

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-209770**DATE:** May 25, 1983**MATTER OF:** Vinita E. Swenty

DIGEST: United States citizen employed as a teacher by the Division of Schools of the former Panama Canal Zone, is not entitled to tropical differential because she was not hired under conditions and criteria established by the regulations in force at the time governing Canal Zone employees' eligibility for the differential.

Mrs. Vinita Swenty appeals the denial by our Claims Group of her claim for tropical differential in connection with her acceptance of a temporary position with the Division of Schools in the Panama Canal Zone in September 1978. The denial of the claim is sustained because under the circumstances Mrs. Swenty does not meet the eligibility criteria for tropical differential set forth in the controlling regulations.

Mrs. Swenty states that in April 1978 the Assistant Superintendent of the Elementary Schools of the Panama Canal Zone contacted her in Houston, Texas, to determine whether she would be interested in returning to Panama to assume a teaching position, as she had previously been employed there as a special education teacher from September 1973 until April 1976. In subsequent conversations she was informed that there was still interest in having her return to Panama to assume a teaching position, but that a position could not be offered to her at that time because the Division of Schools there had restricted its stateside recruitment program.

In view of the restrictions on recruiting teachers from the United States under normal procedures, it appears to have been agreed that Mrs. Swenty would travel to the Canal Zone and be hired locally. She was employed in a temporary position on September 11, 1978. She received a permanent appointment on September 24, 1979, in connection with which she was authorized travel

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and transportation expenses. It appears that she also claimed the tropical differential after notification of her permanent appointment. However, the Office of Personnel Administration of the Panama Canal Commission denied that claim.

The tropical differential was authorized by section 7 of the act of July 25, 1958, 72 Stat. 407 (76A Stat. 17, 2 Canal Zone Code 146) for citizens of the United States who were employees in the Canal Zone. Implementing regulations are set forth at 35 C.F.R. § 253.135.

In order for a United States citizen employed in the Panama Canal Zone to be eligible for the tropical differential, the regulations require, as is relevant here, that:

"(1) * * * the employee must have continuously occupied a position * * * since (i) recruitment or transfer by a department from a place (other than the Canal Zone) under the jurisdiction of the United States * * *." 35 C.F.R. § 253.135(b)(1).

Mrs. Swenty contends that she was recruited from a place under the jurisdiction of the United States, Houston, for the teaching position in Panama. She further contends that she has continuously occupied the same position since she was "recruited" from Houston. She, therefore, believes she is entitled to payment of the tropical differential in connection with her employment in Panama.

The conditions and circumstances in this case indicate that Mrs. Swenty was not hired under the recruitment procedures contemplated by 35 C.F.R. § 253.135(b)(1) because she was hired in the Canal Zone. It is evident that she could not have been recruited or hired for employment in the Canal Zone while she was in the United States in 1978 as she claims because of the Division of Education's administrative restrictions on recruiting in the United States at that time. Moreover, her correspondence with this Office

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clearly shows that she was aware of this fact. By her own admission, she traveled to the Canal Zone at her own expense and was employed locally on a temporary basis to circumvent the permanent hiring restrictions in effect there in 1978.

Even though, as she states, the possibility of her later being appointed to a permanent position was discussed when she was offered the temporary position, no firm offer of a permanent position was extended to her prior to her arrival in Panama in August 1978, since only a "possibility" existed at that time. See Matter of Kosh, B-195743, September 17, 1979, and Matter of Arsenault, B-187098, January 3, 1979. The fact that she was later reimbursed for moving expenses when she received a permanent appointment in 1979 has no bearing on her entitlement to a tropical differential.

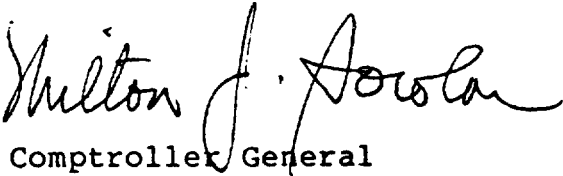
Whether Mrs. Swenty's claim is based on her temporary employment in 1978 or her permanent appointment in 1979, she was not offered either position as a result of the recruitment procedure contemplated by the applicable regulations. Under the circumstances, that she was residing in Houston, Texas, when she was contacted about returning to assume a teaching position is not the determinative factor here. Rather, the fact that she was hired locally precludes any possible entitlement to the tropical differential under the provisions of 35 C.F.R. § 253.135(b)(1).

We conclude, therefore, that Mrs. Swenty has not continuously occupied a position since recruitment "from a place (other than the Canal Zone) under the jurisdiction of the United States," since she was in fact not recruited, but hired locally in the Canal Zone to fill a temporary position. Accordingly, her claim for tropical differential must be denied.

Mrs. Swenty has inquired as to her right of further appeal in the event that the settlement of the Claims Group is sustained by this Office. Decisions of the

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Comptroller General are binding on executive agencies of the United States. 54 Comp. Gen. 921, 926 (1975). However, independent of the jurisdiction of this Office, the United States Claims Court and District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501.

for 
Comptroller General
of the United States