



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Michael Newman--Transfer Overseas--Designation of Residence

**File:** B-257861

**Date:** February 15, 1995

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## DIGEST

An employee who had previously resided in California traveled to Hawaii at his own expense where he was hired locally by an agency to a position for which a transportation agreement was not offered by the agency. About 1½ years later he accepted a transfer to Saipan incident to which he signed an employment agreement designating Hawaii as his actual place of residence at the time of the transfer. Fourteen years later he sought to have the agency redesignate California as his residence at the time of his transfer. The agency denied his request. The designation of an employee's actual place of residence is a matter primarily for the agency to determine, and GAO will not question any reasonable determination by the agency. In this case the agency's determination, well-supported by the facts, is affirmed.

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## DECISION

Mr. Michael G. Newman, an employee of the Social Security Administration (SSA) in Saipan, the Northern Mariana Islands (NMI), appeals our Claims Group settlement, Z-2869067, May 20, 1994, denying his request for a change in the designation of his actual place of residence at the time of his assignment to the position in the NMI. The settlement is affirmed.

## BACKGROUND

Employees stationed at posts outside the continental United States, Alaska, or Hawaii may be eligible to receive allowances for travel and transportation expenses for themselves and their families to return home to take leave between their tours of duty outside the United States. 5 U.S.C. § 5728 (1988). Also, upon completion of their overseas assignment such employees may be entitled to travel allowances for themselves and their dependents, and transportation of their household goods, from their post outside the United States to the place of their actual residence at the time of their assignment outside the United States. 5 U.S.C. §§ 5724(d) and 5722.

The eligibility requirements and limitations for these types of travel are set out in the Federal Travel Regulation (FTR) at 41 C.F.R. §§ 302-1.13(b) and 302-1.12 (1994). The limitation at issue here, which is stated in the statutes and the regulations, is that the travel and transportation shall be from the employee's post of duty "to the place of his actual

residence" at the time of appointment or transfer to the post of duty outside the continental United States. 5 U.S.C. §§ 5728(a) and 5722(a); and FTR § 302-1.12.

Although at the time of his transfer to the NMI, Mr. Newman designated his actual place of residence as Maui, Hawaii, the place where he was then residing and employed by SSA, he has requested that this designation be changed to Los Angeles, California, where he had previously resided.

According to the record, Mr. Newman previously had been employed with the SSA in Ukiah, California. He resigned from this position in early 1977. In January 1978, he accepted a temporary position with SSA in Maui, Hawaii, for which he signed no transportation agreement, and he paid his own travel expenses to Hawaii. This appointment was converted later to a "reinstatement-career" position. In June 1979, he transferred to the NMI from his post of duty in Maui, Hawaii. Incident to this transfer, he signed a service agreement designating his actual place of residence as Kihei (Maui) Hawaii, and in subsequent tour renewal agreements signed in 1981, 1985 and 1990, he continued to designate Hawaii as his actual place of residence.

In January 1993, Mr. Newman submitted a request for a change in the designation of his actual place of residence from Hawaii to Los Angeles, California, where he asserted he lived for the year before receiving the temporary appointment in Hawaii in 1978. Mr. Newman also stated that he had lived his entire life in California. He added that, at the time of his transfer to NMI, the agency designated Hawaii as his residence, and that he accepted this definition because he was not aware of the meaning of that term or that he could claim another location. Mr. Newman stated that no determination of his residence was made at the time he accepted the appointment in Hawaii because the assignment was temporary and he paid his own travel expenses from Los Angeles to Maui. However, he subsequently asserted that SSA erred by not having him designate an actual place of residence when he accepted the temporary post in Hawaii. He bases this claim on the FTR provision that states, "An employee hired locally at a location outside the continental United States who claims residence at another location in the United States . . . at the time of appointment, shall designate in writing the claimed place of actual place of residence for the consideration of the agency officials." FTR § 301-1.12(c)(1). Nonetheless, based on the record as summarized above, the agency denied his request to change the designation, and our Claims Group sustained the agency's denial.

In his appeal, Mr. Newman asserts that, after leaving his position in California in 1977, he moved his household goods into his parents home in Northridge, California, and traveled around the world for 10 months. Further, he asserts that he took the job in Maui only as a "stepping stone" to a position in the NMI. Mr. Newman states that he never intended to establish a permanent residence in Hawaii, and he notes that he rented an apartment and he used furniture and a car provided by a friend, leaving his household goods in California.

## OPINION

Concerning Mr. Newman's allegation that the agency erred in not designating California as his actual place of residence at the time he was given the temporary appointment in Maui, since he was considered a local hire to whom a transportation agreement was not being offered, there would appear to have been no purpose for such a designation. While, as Mr. Newman states, FTR § 302-1.12(c) allows an employee hired locally outside the continental United States who claims a residence at another location to designate it in writing, "for the consideration of agency officials," that would appear to have application in a case where the agency would otherwise offer the employee a transportation agreement, which apparently was not the case with Mr. Newman's temporary appointment in Maui. Whether to offer a transportation agreement in connection with a local hire in such a case is a matter within the discretion of the agency, and the agency is not required to do so. See FTR § 302-1.13(c)(2)(iii). See also, Marilyn M. Millikin, B-191144, Mar. 15, 1979; and 46 Comp. Gen. 691 (1960).<sup>1</sup>

As to Mr. Newman's contention that he should be allowed to change the designation of his place of actual residence made later when he was appointed to the position in NMI, the designation of an employee's actual place of residence is a matter primarily for the agency to determine, and we will not question any reasonable determination by the agency. Miguel Caban, 63 Comp. Gen. 563, 567 (1984), and decisions cited therein. There are no rigid standards for making this determination, but the FTR provides, as a matter of guidance, that a residence is "the place of general abode, meaning principal, actual dwelling place in fact, without regard to intent." FTR § 301-1.12(c)(3).

When an employee designates an actual place of residence in an official document, this designation may be changed only upon a showing by the employee "that the earlier designation was in error or that later circumstances entitle a different location to be made." FTR § 301-1.12(c)(3)(iii). After an employee is stationed outside the continental United States, the designation "shall be changed only to correct an error in the designation of residence." Id.

We find no basis to set aside the agency's determination in this case which appears well-supported by the facts. Regardless of whether Mr. Newman had intended to reside only temporarily in Hawaii, he was hired there locally, not transferred there from California, and at the time of his appointment to the NMI position, he had in fact, resided and worked in Hawaii for nearly 1½ years before his transfer to the NMI. He designated Hawaii as his actual place of residence at the time of his transfer in 1979, and he redesignated Hawaii three additional times, apparently without question until 1993.

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<sup>1</sup>When an agency hires an employee locally in a position for which it is not offering a transportation agreement, it is to so advise the employee prior to the expiration of the period of service generally applicable to employees at that post of duty to whom transportation agreements are provided. In this case, it seems clear that Mr. Newman knew at the time he was hired for the temporary position in Maui, that it entailed no transportation entitlements.

Accordingly, the Claims Group's settlement sustaining the agency's denial is affirmed.

for /s/Seymour Efros  
Robert P. Murphy  
General Counsel