

117679

21000

Final
1/15

DECISION



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

FILE: B-204951

DATE: March 4, 1982

MATTER OF: Roy Simpson

- DIGEST:**
1. Employee transferred from Madrid, Spain, to Washington, D.C., was issued travel orders which erroneously authorized temporary quarters subsistence expenses for a period not to exceed 90 days. With exceptions not here pertinent, reimbursement for such expenses is limited to 30 days, 5 U.S.C. § 5724a(a)(3). Notwithstanding error in travel orders claim for expenses after 30 days spent in temporary quarters may not be allowed. 55 Comp. Gen. 1107 (1976). General rule against retroactive modification of orders is not a mechanism by which authorizing official may expand scope of his authority as limited by law and regulations.

 2. Employee reassigned to Washington, D.C., from a foreign post of duty may not be reimbursed for cost of selling his residence at prior duty station in Florida. Both the old and new duty stations of a transferred employee must be located within the 50 States, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, or the Canal Zone to entitle him to reimbursement for expenses in buying or selling a residence under 5 U.S.C. § 5724a(a)(4). Prior duty station in United States at which transferred employee had reemployment rights cannot be considered constructive old duty station for purpose of entitling employee to real estate expenses in connection with transfer from overseas post of duty.

Mr. Roy Simpson requests reconsideration of our Claims Group's July 15, 1981 denial of his claim for temporary quarters subsistence expenses in connection with his transfer of official station from Madrid, Spain, to Washington, D.C. He also claims real estate expenses required to be paid by him in connection with the sale of his home in Pensacola, Florida. The denial is sustained and the real estate expenses may not be reimbursed.

In connection with his transfer to Washington, D.C., Mr. Simpson, an employee of the United States Navy, was issued travel orders which indicated that he was authorized temporary quarters subsistence expenses not to exceed 90 days as well as real estate expenses. His claim for temporary quarters subsistence expenses for a period in excess of 30 days was disallowed by the Navy, and that disallowance was confirmed by our Claims Group on the basis of para. C13004, of Volume 2 of the Joint Travel Regulations (2 JTR) which limits authorization or approval of temporary quarters subsistence expenses to a period not to exceed 30 days. His claim for real estate sale expenses was administratively disallowed on the basis of 5 U.S.C. § 5724a(a)(4) which authorizes payment of such expenses only when both the old and new duty stations are located in the United States or other designated areas.

In his appeal, Mr. Simpson states that when he was offered a position in Washington, he was informed that he would be reimbursed living expenses incurred for a period not to exceed 90 days while awaiting shipment of his household goods and that real estate expenses incurred as a result of the move would be paid. This information is confirmed in the travel orders he was issued. He points to the language of 2 JTR para. C3053 which provides that travel orders may be amended only in limited circumstances and to the fact that his orders have not been amended. With respect to his claim for real estate expenses, he suggests that those incurred in connection with the sale of his home in Pensacola, Florida, may be allowed on the theory that his transfer was between Pensacola and Washington, D.C., two points within the United States, rather than between Spain and Washington, D.C. He predicates this theory on the fact that he had return rights to Pensacola that he forfeited in accepting the transfer to Washington, D.C.

Under 5 U.S.C. § 5724(a)(3) an employee for whom the Government pays expenses of travel and transportation under 5 U.S.C. § 5724(a) may be reimbursed subsistence expenses for himself and his immediate family for a period of up to 30 days while occupying temporary quarters when the new official station is within the United States. When the employee moves to or from Hawaii, Alaska, the territories or possessions, Puerto Rico, or the Canal Zone, the period of residence for temporary quarters subsistence expenses reimbursement may be extended for an additional 30 days.

The statutory provisions and the implementing regulations at 2 JTR, chapter 13, are clear and unambiguous. Subsistence expenses while occupying temporary quarters are limited to 30 days. Employees who transfer to the United States from foreign countries are subject to the 30-day limitation by the express terms of 2 JTR para. C13004. The 30-day limitation is statutory and cannot be waived. B-176078, July 14, 1972. The fact that extenuating circumstances are present, such as the nondelivery of an employee's household goods, does not entitle him to an additional period of time. See 55 Comp. Gen. 1107 (1976).

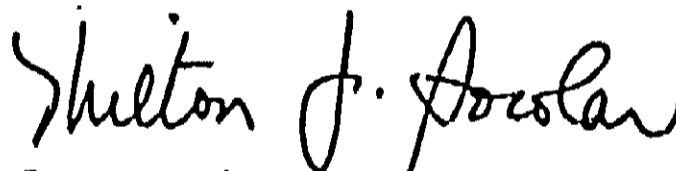
Entitlement to temporary quarters subsistence expenses in excess of the statutory limitation cannot be predicated on erroneous advice or purported authorization in a travel order issued to an employee. Dr. Frank A. Peak, B-199251, November 18, 1980. Moreover, the general rule reflected in 2 JTR para. C3050 that orders may not be revoked or modified retroactively to increase or decrease rights or benefits that have vested when the travel was performed has reference only to competent orders. It is not a mechanism by which an authorizing official may expand the scope of his authority as limited by law and regulation. It is not a bar to retroactive amendment of an order whose provisions are clearly in conflict with a law, agency regulation or instruction. Charles O. Dougherty, B-188106, March 3, 1977.

The extenuating circumstance that Mr. Simpson had accepted his transfer with the understanding that after living in Spain, he would need additional time in temporary quarters before receiving his household goods may not be considered. The statutory 30-day limitation is applicable to his transfer from Spain and it may not be extended.

B-204951

Under 5 U.S.C. § 5724a(a)(4) and FTR para. 2-6.1a, both the old and new stations of a transferred employee must be located within the 50 States, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, or the Canal Zone to entitle him to reimbursement for expenses incurred in buying or selling a residence. Thus, an employee may not be reimbursed for the cost of selling his residence in the United States incident to a transfer to a foreign post of duty, and he may not be reimbursed for his residence purchase expenses upon reassignment to the United States. 47 Comp. Gen. 93 (1967) and David L. Toillion, B-184987, May 28, 1976. The suggestion that an employee who is transferred from an overseas post of duty to a post in the United States may be authorized real estate expenses on the basis that a prior post of duty in the United States at which he had reemployment rights while overseas constitutes his constructive old duty station for the purpose of that transfer was specifically rejected in Army Corps of Engineers, B-194423, March 31, 1980.

Accordingly, the action of our Claims Group in denying reimbursement of additional temporary quarters subsistence expenses is sustained and Mr. Simpson may not be reimbursed for real estate expenses in connection with the sale of his home in Pensacola.

for 
Comptroller General
of the United States