

DECISION



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

FILE: B-211490

DATE: April 10, 1984

MATTER OF: Thelma I. Grimes - Termination of
Overseas Employment - Transportation of
Household Goods to Alternate Destination

DIGEST:

1. Under 5 U.S.C. § 5722, civilian employees on separation abroad are entitled to travel and transportation expenses to their place of actual residence at the time of overseas assignment. We hold that such employees are entitled to those expenses to any alternate point of destination, within or outside the United States, provided however that the cost to the Government shall not exceed the constructive cost of travel and transportation to the actual place of residence. Since this represents a changed construction of the statute, it is for prospective application only, effective as of the date of this decision.

2. A civilian employee of the Defense Intelligence Agency upon separation overseas shipped her household goods from Denmark to Scotland. The agency disallowed her expenses based on our prior decisions since she did not return to United States. We hold that she is entitled to travel and transportation expenses incurred in her move to Scotland, not to exceed the constructive cost to her place of actual residence in the United States.

In this case, the question is whether a civilian employee upon separation overseas is entitled to travel and transportation expenses under 5 U.S.C. § 5722 (1976) from Copenhagen, Denmark, to Scotland instead of to her place of actual residence in the United States. For the reasons stated below, we hold that she is entitled to such expenses, not to exceed the constructive cost of travel and transportation expenses to her place of actual residence.

This decision is in response to a request from Mr. Tidal W. McCoy, Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations), concerning the claim of Mrs. Thelma I. Grimes for transportation of her household goods from her last duty station in Copenhagen, Denmark, to Scotland. The request was approved by the Per Diem, Travel and Transportation Allowance Committee, and was assigned PDTATAC Control Number 83-10.

FACTS

Mrs. Grimes, a civilian employee of the United States Defense Intelligence Agency, was transferred in April 1977 from Washington, D.C., to the United States Defense Attache Office (USDAO) in London, England. In connection with this transfer, Mrs. Grimes was authorized to move her household goods from her residence in Arlington, Virginia, to her new station in London. She completed two tours of duty in London, and then was transferred to the USDAO in Copenhagen, Denmark, on May 20, 1981, for a 2-year tour of duty.

In March 1982, Mrs. Grimes informed the agency that she was planning to separate from the service in December 1982, 5 months short of tour completion, due to her impending marriage to a United States Navy member. Mrs. Grimes originally planned to send her household goods to California, but her fiance received a change of orders to remain in Scotland to the end of August 1983. Mrs. Grimes then requested a change in her departure date, and asked that her goods be shipped to Scotland. On October 8, 1982, the agency's personnel office authorized the USDAO in Copenhagen to issue permanent change-of-station orders returning the household goods of Mrs. Grimes to her home of record or an alternate destination not more distant. These orders were issued on October 12, 1982.

When the travel orders were received in the Office of Comptroller, the agency realized that it had made an error by authorizing the shipment of household goods to Scotland. Mrs. Grimes was informed on approximately November 18, 1982, that she was not authorized to ship her household goods to Scotland. However, on November 12, 1982, before the receipt of this latest message, her household goods had been shipped to Scotland as authorized by her orders.

The Defense Intelligence Agency forwarded the case to the Per Diem Committee and requested that Mrs. Grimes be authorized the maximum amount of transportation entitlement allowable.

OPINION AND CONCLUSION

The issue of travel and transportation expenses of employees upon return from overseas posts of duty is governed by 5 U.S.C. § 5722 (1976). Section 5722(a)(2) authorizes payment of such expenses on the return of an employee from a post of duty outside the continental United States "to the place of his actual residence at the time of assignment to duty outside the United States."

Our original construction of this statute in 1952 was that it contemplated the return of the employee to the United States within a reasonable time after completion of duty at the overseas station, citing 28 Comp. Gen. 285 (1948).. We, therefore, held that there was no authority to pay the employee's expenses upon separation to a point outside of the United States, or even to pay the constructive cost of return travel to his place of residence in the United States when he elects to remain abroad. 31 Comp. Gen. 389 (1952), and B-160029, October 4, 1966.

In 1965, we applied this principle to bar payment of travel and transportation expenses to an employee who elected to remain in Alaska upon completion of his service rather than return to his residence in the "continental" United States. B-156524, May 20, 1965. However, we overruled that case in 46 Comp. Gen. 838, 841 (1965) and held that an employee who elects to remain in Alaska or Hawaii upon separation may be authorized expenses to another location in any of the 50 states or the District of Columbia, not to exceed the constructive cost to the place of actual residence. See also B-107603, June 20, 1972.

The unexpressed major premise of these decisions appears to be that Congress must have intended to require civilian employees of the Government to return to the United States upon separation in order to be reimbursed their expenses. Yet, Congress in 37 U.S.C. § 404(c) (1976) has provided authority for members of the uniformed services to select a home upon separation for travel and transportation purposes, and we have construed that statute to allow

such expenses to anywhere in the world. See 54 Comp. Gen. 1042, 1047 (1975); Technical Sergeant Michael J. Mahoney, B-195604, September 28, 1979; and Lt. Colonel James Z. Metalios, B-192949, June 6, 1979.

In light of the unfortunate results that may flow from our decisions relating to civilian employees, as illustrated by the Thelma Grimes situation, we have decided to reconsider this matter.

There are many reasons why employees decide to remain overseas after completing their Government service, ranging from acceptance of employment overseas to family or personal considerations. In each case, it is the individual's own choice as to where to reside and, once Government service is ended, that choice should not be a matter of concern to the employing agency or to this Office. Yet, our prior decisions impose a financial penalty upon the person who for whatever reason chooses to remain abroad after separation. This penalty is imposed despite the fact that the individual has fulfilled his or her obligations of Government service for the agreed-upon period of time and that no additional expense to the Government is involved. It is also imposed even if the individual stays overseas to work for a United States company or to marry a service member.

In contrast, the retired or separated military member or uniformed service member may choose to remain overseas at any location without financial penalty regardless of the reasons for the choice.

In order to prevent injustice and hardship and to eliminate the unfair disparity between civilian employees and service members, we have decided to change our construction of 5 U.S.C. § 5722. We, therefore, will allow payment or reimbursement of travel and transportation expenses incurred by civilian employees upon separation overseas to any alternate point of destination, whether within or outside the United States, provided however that the cost to the Government shall not exceed the constructive cost of travel and transportation to the employee's place of actual residence at the time of the overseas assignment or the tour renewal agreement.

B-211490

Since this conclusion represents a changed construction of the statute on our part, we shall give it prospective application only, effective as of the date of this decision, except as to Mrs. Grimes. See George W. Lay, 56 Comp. Gen. 561, 566 (1977).

In accordance with the foregoing, Mrs. Grimes is entitled to her travel and transportation expenses from Denmark to Scotland, not to exceed the constructive cost of such expenses to her place of actual residence in the United States.

for Milton J. Fowler
Comptroller General
of the United States