result those reasons were not acceptable to the agency within the meaning of FTR para. 2-1.5a(1)(b) and Customs Service implementing orders.

We find no provision in law or exercise of logic that would support Mrs. Seaburn's contention that the Customs Service approval of her request for leave without pay must be translated into an expression of approval of alleged uncontrollable reasons for failing to fulfill a statutorily mandated Government service agreement. The granting of leave without pay at the employee's request and the acceptance of early separation as beyond an employee's control are separate and distinct matters and administrative determinations are subject to altogether different evaluative processes. We know of no authority to merge the evaluative processes for making the two different determinations and we shall not create any in our decision here.

It has been the consistent policy of this Office, in regard to the release of an employee from a valid Government service agreement, that the responsibility for the determination as to whether an employee's separation from the service is for a

reason beyond her control and acceptable to the agency concerned rests primarily with the employing agency. In the absence of evidence that such a determination is arbitrary or capricious, the decision of the agency will be upheld. 56 Comp. Gen. 606 (1977) and decisions cited therein.

We believe that the facts and circumstances involved in Mrs. Seaburn's case present a reasonable basis for an administrative finding by the Customs Service that the employee's separation was for reasons within her control and therefore not acceptable to the Government. Accordingly, the Customs Service determination denying Mrs. Seaburn the return travel expenses in question is sustained.

Milton J. Socolar

For the Comptroller General
of the United States