



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-215629

December 3, 1987

Dear Mr. :

We refer to your letter dated July 12, 1987, requesting a decision whether your post of duty in Arlington, Virginia, prior to your transfer to Europe is to be considered your place of "actual residence" for travel at Government expense for home leave purposes under the provisions of 5 U.S.C. § 5720(a) (1982). You urge that Los Angeles, California, where you had lived and worked except for the 14 months immediately prior to your transfer to Europe, be considered your place of "actual residence" for home leave entitlement purposes.

In view of the statutes relating to our decision-making authority, we are unable to provide you with a formal decision at this time. See 31 U.S.C. § 3529 and 3702 (1982). However, on the basis of the information provided by you, we offer the following comments.

The essential facts which give rise to your request as gleaned from your letter are as follows. You were employed by the Department of the Treasury in Los Angeles, California, when as a result of a reorganization your Los Angeles office was closed and you were transferred to Washington, D.C. After moving to the Washington area you resided in temporary quarters in Arlington, Virginia, which is part of the Washington metropolitan area. While still residing in temporary quarters in Arlington you transferred from Treasury to the Department of the Army. Shortly after transferring to Army you were offered a position by Army in Europe which you accepted. You report that you occupied temporary quarters in Arlington, Virginia, for the entire period of time between your departure from California and your departure for Europe which was a cumulative period of approximately 14 months. You accent that your residence in Arlington was always of a temporary nature and you stress that through the entire 14-month period of residency in

Arlington you remained domiciled in Los Angeles, California. However, when your home leave was approved by the Department of the Army, (Ft. George G. Meade, Maryland), Arlington, Virginia was designated as your actual residence and you were not authorized travel to Los Angeles, California, as had been your request.

The authority for the granting of round-trip travel expenses for an employee for the purpose of taking home leave upon completion of a tour overseas is 5 U.S.C. § 5728 which provides as follows:

"(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States under a new written agreement made before departing from the post of duty."

Paragraph 2-1.5g(3)(c) of the Federal Travel Regulations (FTR) FPMR 101-7, incorp. by ref., 41 C.F.R. 101-7.003 (1985), provides guidance in the determination of an employee's actual place of residence. It provides in part that this concept views residence as the employee's principle actual dwelling place in fact, without regard to intent. Thus, one of the guidelines in the FTR, para. 2-1.5g(3)(c)(ii) provides, in pertinent part, that "the place at which the employee physically resided at the time of selection for appointment or transfer frequently constitutes the place of actual residence and shall be so regarded in the absence of circumstances reasonably indicating that another location may be designated as the place of actual residence."

In 39 Comp. Gen. 337 (1959), we stated that the "law and regulations do not preclude correction of errors in the overseas assignment or transfer records when it is later shown clearly that, in fact, the place of actual residence was other than the place named in the agreement and related papers." Decisions of this Office have consistently held

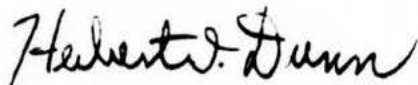
that the provisions of 5 U.S.C. § 5728(a) and the regulations set out at paragraph 2-1.5g(3) of the FTR place the responsibility for determining the place of actual residence of an employee on the administrative agency and require the agency's determination to be made on the basis of all available facts. 45 Comp. Gen. 136 (1965); 39 id. 337 (1959); 37 id. 848 (1958); 35 id. 101 (1955). Such a determination must, of necessity, be based on the facts of each case, and ordinarily our Office will not question any reasonable determination made by the agency of the employee's actual residence. 35 Comp. Gen. 244, 246 (1955).

In Matter of _____, B-197205, May 16, 1980, our Office held that an agency could not properly predicate its determination of an employee's actual place of residence solely on our decision in B-157548, September 13, 1965, 45 Comp. Gen. 136, as the applicable regulations require an independent determination based on the facts of each case. Furthermore, in _____ we held that the fact that an employee was originally a "local hire" should not be made the sole criterion of residency determinations as such action would have the arbitrary and capricious effect of preventing a local hire from ever establishing a different place of residence. Accordingly, we held therein that the determination of the employee's actual place of residence was to be made on the facts after giving the employee a full opportunity to provide evidence in support of his residence designation.

If after reviewing the above information you feel that you have a claim, you may file a claim with the Claims Group of this Office through your agency.

We trust that this information is responsive to your inquiry.

Sincerely yours,



Herbert I. Dunn
Senior Attorney