



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Morton S. Smith—Retired Foreign Service Officer—
Extension of Time to Ship Household Goods

File: B-259543

Date: July 14, 1995

DIGEST

A Foreign Service Officer retired from the Foreign Service and 3 months later received an appointment to the Senior Executive Service. Because of this appointment, he states, he has been unable to complete within the prescribed time limit the shipment of his household goods from his last duty station as a member of the Foreign Service to the place of his retirement, and he requests an extension of that time period. The applicable regulations in the Foreign Affairs Manual do not permit an extension beyond the prescribed time limit and the agency's Committee on Exceptions does not have authority to grant an exception to the time limit. Therefore, the employee's request may not be granted.

DECISION

The United States Information Agency (USIA) requests a decision as to whether it may extend the time permitted Mr. Morton S. Smith, a retired Foreign Service Officer, to ship his household goods from his last post as a Foreign Service officer to his place of retirement or whether, if not, the agency's Committee on Exceptions may grant an exception to the time limit in this individual's case.¹ The answer to both questions is no.

BACKGROUND

Mr. Smith retired as a Foreign Service Officer on October 1, 1993. However, in January 1994, USIA requested Mr. Smith's services in negotiating an agreement with Israel, and Mr. Smith agreed. He was not recalled to active duty as a Foreign

¹The request for decision was presented by the Chief, Travel and Transportation Office, USIA. We also have received correspondence from Mr. Smith and from the Acting Associate Director for Broadcasting of the Voice of America, concerning this matter.

Service Officer for this assignment.² Instead, USIA appointed him to a Senior Executive Service (SES) position for this purpose, a position which he continues to hold. Mr. Smith expects that his work on the agreement will not be completed until sometime in the summer of 1995.

As a result of this appointment, Mr. Smith states, he has not had the time or opportunity to arrange for the shipment of his household goods from his last duty post as a Foreign Service Officer, which was Washington, D.C., to his retirement residence in Oregon. Since, under the applicable regulations which are discussed below, the shipment of household goods may not be deferred more than 18 months from the member's last day in pay status, Mr. Smith's entitlement to ship his household goods incident to his Foreign Service retirement expired on April 1, 1995.

The agency is aware of our prior decisions holding that the 18-month time limit may not be extended by the agency or by its Committee on Exceptions. See Teresita G. Bowman, B-212278, Sept. 2, 1983; and Robert R. Schott, 57 Comp. Gen. 387 (1978). The agency asks, however, whether the additional fact in this case that the delay in the shipment of household goods resulted from Mr. Smith's appointment to the SES position at the agency's request shortly after his retirement would justify a different result.

OPINION

The Foreign Service Act of 1980 authorizes the payment of the travel and related expenses of members of the Foreign Service and their families, including "transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to successive posts of duty and, on separation of a member from the Service, to the place where the member will reside." 22 U.S.C. § 4081(11) (1988).

The regulations implementing these provisions are promulgated by the Secretary of State in the Foreign Affairs Manual (FAM). The regulation applicable here states that, after the employee's separation from the Foreign Service, the shipment of household goods may not be deferred more than 6 months in the case of domestic travel. However, the regulation permits an extension, which "shall not exceed 18 months after the employee's last day in pay status." 6 FAM 133.2-2(a).

We do not believe Mr. Smith's subsequent SES appointment provides a basis to extend the time in which he may ship his household goods incident to his retirement from the Foreign Service. Neither the statute nor the implementing

²Under 22 U.S.C. § 3948 a retired, career foreign service officer may be recalled to active duty under certain circumstances.

regulation is ambiguous in this regard. The statute provides the benefit incident to "separation of a member from the [Foreign] Service," as distinguished from government service in general. 22 U.S.C. §§ 4081(11) and 3902(11). The regulation allows for an initial period of 6 months with a possible extension to total not more than 18 months after the employee's last day in pay status. On its face, the regulation does not allow for any further extensions. Therefore, under the plain language of the regulation, the 18-month limit applicable to the shipment of Mr. Smith's household goods, which began upon his retirement from the Foreign Service on October 1, 1993, and ran until April 1, 1995, was not interrupted by his service in the non-foreign service SES position.

As the agency notes, the reason given for Mr. Smith's delay in shipping his goods (his acceptance of the agency's request that he accept the SES appointment) differs somewhat from those in the Bowman and Schott cases.³ However, our holdings in those cases were based on the rule that an agency may not waive its own regulations in individual cases, unless the regulations contain authority to grant such waivers. See especially Bowman, *supra*. This is because statutorily-authorized regulations have the force and effect of law and, therefore, may not be waived by this Office or any agency. See e.g. William R. Walberg, 58 Comp. Gen. 539 (1979); and Dr. James A. Majeski, B-247196, Apr. 3, 1992, which involve similar time limits also established by regulations promulgated pursuant to law.

The FAM does authorize agencies to establish committees to grant exceptions to the regulations in the FAM in instances in which weight allowances are exceeded or excess costs are incurred. 6 FAM 121.1. However, as we held in the Bowman and Schott decisions, this authority does not extend to granting exceptions to the specific time limits stated in the regulations for exercising the transportation benefits in question here.⁴

³In Schott the officer retired while serving in Iran and delayed exercising his transportation entitlements due to his continuing to live in Iran and work there as a private citizen. Bowman concerned the delay of a deceased officer's widow in exercising the entitlement due to settling her husband's estate and making schooling arrangements for her child.

⁴Since the statute itself does not prescribe a specific time limit for the shipment of household goods, it appears that it would be within the authority granted the State Department in prescribing the regulations, to broaden the authority of the Committees on Exceptions to grant some exceptions to the time limit. However, this would require amendment of the FAM to so provide.

Therefore, we find no basis on which USIA or its Committee on Exceptions may extend or grant an exception to the time limit for the shipment of Mr. Smith's household goods.

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