

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

B-219186

October 15, 1985

RELEASED

The Honorable Charles E. Grassley
United States Senator
103 Federal Building
320 6th Street
Sioux City, Iowa 51101

Dear Senator Grassley:

This is in reply to your letter of June 11, 1985, concerning your constituent, _____, presently residing in Austria, who left Government service in July 1983 while stationed in Munich, Germany. You stated that your letter to us was at the direction of the Office of the Chief of Legislative Liaison, Department of the Army, and you furnished us with a copy of the Army's response to your original request. The Congressional Coordinator of that Office suggested that Mr. _____ direct to us his suggestion that our decision _____, 63 Comp. Gen. 281 (1984), be made retroactive to cover his own situation.

In his letter to you dated March 12, 1985, Mr. _____ refers to our decision, _____, cited above, which reversed a long-standing position of our Office that employees separated overseas must return to their country of actual residence to be entitled to separation allowances. In _____, we held that such employees could be eligible for travel and transportation allowances to a location of their choice, within or outside the United States, provided that such cost does not exceed the cost to the actual place of previous residence. Our reversal of position resulted from a changed interpretation applied to 5 U.S.C. § 5722 (1982) which took into consideration that 37 U.S.C. § 404(c) (1982) grants members of the uniformed services travel and transportation allowances to any worldwide location they select upon separation. To prevent injustice and hardship and to eliminate the unfair disparity between civilian employees and service members, we similarly permitted travel and transportation within the above described cost limitations to any location for civilian employees upon separation overseas. The _____

B-219186

decision involved the shipment of household goods of an employee separated overseas. Since that decision represented a changed construction of the statute on our part, the decision was expressly given prospective application only, effective as of the date of the decision, except as to Mrs.

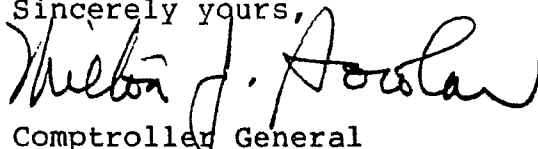
It is Mr. _____ position that the _____ decision is "unfair and discriminatory in that it gives retroactively approved reimbursement of an overseas move by a government employee in 1982 but does not permit reimbursement of my overseas move in 1983." Mr. _____ references to 1982 and 1983 are to the fact that Mrs. _____ shipped her household goods in 1982 and was reimbursed, but, although Mr. _____ shipped his household goods in 1983, he was not eligible for reimbursement. Mr. _____ concludes with the suggestion that the _____ decision be made retroactive to 1976.

We must decline to adopt Mr. _____ suggestion and give the _____ decision retroactive application. Prior to _____, the decisions of our Office had followed an unbroken line of precedent for many years, and had been justifiably relied upon by separating employees, by employing agencies in rendering advice to those leaving Government service, and by certifying and disbursing officers in the disposition of claims presented to them for reimbursement. Further, prospective application of our decision in _____ will foster stability since it will avoid the necessity of opening claims which might have gone stale because of a failure to promptly investigate.

Accordingly, since _____ represents a substantial departure from our previous construction of 5 U.S.C. § 5722, and involves the overruling of many precedents on which reliance had justifiably been placed, the holding in _____ was made prospective only. See 56 Comp. Gen. 561 (1977); 54 Comp. Gen. 890 (1975); 54 Comp. Gen. 1042 (1975) (copies enclosed).

We trust this information will assist you in responding to Mr. _____ suggestion and concerns.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosures