Pool, PLM.
1458

DECISION

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

FILE: B-196294 [Claim for

DATE: August 19, 1980

MATTER OF: Patrick V. Vail - Travel, transportation, and relocation expenses upon reemployment following service with international organization

DIGEST:

1. Department of Agriculture employee was separated from his position in Phoenix for transfer to international organization in Austria under 5 U.S.C. §§ 3581, et seq. Upon expiration of his contract with that organization he was reemployed by the Department of Agriculture for an assignment in Fresno. Employee may be considered reemployed at Phoenix and the designation of his new station at Fresno may be considered a transfer of station. Therefore, he may be allowed specified travel and transportation benefits under chapter 57, of title 5, United States Code.

2. Department of Agriculture employee was separated from his position in Phoenix for transfer to international organization in Austria under 5 U.S.C. § 3581, et seq. Incident to his reemployment with the Department of Agriculture pursuant to 5 U.S.C. § 3582(b) he was transferred from Phoenix to Fresno. Employee may not be reimbursed for real estate expenses incurred in sale of residence in Phoenix incident to transfer to Fresno since that dwelling was not employee's actual residence at time he was first definitely informed of transfer as required by para. 2-6.1d of the Federal Travel Regulations. See B-166678, May 23, 1969.

~~011748~~

113079

At the request of H. Larry Jordan, an authorized certifying officer for the U.S. Department of Agriculture (USDA), we are rendering a decision on the propriety of payment of certain change of station allowances to Dr. Patrick Vail in connection with his return to the Science and Education Administration, USDA, following service with an international organization.

Dr. Vail was an employee of the Agriculture Research Service (now Science and Education Administration), USDA, in Phoenix, Arizona, on January 5, 1975, at which time he transferred to a position with the International Atomic Energy Agency (IAEA) in Vienna, Austria. In accordance with section 3582 of title 5, United States Code, Dr. Vail sought reemployment with USDA following completion of his service with IAEA. Although Dr. Vail was unable to be reemployed in the position he formerly held in Phoenix, he was offered and accepted a position with the Agriculture Research Service in Fresno, California. The offer was made to Dr. Vail on October 31, 1977. Dr. Vail accepted the position by letter dated November 15, 1977, and reported for duty in his new position on July 17, 1978.

Under an official travel authorization dated May 10, 1978, Dr. Vail was authorized to incur expenses for per diem, transportation of household goods, mileage for use of a private automobile, and temporary quarters in connection with his transfer from Phoenix to Fresno. Real estate expenses were not listed on the travel authorization. However, Dr. Vail's Area Administrative Officer has indicated that agency discussions and recommendations recorded in an agency memorandum dated May 25, 1977, served as notification that Dr. Vail was being transferred, and as a result, the Area Administrative Officer believes that real estate expenses should have been authorized. Mr. Jordan has presented the issue for our resolution.

The rights of Federal employees who transfer to an international organization are set forth in section 3582, title 5, United States Code (1970). Subsection (a) provides that an employee who transfers to an international organization with the consent of the head of his agency is entitled to certain rights and benefits pertaining to retirement, life and health insurance, compensation for work injuries, and annual leave. Subsection (b)

provides that such an employee is entitled to be reemployed in the agency from which he transferred if--(1) he is separated from the international organization within 5 years or any extension thereof, or within a shorter period named by the head of the agency, and (2) he applies for reemployment not later than 90 days after separation. This subsection also provides that upon reemployment an employee is entitled to the restoration of his sick leave account and to be paid an equalization allowance in an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the same benefits that would have been paid by the agency had he been detailed to the international organization. Edward Napoliello, B-193771, December 17, 1979.

In Michael B. McClellan, B-181853, August 23, 1976, we reviewed the legislative history of the Federal Employees International Organization Service Act (Pub. L. No. 85-795, 72 Stat. 959, August 28, 1958, codified at 5 U.S.C. §§ 3581 to 3584 (1970)), and concluded in part that within the context of these sections an individual who transfers to an international organization becomes an employee of the international organization and is no longer an employee of the United States Government. Thus, reimbursement of travel, transportation and subsistence expenses, and relocation expenses and allowances for employees who transfer to an international organization under 5 U.S.C. § 3851 are subject to the terms and conditions of the individual's service agreement with the international organization.

However, under the facts of the present case, the agency has indicated that Dr. Vail was reemployed pursuant to 5 U.S.C. § 3581 at his former duty station in Phoenix and then--apparently within the same personnel action--transferred to Fresno. As a result, notwithstanding the dubious rational for the increased expense to the Government, Dr. Vail's travel and relocation entitlements are based on his status as a Government employee transferred in agency's interest within the United States and are payable pursuant to chapter 57 of title 5, United States Code.

The present case resembles B-166678, May 23, 1969, wherein we rendered a decision to the Secretary of

Agriculture concerning the eligibility of a professional employee for change of station allowances upon his return to the Agricultural Research Service following service with the International Atomic Energy Agency at Vienna, Austria. The employee in question had transferred to the international organization pursuant to 5 U.S.C. §§ 3581 et seq. from his actual residence in College Station, Texas. Upon expiration of his contract with the international organization he was reemployed by the Department of Agriculture for an assignment in Gainesville, Florida. In holding that the designation of his new station at Gainesville may be considered a transfer of station we reasoned in part as follows:

> "Section 3582(b) of title 5, United States Code, provides that an employee who transfers to a public international organization is entitled under the conditions stated therein to reemployment in his former position or a position of like seniority, status and pay in the agency from which he transferred. The purpose of the statute is to authorize the transfer of Federal personnel without loss of Federal employment rights and beneifts. See page 1 of House Report No. 2509, August 7, 1958. While the statute does not provide that the employee shall be on furlough, various provisions thereof require that for specific purposes he be considered as if he had remained a Federal employee. In the instant case the ARS, apparently for its convenience, plans to reemploy Dr. Lindquist at Gainerville [sic] rather than at College Station. In view of the statute and its purpose the employee may be regarded as reemployed at College Station for transfer purposes and the designation of the new duty station is to be considered a transfer of station."

In accordance with this reasoning, and pursuant to the legal authority provided in 5 U.S.C. §§ 5724 and 5724a for the payment of travel and transportation expenses and allowances and certain relocation expenses, we find the items which the agency has already reimbursed to Dr. Vail were predicated on appropriate entitlements. See also chapter 2 of the FTR. Concerning the specific claim for real estate expenses in connection with the sale of Dr. Vail's residence in Phoenix, we find that in these

circumstances Dr. Vail's "old and new duty stations"--for purposes of establishing his entitlement to relocation expenses under 5 U.S.C. § 5724a--were Phoenix and Fresno respectively. This follows from the same analysis applied in B-166678, supra, set out above in connection with the travel and transportation entitlement under 5 U.S.C. § 5724.

However, payment of the expenses of the sale of the residence as contemplated by 5 U.S.C. § 5724a remains subject to regulations contained in the FTR. Para. 2-6.1 of the FTR provides the conditions and requirements under which expenses incurred in connection with residence transactions are payable. Of particular significance in the present case is the requirement set forth in para. 2-6.1d that the dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station.

Our appraisal of this requirement in B-166678, supra, resulted there in the denial of expenses in selling the residence because, while the employee still owned his residence at the old duty station (i.e. College Station, Texas) the employee and his family were in Vienna at the time he was definitely advised concerning his new official duty station and, thus, his dwelling at College Station could not have been his actual residence as required by the regulations.

In the present case we conclude that the residency requirement of FTR para. 2-6.1d similarly precludes payment of real estate expenses for the sale of the residence at Phoenix since that dwelling was not Dr. Vail's actual residence at the time he was informed of his transfer to Fresno.

In addition, Mr. Jordan has presented the following questions concerning Dr. Vail's change of station from Phoenix to Fresno:

> "Also claimed were mileage for two vehicles, and storage and handling charge for 5,930 pounds of household goods. The vehicles and household goods were returned from Vienna

to San Pedro, California. The claim covers expenses for transit between San Pedro and Fresno. Should these charges be paid by International Atomic Energy Agency or by Department of Agriculture?"

Paragraph 2-8.5a of the FTR provides that temporary storage of household goods at Government expense may be allowed only when such storage is incident to transportation of the household goods at Government expense. In the instant case, although the record is silent as to the length of the storage of the household goods at San Pedro, we believe that there is sufficient evidence to show that the storage and handling expenses were incurred as a necessary incident to the official transfer orders so as to come within the scope of para. 2-8.5a of the FTR.

Concerning the shipment of this portion of Dr. Vail's household goods from San Pedro to Fresno, para. 2-8.2d of the FTR provides that the cost of transportation of household goods may be paid by the Government whether the shipment originates at the employee's last official station or place of residence or at some other point, or if part of the shipment originates at the last official station and the remainder at one or more other points. However, the total amount which may be paid or reimbursed by the Government shall not exceed the cost of transporting the property in one lot by the most economical route from the last official station of the transferring employee to the new official station. In accordance with this authority the agency may reimburse Dr. Vail for the shipment of his household goods from Phoenix and San Pedro to Fresno to the extent that the cost does not exceed that for shipment of the goods within the authorized weight limitation from Phoenix to Fresno in one lot by the most economical route. See B-166678, supra. However, in accordance with 5 U.S.C. § 5727 and under para. 2-1.4h of the FTR, shipment of an automobile as an item of household goods is specifically precluded. 54 Comp. Gen. 301 (1974).

Finally, we consider the claim for mileage in connection with the movement of two vehicles from San Pedro to Fresno. As we have noted there is no authority to

transport the privately owned vehicle (POV) of a employee at Government expense between duty stations in the continental United States. Thus, we presume the mileage claimed represents travel from San Pedro to the new duty station in Fresno. Reimbursement of this mileage is governed by para. 2-2.2a of the FTR which provided that travel of the employee and his immediate family may begin at the employee's old official station or some other point, or partially at both, or may end at the new official station or some other place selected by the employee, or partially at both. However, the cost to the Government for transportation of the immediate family shall not exceed the allowable cost by the usually traveled route between the employee's old and new official station.

Thus, subject to the comparative requirement in para. 2-2.2a of the FTR, we believe it is appropriate to reimburse Dr. Vail for the use of a privately owned automobile in connection with his permanent change of station, notwithstanding the fact that the actual miles traveled were between San Pedro and the new duty station at Fresno. However, use of more than one privately owned vehicle must be authorized under the special circumstances set out in para. 2-2.3e of the FTR. As a result, in the absence of official authorization for the use of more than one privately owned vehicle, that part of Dr. Vail's claim covering mileage for a second vehicle may not be allowed. See 48 Comp. Gen. 119 (1968).

Milton J. Socolar

For the Comptroller General
of the United States