

DECISION

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

FILE: B-205640

DATE: June 18, 1982

MATTER OF: Daniel C. Murphy

DIGEST: Employee whose reemployment rights under 10 U.S.C. § 1586 were not recognized following his completion of an overseas tour of duty accepted a position in another geographical location upon his return to the United States and continued to work there until he was assigned to another overseas tour. Upon completion of the latter tour, he was not entitled to reassignment to the duty station to which he may have initially had reassignment rights, but was only entitled to reassignment to his last duty station in the continental United States. Such assignment did not constitute temporary duty, and he is, therefore, not entitled to reimbursement for travel expenses incurred in connection with that assignment.

This decision responds to the appeal of Mr. Daniel G. Murphy, an employee of the Department of the Army, of our Claims Division settlement, dated August 12, 1981, which denied his claim for travel expenses incurred during a purported 9-month temporary duty assignment. Since payment of expenses for travel between the employee's home and his duty station is not statutorily authorized, we sustain the settlement of the Claims Division.

The record shows that in August 1971, while employed as a supervisory equipment specialist at the U.S. Army Electronics Command (ECOM), Tobyhanna, Pennsylvania, Mr. Murphy was reassigned to Long Binh, Vietnam. The SF-50 "Notification of Personnel Action" documenting that reassignment states that Mr. Murphy had reemployment rights with the ECOM Field Office, Western Hemisphere, at a duty station to be specified. These orders indicated that he did not qualify for reemployment rights granted by 10 U.S.C. § 1586. The record indicates that while Mr. Murphy was stationed in Vietnam on this assignment, the field office at Tobyhanna was discontinued by ECOM Order No. 27, dated May 18, 1972.

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In October 1972, Mr. Murphy was reassigned from Vietnam to the ECOM Headquarters Office at Fort Monmouth, New Jersey. There is no indication that he contested this assignment or asserted a right to a position at Tobyhanna rather than at Fort Monmouth. In September 1973, he was reassigned from Fort Monmouth, New Jersey, to Bangkok, Thailand, with reemployment rights under the provisions of 10 U.S.C. § 1586, and in August 1975 he was again reassigned from Thailand to Fort Monmouth, New Jersey. However, the record shows that the Fort Monmouth office amended Mr. Murphy's August 1975 Personnel Action Form by designating Tobyhanna instead of Fort Monmouth as his duty station. The memorandum requesting this amendment states:

"The * * * change is required to grant Mr. Murphy reemployment rights under [10] USC 1586 per CPR 300, change 352. A subsequent SF-52 will be prepared to reassign Mr. Murphy from Tobyhanna, PA to Ft. Monmouth, NJ within the next 90 days."

On August 26, 1975, a temporary duty travel order was issued to cover a period of 59 days, retroactive to August 3, 1975. The purpose of that temporary duty assignment was specified as follows:

"To assume duties for Chief, Field Support Section, Technical Assistance and New Equipment Training Division"

The temporary duty order authorizes no travel or per diem expenses and specifically states, "TDY was accomplished with no Per Diem or Travel Cost authorized."

Mr. Murphy states that upon his receipt of the temporary duty orders, he traveled on each workday from his residence in Stroudsburg, Pennsylvania, to Fort Monmouth, New Jersey, to perform his assigned duties there. In November 1979, more than 4 years after he began the subject travel, Mr. Murphy submitted to the agency his claim for reimbursement of his daily round-trip travel expenses, including tolls, between Stroudsburg and Fort Monmouth (which he variably lists as a distance of 180-192 miles), covering the majority of the workdays within the period from August 5, 1975, through April 16, 1976.

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Concerning Mr. Murphy's continuation upon temporary duty instead of a change of duty station to Fort Monmouth, in a memorandum dated June 19, 1980, Mr. Aulcy L. Jones, the Director of Maintenance Engineering who was responsible for amending Mr. Murphy's personnel orders, states:

"To the best of my memory, I remember Mr. Murphy explaining to me that he did not want to PCS at this time and would I please amend the orders as a personal convenience and protection for himself, and he told me that there would be no cost to the government. That reason resulted in my continuing to sign amendments extending the number of days TDY to 295. I remember later Mr. Murphy telling me that he would be reassigned to Europe and therefore there would be no need for him to change his residence. As far as I was concerned, Mr. Murphy's job and duty station were here at Fort Monmouth. His residence could be wherever he so chose."

Effective May 1, 1976, Mr. Murphy was transferred from Tobyhanna to Frankfurt, Germany.

Upon appeal, Mr. Murphy contends that the extended temporary duty was not granted as a personal convenience to him, but that it was a statutory requirement under Public Law 86-585, 10 U.S.C. § 1586. Essentially he claims that the Army was obligated to reassign him to Tobyhanna upon completion of his assignment to Bangkok and that the Army could obtain his services at Fort Monmouth where they were needed only on the basis of a temporary duty assignment for which it is obligated to pay travel expenses.

The referenced statute authorizes the Secretary of Defense and the Secretary of each military department to establish and operate programs of rotation by which certain civilian employees of the Department of Defense may be granted the right to return to a position in the United States in the department concerned, after they have satisfactorily completed assigned duty outside the United States. Subsection (c) of section 1586 specifies

the manner in which such employees shall be placed. Subsection (c)(1) provides that the employee shall be placed in the position he held prior to his assignment to duty outside the United States, if such position exists. Subsections (c)(2) and (c)(3) provide for the employee's placement in the same geographical area in another continuing position or in a position established for 90 days for that specific purpose in the event placement cannot be made under subsection (c)(1).

In Mr. Murphy's case, the position he held prior to his 1973 assignment to Bangkok was at Fort Monmouth. The record contains a communication dated in May of 1974 which indicates that prior to his reassignment to the United States the Army verified that he held reemployment rights at Fort Monmouth. That communication contains the following advice:

** * * reemployment rights to CONUS will be the subcomponent, activity, and grade the individual left just prior to his overseas assignment, regardless as to being considered excess in the position.

"In view of the above, subject employee's reemployment rights are Fort Monmouth, New Jersey."

Since the record indicates that a position at the appropriate grade existed at Fort Monmouth in August of 1975 and since he in fact served at that installation upon his return to the United States, it would appear that the SF-50 initially issued in connection with that reassignment correctly reflected the fact that Fort Monmouth was his new duty station. There is nothing in the record that adequately explains the administrative action amending that document to designate Tobyhanna, a location some distance from Fort Monmouth, as his permanent duty station. This action seems to have been predicated upon a determination that Mr. Murphy had been erroneously denied reassignment rights in connection with his assignment to Vietnam in August 1971 and his return to the United States in October 1972. At the time of that return, it appears that he may have had a right to return to Tobyhanna to a position created under 10 U.S.C. § 1586(c)(3) for a 90-day period. This action was not

taken at that time, and Mr. Murphy accepted the position at Fort Monmouth and worked in that position for about 1 year until his next overseas assignment in Bangkok, Thailand. After about 2 years in Bangkok he was returned to duty in Fort Monmouth by travel orders dated May 14, 1975. A personnel action was taken on August 13, 1975, reflecting that same transfer. The travel order was amended August 25, 1975, and the personnel action was amended September 3, 1975, to show that he was transferred to Tobyhanna and not Fort Monmouth.

The first indication that Mr. Murphy asserted a right to be returned to Tobyhanna is his memorandum of January 3, 1973, at which time he was assigned to Fort Monmouth. However, no official action was taken until the documents relating to his return from Thailand were amended.

Regardless of other considerations involved in Mr. Murphy's claim that Tobyhanna, not Fort Monmouth, was his official duty station between August 1975 and May 1976 when he was again transferred overseas, we do not find that the amendments changing his duty station to Tobyhanna upon his return from Thailand were proper.

The return provisions of 10 U.S.C. § 1586 are specific in the rights provided. The unusual claim which Mr. Murphy asserts as a remedy for a prior error is not authorized in law or regulation. It is unfortunate that his rights under 10 U.S.C. § 1586 may not have been recognized at the time of his return from Vietnam in 1972. At that time he may have been entitled to the protection of the procedures in 10 U.S.C. § 1586(c)(3) prior to being officially transferred to Fort Monmouth. But, since that was not done and he served a tour of duty at Fort Monmouth and was later transferred from there to Bangkok, his rights on return from that assignment were to Fort Monmouth.

Accordingly, the travel order as originally issued was proper and the attempt to modify it is without effect since his permanent duty station upon return from Thailand was in fact Fort Monmouth.

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Accordingly, we sustain the action of the Claims Division in denying Mr. Murphy's claim for travel expenses.

for *Harry R. Van Cleave*
Comptroller General
of the United States