

DECISION

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

FILE: B-205137**DATE:** May 18, 1982**MATTER OF:** Dick D. Hendricks - Renewal agreement travel

- DIGEST:**
1. Where employee assigned to duty in Alaska did not execute overseas employment agreement applicable to service outside the conterminous United States, but executed renewal agreement after having completed an initial 2-year tour in Alaska that was customary in his employing office, he is nonetheless entitled to renewal agreement travel and transportation expenses under 5 U.S.C. 5728.
 2. The employing office is required by 5 U.S.C. 5728 and para. 2-1.5h(1)(a) of the FTR, authorizing renewal agreement travel, to either ask employees assigned outside the conterminous United States to agree upon an initial period of service outside the conterminous United States or prescribe in advance a fixed period of between 1 and 3 years. Also, tour-renewal agreements necessary for renewal agreement travel should clearly stipulate that the service is to be outside the conterminous United States.
 3. Where travel at a later date is authorized or approved, employee who meets conditions for renewal agreement travel is entitled to round-trip travel and transportation expenses under 5 U.S.C. 5728 even though he did not begin travel until 5 months after signing renewal agreement.

4. Payment of renewal agreement travel expenses to an employee who meets all of the eligibility requirements is mandatory rather than discretionary with the employing agency.

Mr. Dick D. Hendricks, an employee of the General Services Administration (GSA), is entitled to renewal agreement travel expenses covering a round trip by him and his family between his official duty station at Anchorage, Alaska, and his residence in Kansas City, Missouri, even though he was not required to execute an overseas employment agreement when first assigned to Alaska. This decision, requested by Ronald Boomer, Authorized Certifying Officer, GSA, Region 10, also answers subsidiary questions concerning renewal agreement travel of Mr. Hendricks and other GSA employees similarly situated.

Incident to his initial tour of duty in Alaska Mr. Hendricks was not required to execute GSA's standard "Overseas Employment Agreement" stipulating that he would remain with GSA for a fixed period. Although GSA required some employees transferred to Alaska to sign this agreement for a tour of 24 months, others--as in the case of Mr. Hendricks--executed only the GSA Form 2255 applicable to relocation actions within the continental United States by which they agreed to a 12-month Government service requirement. GSA has not had a written policy for tour lengths in Alaska, but 24 months is the customary tour under those overseas employment agreements executed in Region 10.

Mr. Hendricks completed his initial 24 months of duty in Alaska on January 16, 1981. On that date he signed GSA's "Alaska Tour of Duty Renewal Agreement" under which he agreed to serve an additional 24 months with GSA upon his return to Alaska. The "Alaska Tour of Duty Renewal Agreement" contemplated that he would receive travel expenses to his place of actual residence in the continental United States and return to Alaska before commencing his second tour of duty there. Under Government travel authorization of May 13, 1981, he and his family traveled at Government expense on leave to his residence in Kansas City, Missouri, on June 5, 1981,

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and returned to Anchorage on July 1, 1981. The Certifying Officer's questions concerning Mr. Hendricks' entitlement to renewal agreement travel benefits relate to his failure to execute an overseas employment agreement at the time of his initial assignment to Alaska and to the fact that he did not begin his travel to Kansas City until 5 months after he executed the renewal agreement.

Legal Provisions

The renewal agreement travel provisions originally enacted as Public Law 737, approved August 31, 1954, 68 Stat. 1008, are intended to provide expenses of round-trip travel and transportation for civilian Government employees and their families between tours of duty overseas for the purpose of taking leave. House Report No. 2096, 83d Congress, Senate Report No. 1944, 83d Congress; B-131459, May 6, 1957. Now codified in 5 U.S.C. 5728, the law states that under regulations prescribed by the President an agency shall pay such travel expenses to an employee who has (1) "satisfactorily completed an agreed period of service outside the continental United States" and (2) signed a new agreement to serve another tour of duty outside the "continental United States." Alaska is considered to be outside the "continental United States" under the definition of that term in 5 U.S.C. 5721(3).

The regulations governing renewal agreement travel are promulgated by the General Services Administration in paragraph 2-1.5h of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973, as amended). Corresponding to the qualifications in 5 U.S.C. 5728, there are two eligibility requirements for renewal agreement travel under subparagraph 2-1.5h(1)(a) of the FTR. First, the employee must have completed either an agreed period of service or the 1 to 3-year period of service prescribed in advance by the head of the agency as a condition to the employee's entitlement to return travel and transportation expenses under FTR para. 2-1.5(b). The second eligibility requirement is that the employee enter into a new written agreement as provided in 2-1.5a(1)(b) for another period of

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service outside the "conterminous United States." The term "conterminous United States," means the 48 contiguous States and the District of Columbia. It is synonymous with the term "continental United States" in 5 U.S.C. 5721(3). See subparagraphs 2-1.4a and 2-5a(1)(b) of the FTR.

As expressly set forth in 5 U.S.C. 5728, the period of service under the first, as well as the second, eligibility requirement for renewal travel under subparagraph 2-1.5h(1)(a) of the FTR must be outside the continental United States. See also, Matter of Vischer, B-186560, December 9, 1976.

Answers to Questions

The certifying officer's specific questions and our responses are set forth below.

1. Is GSA obligated to reimburse Northwest Airlines \$2,756 for Mr. Hendricks' and his family's renewal agreement travel, and is an additional \$37.40 owed for Mr. Hendricks' per diem?

Mr. Hendricks and his family met the essential requirements for entitlement to renewal agreement travel by serving the 2-year tour of duty prescribed by GSA for those employees required to execute overseas employment agreements incident to their assignments to Alaska and by signing a renewal agreement contemplating another 2-year tour in Alaska. His renewal agreement travel was approved and authorized by the Assistant Regional Director and the Regional Director, respectively, in accordance with a special travel authorization. Consequently, the specific items of travel expense may be reimbursed if otherwise payable.

In reaching our decision, we have considered the fact that Mr. Hendricks did not sign an agreement stipulating that for his initial tour of duty he would remain in Alaska for a fixed period. We also considered that GSA has not regularly required employees assigned to Alaska to sign such an agreement for a tour of 24 months there and that GSA has not had a written policy for tour lengths in

Alaska. Nonetheless, the customary overseas tour under employee agreements in GSA's Region 10 was 24 months, the same period Mr. Hendricks worked in Alaska. We have specifically recognized that an employee's entitlement to renewal agreement travel is not defeated by the fact that he may have served in an overseas area without a written agreement, if he has served at such post for the period normally required of other employees of the agency serving in the same area. B-148591, April 18, 1969. Since Mr. Hendricks served the ordinary period overseas expected of GSA employees in Region 10, he substantially satisfied the initial service completion requirement for renewal agreement travel expenses.

However, we suggest that GSA either ask each employee being assigned outside the conterminous United States to sign an agreement to serve an initial fixed period outside the conterminous United States or prescribe in advance a period of service from 1 to 3 years for the particular area. Also, tour renewal agreements should clearly stipulate that the service be outside the conterminous United States. See Vischer, cited above. This procedure is required by 5 U.S.C. 5728, as implemented by paragraph 2-1.5h(1)(a) of the FTR. The sample GSA agreements and Mr. Hendricks' tour-renewal agreement enclosed with the decision request do not specifically require the employee to serve outside the conterminous United States for the period specified.

2. Must the employee begin renewal agreement travel immediately after entering into a new agreement to serve another tour of duty outside the conterminous United States, or may the employee wait 5 months after signing before taking leave as Mr. Hendricks did?

While tour-renewal agreement travel is ordinarily to be performed between tours of duty outside the continental United States, we have recognized that the costs of such travel may be reimbursed even though the travel is delayed for reasons related to the employee's official duties. Since Mr. Hendricks' renewal agreement travel to Kansas City in June of 1981 was authorized and approved, we see

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no basis to object to payment of the travel expenses claimed simply because the travel was undertaken several months after he executed the renewal agreement.

3. Did Mr. Hendricks and other GSA employees similarly situated meet the service completion requirement for entitlement to renewal agreement travel by carrying out their initial agreement to serve 12 months in the Government service following their transfer outside the conterminous United States?

Fulfilling the 12-month Government service agreement that Mr. Hendricks signed (GSA's standard "Service and Reimbursement Agreement for Moving Expense Allowances") did not satisfy the initial service completion requirement for renewal agreement travel. The employee's obligation under this agreement is limited to remaining in the Government Service for 12 months after the transfer, regardless of whether the duty is within or outside the conterminous United States. Meeting the obligation merely entitles the employee to retain relocation expenses paid in connection with his assignment or transfer to the overseas post. See the first two sentences of subparagraph 2-1.5(a)(1)(b) of the FTR.

On other hand, entitlement to renewal agreement travel requires an initial period of completed service outside the continental (conterminous) United States. See 5 U.S.C. 5728 and subparagraph 2-1.5h(1)(a) of the FTR, discussed above.

Since the answer to question 3 is in the negative, question 4 is not relevant.

5. If an employee is transferred from the conterminous United States to Alaska on a permanent change-of-station basis, is renewal agreement travel an employee right or is it discretionary with GSA?

An employee who meets all of the eligibility requirements under 5 U.S.C. 5728 is entitled to renewal agreement travel. In holding that an agency cannot defeat an employee's travel entitlement under section 5728 by refusing to negotiate a renewal agreement where the particular position could be filled locally, we have recognized that

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renewal agreement travel is not merely a matter of privilege. 37 Comp. Gen. 848 (1958). As stated in 5 U.S.C. 5728, " * * * an agency shall pay * * * the expenses of round-trip travel * * *" when the conditions of entitlement are satisfied. The term "shall pay" is mandatory rather than discretionary.

for Milton J. Fowler
Comptroller General
of the United States