FILE: B-219856 DATE: January 21, 1986

MATTER OF: Charles E. Potts

DIGEST:

- Federal employees who agree to perform consecutive overseas tours of duty are eligible for tour renewal travel for themselves and their dependents to the United States for a period of leave. An employee's dependents may properly perform tour renewal travel by accompanying the employee on a temporary duty assignment in the United States, and the employee in that situation may defer his own tour renewal travel for use during leave taken at a later date. Hence, the wife and son of a Defense Department employee stationed overseas were properly authorized tour renewal travel to accompany the employee when he performed a temporary duty assignment at Fort Meade, Maryland, notwithstanding that as a general rule Federal employees have no entitlement to the concurrent travel of their dependents on temporary duty assignments.
- 2. Federal employees stationed overseas who are eligible for tour renewal travel to the United States for themselves and their dependents may elect to defer their own tour renewal travel to some time subsequent to the time of their dependents' travel. An employee who defers personal tour renewal travel and is later unable to perform that travel has no obligation to refund the expenses of the tour renewal travel performed earlier by the dependents. A Defense Department employee who was apparently precluded by official action from exercising his

own eligibility for deferred tour renewal travel is thus not liable to refund the expenses of the tour renewal travel performed earlier by his wife and son.

The question presented in this matter is whether a Federal employee stationed overseas was properly allowed the travel of his dependents at public expense when they accompanied him on a temporary duty assignment to the United States. 1/ In the particular circumstances we conclude that the dependents' travel was properly authorized as overseas tour renewal travel, notwithstanding that as a general rule Federal employees have no entitlement to the concurrent travel of their dependents at public expense during temporary duty assignments.

Background

In 1983 Mr. Charles E. Potts, a civilian employee of the Department of Defense, received a written travel authorization for a permanent change-of-station transfer from Pearl Harbor, Hawaii, to Melbourne, Australia, with a 30-day temporary duty assignment en route at Fort Meade, Maryland. The documents authorized the transportation of his wife and son as his dependents, and indicated that the authorization was for the purpose of "Travel Between Official Stations" and also "Renewal Agreement Travel."

In conformity with this travel authorization, Mr. Potts traveled with his family by commercial airline from Honolulu, Hawaii, to Baltimore, Maryland, on July 15, 1983. They remained in the Baltimore area while Mr. Potts performed his 30-day temporary duty assignment at Fort Meade, and they then traveled on by commercial airline from Baltimore to Melbourne, Australia, on August 15, 1983. Mr. Potts obtained the airline tickets for this travel through the use of a Government Transportation Request issued in Hawaii on the basis of his travel authorization.

This action is in response to a request for a decision received from Mr. Kenneth F. Chute, a Finance and Accounting Officer of the Department of Defense.

Finance and Accounting officials of the Department of Defense now question whether Mr. Potts' travel authorization was consistent with the governing provisions of statute and regulation with respect to the travel performed by his dependents. The officials note that as a general rule employees are not entitled to have their dependents accompany them at public expense on temporary duty assignments.2/ The officials indicate, however, that Mr. Potts was also eligible for overseas tour renewal travel at public expense for himself and his dependents to and from Fort Meade, Maryland, on the basis of his agreement to perform consecutive overseas tours of duty. $\frac{3}{}$ / Nevertheless, they further note that regulations applicable to tour renewal travel of Department of Defense employees provide that dependents "cannot perform round trip travel under renewal agreement authority if the employee concerned does not perform authorized renewal agreement travel."4/ They question whether that provision of the regulations may have operated to preclude Mr. Potts' wife and son from traveling with him to Fort Meade at public expense, since his own travel to that place was for the purpose of performing official business on a temporary duty assignment rather than for the purpose of taking leave between consecutive overseas tours of duty.

Analysis and Conclusion

Subsection 5728(a) of title 5, United States Code, provides that 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

See paragraph C7000, Volume 2 of the Joint Travel Regulations; and Joseph Salm, 58 Comp. Gen. 385 (1979).

The officials report that Fort Meade, Maryland, had been Mr. Potts' permanent duty station prior to his assignment to Hawaii, and that Fort Meade was consequently determined to be his "actual place of residence" in the continental United States for overseas tour renewal travel purposes.

Paragraph C4156, Volume 2 of the Joint Travel Regulations.

States to the place of his actual residence at the time of 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.5/

We have expressed the view that under 5 U.S.C. § 5728(a) the payment of the transportation expenses of an employee's dependents from an overseas post of duty to the actual place of residence in the continental United States and return may generally not be allowed unless the employee himself returns to the continental United States for the purpose of taking leave. 6/ Thus, as noted by the Defense Department officials, regulations that have been adopted to implement 5 U.S.C. § 5728(a) provide that dependents' eligibility for round-trip overseas tour renewal travel is contingent upon the performance of renewal agreement travel by the sponsoring employee. 7/

We have also expressed the view, however, that 5 U.S.C. § 5728(a) is to be given a liberal construction to effectuate the beneficial congressional purpose for its enactment, and consistent with that principle we have held that an employee need not perform tour renewal travel at the same time as his dependents, but may instead elect to defer

An amendment to 5 U.S.C. § 5728(a) enacted on September 8, 1982, had the effect of deleting entitlement to tour renewal travel for employees stationed in Hawaii, but the amending legislation contained a provision preserving the entitlement for employees who, like Mr. Potts, were then currently serving a tour of duty in Hawaii. Public Law 97-253, § 351, September 8, 1982, 96 Stat. 800.

^{6/ 46} Comp. Gen 153, 155 (1966); 35 Comp. Gen. 101, 102 (1955).

Paragraph C4156, Volume 2 of the Joint Travel Regulations, cited above (footnote 4).

his own renewal agreement travel to a later date. 8/
Moreover, we have specifically held that an employee's
dependents may perform authorized tour renewal travel by
accompanying the employee on a temporary duty assignment he
is directed to perform in the continental United States
between overseas tours of duty, and that the employee in
that situation may then defer his own tour renewal travel
for use in a subsequent trip by himself to the United
States. 9/ In addition, we have repeatedly and consistently
held that an employee who defers his own tour renewal travel
and is later precluded from performing that travel for
reasons beyond his control has no obligation to refund the
expenses of the tour renewal travel performed by his
dependents at an earlier date. 10/

In the present case, therefore, our view is that Mr. Potts' wife and son were properly authorized tour renewal travel when they accompanied him on his temporary duty assignment at Fort Meade in July and August 1983, and that he remained eligible to perform his own tour renewal travel separately for the purpose of taking leave in the United States at a later date. Although there is no indication that he subsequently performed such leave travel, the records before us suggest that he was precluded from doing so because of official actions which were beyond his control. Hence, we conclude that he is not liable to refund any portion of the expenses of the travel performed by his wife and son in 1983 from Honolulu, Hawaii, to Fort Meade, Maryland, and thence to Melbourne, Australia.

The question presented is answered accordingly.

Comptroller General of the United States

^{8/} See 55 Comp. Gen. 886, 889 (1976); and 46 Comp. Gen., supra, at 155.

^{9/} Alan B. Carlson, B-186310, February 16, 1977.

^{10/} See, e.g., <u>James I. Lucas</u>, B-186021, November 9, 1976; and B-166357, April 17, 1969.