DECISION

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

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FILE: B-212900 DATE: November 15, 1983

MATTER OF: Susan L. Marsh

DIGEST:

Employee is not entitled to travel expenses for an individual claimed to be her spouse by common-law marriage incident to her transfer from Oregon to Montana since no state in which they resided recognized such marriage. Even if common-law marriage arose in Montana at some point after she arrived, payment for travel of her claimed spouse would not be allowed, since when the travel was performed no marriage existed. Further, under Montana law it is doubtful that such a marriage could be shown for the purpose of paying temporary lodging expenses.

We hold that Ms. Susan L. Marsh, an employee of the Forest Service, is not entitled to travel expenses for a spouse, since she has not demonstrated that she was legally married at the time she transferred to her new duty station.

Ms. Marsh states that sometime during October 1975 in Whatcom County, Washington, she and Mr. Donald Plumley mutually agreed to live together as husband and wife and so represented themselves before family and friends. They have since continuously lived together, moving from Bellingham, Washington, to Logan, Utah, in 1977, from there to Lakeview, Oregon, in November 1980, and then to Bozeman, Montana, in November 1982. They intend to remain living together in the future. They have had joint bank accounts and lease agreements, and Mr. Plumley is named beneficiary under Ms. Marsh's life insurance and is covered by her medical insurance.

The Forest Service transferred Ms. Marsh from Lakeview, Oregon, to Bozeman, Montana, where she reported for duty on November 15, 1982. She received travel expenses, including per diem, mileage for driving privately owned vehicles, and temporary quarters subsistence expenses for herself and Mr. Plumley.

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Because Forest Service personnel on the advice of an attorney decided that Mr. Plumley was not her common-law spouse in Oregon, they denied Ms. Marsh the portion of temporary quarters subsistence expenses not previously reimbursed and decided there was no entitlement to any travel expenses for Mr. Plumley. The National Finance Center, Department of Agriculture, through an authorized certifying officer, submitted a request for an advance decision at the request of Ms. Marsh.

Travel expenses incident to a transfer are authorized by statute for the employee and the employee's "immediate family." 5 U.S.C. §§ 5724(a) and 5724a. Implementing regulations define "immediate family" to include a "spouse" and other enumerated relatives who are:

> "members of the employee's household at the time he/she reports to the new permanent duty station." Paragraph 2-1.4d of the Federal Travel Regulations FPMR 101-7 (September 1981).

For the purpose of travel expenses, the employee's "spouse" is limited to his or her lawful wife or husband at the time of transfer. 41 Comp. Gen. 574 (1962). We have also held that it is sufficient if the marriage of the employee and spouse occurs en route between the old and new duty station. B-149024, June 15, 1962; B-109466, June 4, 1952.

The status of spouse is acquired only by a valid marriage recognized under the law of the place where it was contracted. It is insufficient that the employee and his partner merely live together. See 21 Comp. Gen. 79 (1940). Compare Matter of LaPointe, B-191316, September 27, 1978. We have found the relationship of spouse exists if there is a common-law marriage recognized under the law of the state where the parties entered into such a marriage. Matter of Murphy, B-186179, June 30, 1976, and the decisions cited above.

Concerning Ms. Marsh's case, Oregon does not recognize the creation of a common-law marriage in that state. It will uphold the existence of such a marriage lawfully contracted elsewhere even though the parties are Oregon

residents. Bridgman v. Stout, 485 P.2d 1101 (Ct. App. Ore. 1971); Walker v. Hildenbrand, 410 P.2d 244 (Sup. Ct., Ore. 1966). However, neither Washington, where evidently Ms. Marsh and Mr. Plumley first considered themselves married, nor Utah, where they lived immediately before moving to Oregon, recognized entry into a valid common-law marriage within their respective borders. Washington - Gallagher Estate, 213 P.2d 621 (Sup. Ct., Wash, 1950); Utah - Hazlewood v. Hazlewood, 556 P.2d 345 (Sup. Ct., N.M. 1976).

Accordingly, Ms. Marsh is not entitled to be paid for Mr. Plumley's travel and per diem from Oregon to Montana because he was not her spouse during that period of travel. Regarding paying for temporary lodging expenses after they arrived in Montana, we find that establishment of a common law marriage at that time under Montana law is too doubtful to permit payment of any allowance on Mr. Plumley's behalf.

Montana recognizes a common-law marriage created in that state. See § 48-314, Revised Codes of Montana (1977 Cumulative Supp.); Jim's Water Service v. Eayrs, 590 P.2d 1346 (Sup. Ct. Wyo. 1979). Montana law, however, in addition to mutual consent by competent parties to be married and cohabitation, requires that they continue a course of conduct to establish their repute as husband and wife. The parties must acquire over a substantial period the reputation of being husband and wife before the public in the local community where they live. Jim's Water Service v. Eayrs, supra. These decisions indicate that in Montana a short period of cohabitation and holding out as husband and wife in that state is insufficient to establish the necessary repute. See Laikola v. Engineered Concrete, 277 N.W. 2d 653 (Sup. Ct. Minn. 1979).

Since it has not been shown that Mr. Plumley was Ms. Marsh's spouse at the time she reported for duty at Bozeman, the withheld temporary quarters subsistence expense should not be reimbursed and collection action should be taken to recover overpayment of travel expenses.

Milton J. Socolar

Acting Comptroller General
of the United States