



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Roy M. Josephson  
File: B-221042  
Date: September 26, 1986

## DIGEST

1. Former employee of the Forest Service claims payment under 5 U.S.C. § 5722(a)(1) for travel from his alleged residence in Red Wing, Minnesota, on November 4 and 5, 1978, to accept a permanent position of forester with the Forest Service in Petersburg, Alaska, beginning November 5, 1978. The General Accounting Office first received the claim on June 19, 1985, more than 6 years after the date the claim first accrued in November 1978. The claim may not be allowed since 31 U.S.C. § 3702(b) bars consideration of claims received in the General Accounting Office more than 6 years after the date the claim first accrues, regardless of a prior filing with the claimant's agency.

2. Former Forest Service employee hired locally in Alaska does not qualify for payment of return travel and transportation expenses under 5 U.S.C. § 5722(a)(2). Benefits under section 5722 are not available to an employee whose place of actual residence at the time of appointment is the same as the official duty station outside of the continental United States at which he is appointed. Forest Service's determination in this case that the employee was a resident of Alaska at the time of his appointment is reasonable and, therefore, entitled to deference.

## DECISION

The question in this case is whether Mr. Roy M. Josephson, a former employee of the Forest Service, United States Department of Agriculture, is entitled to payment for certain travel and transportation expenses under 5 U.S.C. § 5722 (1982) incident to his appointment to a position in Alaska and upon his return to a designated location after resignation from the Forest Service.<sup>1/</sup> Mr. Josephson's claim

<sup>1/</sup> This responds to a request for a decision from C. E. Tipton, a Forest Service certifying officer.

under 5 U.S.C. § 5722(a)(1) for travel and transportation expenses from Red Wing, Minnesota, to Alaska incident to his appointment accrued in November 1978 when the expenses were actually incurred. Since this claim was not received in our Office until more than 6 years thereafter, it is barred by the statute of limitations, 31 U.S.C. § 3702(b) (1982), and cannot be considered on its merits. Mr. Josephson's claim under 5 U.S.C. § 5722(a)(2) for return travel and transportation expenses upon his resignation from the Forest Service must be disallowed since his actual place of residence at the time of appointment to the Alaska position was Alaska.

#### BACKGROUND

While living and working in Red Wing, Minnesota, Mr. Josephson applied in January 1977 for a seasonal job with the Forest Service in Alaska. He accepted temporary seasonal employment with the Forest Service as a surveying technician in Petersburg, Alaska, and he worked there from March 31 until December 2, 1977, when that job ended. He then returned to the family home in Red Wing to work in his father's clothing store.

Before his 1977 temporary job in Alaska ended, Mr. Josephson had filed an application for permanent employment as a forester in Alaska, listing his current temporary employment location in Alaska as his mailing address but describing his legal or voting residence as Minnesota. The Civil Service Commission requested him to complete two additional forms in connection with his application for the forester position. In addition to completing those two forms, Mr. Josephson submitted an entirely new application several weeks after his temporary job had ended. The only significant difference between the two applications, completed less than a month apart, was that on the first he listed his legal or voting residence as Minnesota while on the second it was listed as Alaska. Just after his 1977 temporary job had ended, Mr. Josephson also filed an application for temporary seasonal employment in Alaska for 1978. On this application he listed his family home address and telephone number in Red Wing for notification, although he once more declared himself to be an Alaskan resident.

Mr. Josephson was again selected for temporary seasonal employment in Petersburg, Alaska, as a surveying technician and he began work on April 9, 1978. While serving in this temporary position in September 1978, he was notified that he had been selected for the permanent position as forester, with an effective starting date of November 5, 1978. He

accepted this position and resigned his temporary job on October 2, 1978, in order to return home to Minnesota to gather up some of his personal belongings and say goodbye to friends before beginning his permanent job as forester in Petersburg effective November 5.

Mr. Josephson received no travel or transportation benefits when he reported to either of his temporary jobs as a surveying technician or to his permanent job as a forester. In October 1982, however, Mr. Josephson's supervisor recommended to the Regional Forester that the travel and transportation benefits available under 5 U.S.C. § 5722 to employees hired in Alaska with actual residences at the time of appointment in the continental United States be granted retroactively to Mr. Josephson. The supervisor also recommended that eligibility for tour-renewal travel or vacation leave be established for him, pursuant to 5 U.S.C. § 5728 (1982). The Regional Forester, in a December 7, 1982 decision, declined to award section 5722 travel and transportation benefits to Mr. Josephson but stated that "\* \* \* since we recruited Mr. Josephson from Red Wing, Minnesota and based on other information provided by you, he would be entitled to vacation leave \* \* \*." Mr. Josephson took vacation leave in January 1983.

In September 1984 Mr. Josephson resigned his position with the Forest Service in Petersburg to take a job with the State of Alaska in Haines, Alaska. He states that before resigning from the Forest Service, he had been assured by his local administrative unit that he was eligible for return travel and transportation benefits under 5 U.S.C. § 5722(a)(2). However, the Regional Forester notified Mr. Josephson in October 1984, after his resignation, that he was not eligible for these benefits. Mr. Josephson then wrote his former supervisor on November 1, 1984, that he wished to appeal the Regional Forester's decision of December 7, 1982, which denied him travel and transportation benefits to Alaska in 1978 and the Regional Forester's decision of October 1984, which denied return travel and transportation benefits. He also requested in that letter a decision from the Comptroller General.

On May 30, 1985, the Regional Forester sent Mr. Josephson a copy of the material that was being prepared for submission to the Comptroller General. On June 12, 1985, Mr. Josephson wrote directly to the Comptroller General making various comments on the material that had been prepared by the Regional Forester. Those comments were received in this Office on June 19, 1985. On November 1, 1985, the Forest Service transmitted Mr. Josephson's claim here for an advance decision.

## DISCUSSION

Under 5 U.S.C. § 5722, an agency may pay a new appointee's travel and transportation expenses "from the place of actual residence at the time of appointment to the place of employment outside the continental United States" (§ 5722(a)(1)) and these same expenses on the return of the employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States (§ 5722(a)(2)). Alaska constitutes a place of employment outside the continental United States for purposes of these authorities. See 5 U.S.C. § 5721(3) (1982).

Regulations implementing 5 U.S.C. § 5722 are contained in chapter 2 of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1985). Paragraph 2-1.5g(2)(a) of the FTR (Supp. 1, September 28, 1981), provides:

"(a) Residence at time of appointment. A new appointee to a position outside the conterminous United States is eligible for certain travel and transportation benefits under these regulations if his/her residence at the time of appointment is in an area other than the area in which his/her official station is located. Under this rule 'area' means a foreign country, the conterminous United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, or a territory or possession of the United States."

An individual eligible for return travel and transportation may select an alternate location, i.e., a location other than his or her actual place of residence at the time of appointment, but the cost payable by the Government cannot exceed the cost of travel and transportation to the original place of residence. See FTR para. 2-1.5g(4).

Mr. Josephson asserts that Red Wing, Minnesota, was his actual place of residence at the time he was appointed to the forester position in Petersburg, Alaska. Thus, he seeks payment under 5 U.S.C. § 5722(a)(1) for his travel and transportation expenses from Red Wing to Alaska incurred in 1978 incident to that appointment. He also seeks payment under 5 U.S.C. § 5722(a)(2) of return expenses to an alternate location, Haines, Alaska, following his separation from the Forest Service.

## Travel Expenses Incident to Appointment

As discussed previously, Mr. Josephson traveled from the family home in Red Wing, Minnesota, on November 4 and 5, 1978, to begin working in the permanent position of forester in Petersburg, Alaska. He claimed these travel expenses from the Forest Service in 1982 under 5 U.S.C. § 5722(a)(1). His claim was denied at that time and again in 1984.

Mr. Josephson's claim was not received in our Office until June 19, 1985, when Mr. Josephson wrote directly here. Section 3702(b) of title 31, United States Code, provides that every claim or demand against the United States cognizable by the General Accounting Office must be received in our Office within 6 years after the date it first accrued or be forever barred. Mr. Josephson incurred his travel expenses incident to appointment on November 4 and 5, 1978; therefore, his claim for reimbursement of these expenses accrued at that time. Since this claim was received here more than 6 years after the date of accrual, it may not be considered by this Office on the merits. We have consistently held that the filing of a claim with the claimant's agency does not toll the running of the statute. Carlton L. Shepard, Jr., B-204542, November 30, 1981; Phyllis Rinkach, B-210748, August 3, 1983.

## Return Travel Expenses

The other part of Mr. Josephson's claim is for payment under 5 U.S.C. § 5722(a)(2) of return travel and transportation expenses upon his separation from the Forest Service and move to Haines, Alaska, in 1984. While this claim is timely, it must be denied on the basis that Mr. Josephson was a resident of Alaska when he was appointed to his forester position in 1978.

As noted previously, travel and transportation allowances under 5 U.S.C. § 5722 are not available to an appointee whose actual place of residence at the time of appointment was the same as his post of duty outside the conterminous United States. The Forest Service apparently did not consider Mr. Josephson for section 5722 benefits and therefore did not make a formal determination of his actual place of residence at the time of appointment. However, the agency now asserts that Mr. Josephson was an Alaskan resident when appointed to his forester position in 1978. The agency submission to us states in this regard:

"Mr. Josephson accepted his second temporary summer/seasonal position at Petersburg, Alaska,

effective April 9, 1978. He claimed Alaska residency on this application for temporary employment. Alaska residents received hiring preference for these appointments. Because Mr. Josephson had previously worked for the Forest Service in Alaska, he received preferred hiring on subsequent tours in Alaska. Many prospects acquire residency to improve their opportunity for employment.

"Mr. Josephson applied for a FS-460-5 Forester position \* \* \* on December 20, 1977, and was offered and accepted this position in September 1978. This application also indicated a Petersburg, Alaska, address and primary place to be employed of Petersburg-Wrangell, Alaska, (same geographic area as residence.) Mr. Josephson was living and residing in Petersburg, Alaska, when applying, offered, and accepting this position. The documents that he prepared and certified to be true, complete and correct, and that claim Alaska residency include exhibits 6, 7, 12, 13, 14, 15, and 16.

"Mr. Josephson had worked and lived nearly continuously in Alaska from March 31, 1977, to October 2, 1978, \* \* \* except for the brief period between field seasons and when on vacation. We believe that Josephson's actions indicate his intention to establish Alaska residency. Prior to graduation from college and on his initial application for seasonal employment, he maintained his parents home address. As indicated in the previous paragraph, documents subsequent to this date indicate Alaska addresses and voting residency. We do not question the accuracy of these documents."

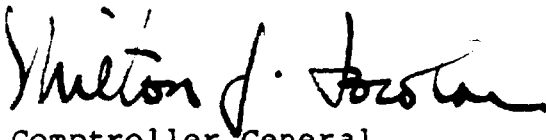
While Mr. Josephson does not dispute the basic facts recited by the agency, he does reject its conclusion as to his residency in 1978. He states that he listed only Forest Service addresses when applying for his positions in Alaska; he did not obtain his own mailing address or an Alaskan driver's license nor did he register to vote as an Alaskan resident until after he was hired for the permanent forester position. Thus, Mr. Josephson maintains that he was a resident of Minnesota at the time of his appointment to the forester position.

The determination of an employee's actual place of residence at the time of appointment is the responsibility of the employing agency; our Office will not disturb the agency's

determination unless it is plainly erroneous. See, e.g., Miguel Caban, 63 Comp. Gen. 563, 567 (1984); Estelle C. Maldonado, 62 Comp. Gen. 545, 552 (1983), and decisions cited. We view the agency's submission in this case as, in effect, a determination that Mr. Josephson was an Alaskan resident at the time of his appointment to the forester position. This determination is not plainly erroneous; on the contrary, there is ample evidence to support it. Mr. Josephson specifically held himself out to be a resident of Alaska in his application for the forester position and another Forest Service position, as well as in related documents. We find nothing in the record to suggest that Mr. Josephson did not knowingly claim Alaskan residency. Indeed, the other facts of record as to Mr. Josephson's status in 1978 are fully consistent with his claim of Alaskan residency.

The Forest Service's decision in 1982 to grant Mr. Josephson home leave is inconsistent with the conclusion that he was an Alaskan resident at the time of his appointment. Nevertheless, we have held that such a prior determination of residence is not binding on an agency, but can be reconsidered based on new evidence or other factors. Richard L. Griffith, B-167423, September 4, 1969; B-178654, April 8, 1974. The record before us does not reveal what evidence or factors the agency relied on in deciding to grant Mr. Josephson home leave. However, the evidence now presented by the agency clearly demonstrates that he was an Alaskan resident in 1978. Therefore, we do not believe that the agency is constrained here by its 1982 decision.

For the reasons stated above, we conclude that since Mr. Josephson was an Alaskan resident at the time of his appointment, he is not entitled to a return travel expenses under 5 U.S.C. § 5722.

*for*   
Comptroller General  
of the United States