

DECISION



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

FILE: B-197023

DATE: March 14, 1980

MATTER OF: Anthony A. Esposito

DIGEST: Employee filed formal grievance relative to reassignment and transfer from SHAPE at Casteau, Belgium, to NATO at Brussels, Belgium, and was returned to position at SHAPE. Agency designated period of wrongful reassignment as temporary duty and issued amended travel orders authorizing commuting and per diem expenses. Remedial action of restoring employee to former position at SHAPE does not change nature of duty at Brussels from permanent to temporary. Accordingly, employee may not receive commuting and per diem expenses. However, employee is entitled to receive cost-of-living allowance based on permanent duty at Brussels and not Casteau during period of transfer.

Mr. Anthony A. Esposito, a civilian employee of the Army, appeals the denial of his claim for mileage and per diem by our Claims Division. As will be explained, Mr. Esposito may not be reimbursed for his mileage or his per diem expenses but may receive a cost-of-living allowance previously collected by the Army.

On August 5, 1977, incident to his permanent change of station from SHAPE at Casteau, Belgium, to NATO at Brussels, Belgium, Mr. Esposito was issued travel orders authorizing transportation for himself and his dependents to the new duty station. Additionally, the travel orders authorized Mr. Esposito to ship his household goods at Government expense to the new duty station.

Mr. Esposito reported for duty at Brussels on August 8, 1977. However, he did not relocate his household to the Brussels' area. Rather he commuted daily from his residence at Villerot, Belgium, in the Casteau area, a round trip of about 110 miles. Mr. Esposito

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states that he did not relocate his household because of his belief that his permanent change of station was contrary to agency and Civil Service regulations. He filed a formal grievance seeking to have the change of permanent station rescinded and to be restored to his previous position at SHAPE.

On April 24, 1978, in response to Mr. Esposito's grievance the Commander, 21st Support Command, did cancel the permanent change-of-station orders and did reassign Mr. Esposito to his previous position at SHAPE. While the Commander did not specifically indicate the basis for his findings he did state that the action was being taken because of the claimant's contentions that Army and Civil Service regulations had been violated.

To remedy the wrongful transfer of Mr. Esposito the Commander, among other things, cancelled the travel orders incident to the permanent change of station. Based on this, Mr. Esposito requested and received amended travel orders authorizing him reimbursement for his duty mileage and per diem for one meal a day. The travel orders indicate that Mr. Esposito's duty at Brussels had been retroactively designated as temporary duty by the agency. The Army Finance Section submitted the claim to our Claims Division as doubtful because the amended orders were not issued until after the completion of the claimant's travel. Also, the Finance Section questioned whether it was appropriate for the travel orders to authorize per diem but limit this to one meal a day.


We have previously considered whether an administrative determination to retroactively restore an employee to his former position at his old duty station, after a wrongful reassignment and permanent transfer to a new duty station, would make the time spent at the new duty station temporary duty. We held that the remedial action of restoring the employee to his old position was not a basis for converting the tenure under the transfer from permanent to temporary. William H. Buchenhorst, B-194447, August 7, 1979; Marie R. Streeter, B-191056, June 5, 1978. See Jimmy Morris, B-188358, August 10, 1977. Our decisions have consistently held that the

location of an employee's official duty station is a question of fact and it is the place where the employee performs a major part of his duties and is expected to spend a greater part of his time. 32 Comp. Gen. 87 (1952); and B-171991, April 14, 1971. Accordingly, while it was subsequently held that Mr. Esposito should not have been reassigned and transferred for travel purposes his duty at Brussels was permanent duty.

Since the duty performed at Brussels was designated as permanent for travel purposes Mr. Esposito is not entitled to reimbursement of his commuting expense or to a per diem allowance as these entitlements accrue only to individuals performing duty away from their permanent station. Marie R. Streeter, supra; Jimmy Morris, supra; and Ernest F. Gonzales, B-184200, April 3, 1976.

In reviewing the record of this case, we note that for the period he worked in Brussels Mr. Esposito received a cost-of-living allowance (COLA) based on duty at Brussels. After the adjudication of his grievance and the administrative action of designating the claimant's duty at Brussels as temporary, the Army collected \$580.58 of the COLA from him. This was done on the basis that the redesignation of SHAPE at Casteau as his permanent duty station governed his entitlement and the SHAPE COLA for the period was \$580.58 less than the Brussels' COLA. Mr. Esposito remitted the \$580.58 to the Government. This amount should be returned to him as his entitlement is governed by his permanent duty station which, as indicated, was Brussels.

Accordingly, the claims for mileage and per diem are denied, but Mr. Esposito may receive the \$580.58 that the Army collected from his Brussels' COLA allowance. Settlement will issue to him for that amount.


FOR THE Comptroller General
of the United States