Pool - GLM

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joseph J. Wuscher, Robert J. Rosen, and Sebastian P. Luizzi
File: B-225013

Date: October 28, 1987

DIGEST

On September 8, 1982, 5 U.S.C. § 5728 was amended to restrict tour renewal travel for employees assigned to Alaska and Hawaii to situations in which travel was necessary to recruit or retain an employee for a tour of duty in Alaska or Hawaii. That statute and the implementing regulations now provide that only employees who have been continuously stationed in Alaska and Hawaii on and since September 8, 1982, may retain unrestricted tour renewal travel rights. Under the plain terms of the applicable statute and regulations three civilian employees of the Air Force who were recruited for an assignment in Hawaii prior to September 1982 but who were later reassigned away from Hawaii and were not stationed in Hawaii on September 8, 1982, did not retain the unrestricted renewal travel entitlements when they subsequently returned to Hawaii in 1983.

DECISION

Messrs. Joseph J. Wuscher, Robert J. Rosen, and Sebastian P. Luizzi each claim entitlement to additional paid "Renewal Agreement Travel" in connection with their civilian employment with the Department of the Air Force. We have concluded that their claims may not be allowed.

BACKGROUND

Tour renewal travel for Federal employees stationed overseas is authorized by 5 U.S.C. § 5728. Implementing regulations applicable to civilian employees of the Department of the Air Force are found at paragraph C4150 et seq. of Volume 2 of the Joint Travel Regulations (2 JTR).

Prior to September 8, 1982, employees stationed outside the continental United States--including those stationed in Alaska and Hawaii--were eligible for tour renewal

040407

travel upon completion of an agreed period of service overseas and the signing of a written agreement to serve another period of service at the same or another overseas location. However, section 351 of the Omnibus Budget Reconciliation Act of 1982, Public Law 97-253, 96 Stat. 763, 800, September 8, 1982, amended 5 U.S.C. § 5728 to change the conditions under which tour renewal agreement travel could be authorized for Federal employees assigned to Alaska and Hawaii. The amendment provided that, under regulations prescribed by the President, tour renewal travel could be allowed to employees assigned to Alaska and Hawaii after September 8, 1982, only when such travel was necessary for recruiting or retaining an employee for a tour of duty in Alaska or Hawaii.

On August 1, 1984, the applicable regulations were amended to authorize tour renewal travel for employees assigned to a post of duty in Alaska or Hawaii after September 8, 1982, only if it is determined under directives by the Department of Defense component involved that payment of these expenses is necessary for the purpose of recruiting or retaining an employee. Paragraphs C4152 and C4153, 2 JTR (Change 226, August 1, 1984). The Air Force then issued a directive on September 1, 1984, specifying categories of employees in positions to be authorized tour renewal agreement travel when transferred to Alaska or Hawaii after September 8, 1982. Paragraphs C4152 and C4153, 2 JTR, and the Air Force directive differentiate between employees serving in Alaska or Hawaii on September 8, 1982, and those assigned, appointed or transferred to a post of duty in Alaska or Hawaii after September 8, 1982. Under these published rules only employees "who have been continuously stationed in Hawaii on and since" September 8, 1982, continue to have the entitlement for periodic renewal agreement travel, but those not so assigned are not authorized the entitlement unless their positions have been identified by the Air Force as hard to fill. In addition, however, specific provision was made to allow two round trips within a 5-year period to any employee regardless of position who was assigned to Hawaii after September 8, 1982, but prior to the date the regulations were amended on August 1, 1984.

The claimants' cases and contentions here are typified by Mr. Wuscher who was employed by the Air Force in Hawaii between 1966 and 1978. In November 1978 he left Hawaii to accept a position of civilian employment with the Navy in the Philippines. He returned to Hawaii 5 years later in November 1983 and was again employed by the Air Force. He reports that he was later advised by the Air Force that since he completed a transportation agreement after

September 8, 1982, but prior to the subsequent retroactive change to the JTR on August 1, 1984, he would be entitled to two renewal agreement tour trips within a 5-year period beginning with the date of his Hawaii tour, rather than losing the entitlement altogether.

Mr. Wuscher further reports that at the same time the Air Force determined that his permanent change-of-station move to the Philippines in 1978 was based on his registration for that area after a reduction-in-force at his Hawaii station. The Air Force therefore concluded that when Mr. Wuscher moved, he entered a new transportation agreement for the Philippine station. While neither his return rights to a position in Hawaii nor his entitlement to file for return transportation to the continental United States were affected, because of the intervening overseas tours the Air Force concluded that Mr. Wuscher's entitlement to continual renewal agreement tour travel--based on consecutive tours in Hawaii--was lost because he was no longer serving under a continual agreement in Hawaii. In short, the Air Force determined that because Mr. Wuscher was not serving a tour of duty in Hawaii on September 8, 1982, he could not receive continuing coverage under 5 U.S.C. § 5728, as amended by Public Law 97-253, supra.

Mr. Wuscher counters that he only took the assignment in the Philippines due to the reduction-in-force action in Hawaii. His understanding was that the job in the Philippines was an offer which, if not accepted, would remove him from priority reinstatement to his prior grade in the Hawaii position. Therefore, he stated, he took the job in the Philippines without any knowledge that he would be relinquishing his renewal agreement tour travel rights when he returned to a position in Hawaii. Thus, it was his expectation that when he returned after 5 years to Hawaii and was restored to the higher grade position he had left, that position would also carry with it a continuing entitlement to renewal agreement travel and thus he would be "grandfathered" on the basis of his previous entitlement.

ANALYSIS AND CONCLUSION

Paragraph C4152, 2 JTR, reads as follows:

> "An employee whose status on 8 September 1982 was any of the situations listed in items 1, 2, or 3, involving a post of duty in Alaska or in Hawaii will continue to be eligible to receive allowances for travel and transportation expenses for tour renewal agreement travel provided that the employee continues to serve consecutive tours

of duty within Alaska or Hawaii. Transfers between Alaska and Hawaii will not constitute consecutive tours of duty for purposes of continuing eligibility under the provisions of this paragraph. On 8 September 1982, the employee must have been:

"1. serving a tour of duty in Alaska or Hawaii on that date;

"2. en route to a post of duty in Alaska or Hawaii under a written agreement to serve a tour of duty; or

"3. engaged in tour renewal agreement travel and have entered into a new written agreement to serve another tour of duty in Alaska or in Hawaii."

As indicated, this regulation was issued to implement 5 U.S.C. § 5728, as amended by Public Law 97-253, supra. We have no basis to question the validity of this regulation restricting continued unlimited entitlement to periodic renewal agreement travel to employees who have been continuously stationed in Hawaii and Alaska on and since September 8, 1982.

Our view is that under the plain terms of the regulation, in order to have continued unrestricted eligibility for renewal agreement travel, employees such as Mr. Wuscher must have been serving a tour in Alaska or Hawaii on September 8, 1982. In our view the fact that he may have been stationed in Hawaii between 1966 and 1978, and that he may have had return rights to Hawaii in 1983 following his period of employment elsewhere, does not meet that criteria. Furthermore, there is nothing in the record before us to suggest that his transfer away from Hawaii in 1978 was effected in contravention of the applicable civil service rules, nor does the record provide any indication that the transfer might otherwise have been improper or invalid. We consequently have no basis to treat the transfer as a nullity. Since Mr. Wuscher was properly transferred to the Philippines in 1978 and remained stationed there until 1983, he cannot be accorded the status of an employee who was serving in Hawaii on September 8, 1982. Hence, since there has apparently been no determination that an authorization of renewal agreement tour travel was necessary to recruit and retain an employee for the position he filled when he returned to Hawaii in

November 1983, his entitlement is now limited to two round trips within a 5-year period computed from November 28, 1983, to November 27, 1988.

Milton J. Socolar

for Comptroller General
of the United Stated