



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Joseph P. Moss - Transfer to International  
Organization - Equalization Allowance

File: B-230401

Date: August 23, 1989

### DIGEST

An employee who exercised his reemployment rights with the U.S. Customs Service after a transfer to an international organization is not entitled to additional payment for an equalization allowance where the record shows the computation was made in accordance with the governing statute and regulations.

### DECISION

Mr. Joseph P. Moss, a former employee of the Customs Cooperation Council, an international organization, has appealed our Claims Group settlement, Z-2864026, Sept. 1, 1987, which denied his claim for additional compensation. Mr. Moss alleges that the United States Customs Service erroneously computed his equalization allowance upon his return from an overseas assignment in 1984. For the reasons that follow, we affirm our Claims Group's determination.

### BACKGROUND

Mr. Moss transferred in 1979 from the United States Customs Service to the Customs Cooperation Council, an international organization located in Brussels, Belgium.<sup>1/</sup> Mr. Moss's transfer was for a total of 5 years, after which time he exercised his return rights to reemployment with the Customs Service.

Upon his return, the Customs Service paid Mr. Moss an equalization allowance on the authority of 5 U.S.C. § 3582(b) (1982). Mr. Moss disputes the Customs Service's computation of his equalization allowance and states that he

<sup>1/</sup> The transfer was authorized under the provisions of 5 U.S.C. §§ 3581-3584 et seq. (1982).

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has been underpaid \$22,864.46 in housing allowances and \$9,371.24 in salary and benefits.

#### OPINION

An employee who transfers to an international organization, exercises return rights and becomes reemployed by the employing agency is authorized to be paid an equalization allowance, if necessary, under the provisions of 5 U.S.C. § 3582(b) (1982). The allowance is based on an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had the employee been detailed to the international organization under 5 U.S.C. § 3343. The purpose of the reimbursement is to prevent any loss of pay that might be caused by the transfer. See 5 C.F.R. § 352.310.

#### Housing Expenses Component

Federal employees who are stationed in foreign areas may be granted a housing allowance when government-owned or rented quarters are not available. See 5 U.S.C. § 5923 (1982). Therefore, Mr. Moss's equalization allowance included a housing expenses component. Mr. Moss takes issue with the method Customs used to calculate the housing component. He asserts that Customs should have applied a standard housing allowance instead of reimbursing him for his actual housing expenses.

Apparently Customs officials were confused during much of the period of Mr. Moss's detail over how to calculate the housing component and gave him reason to believe that application of a standard allowance was appropriate. However, while it is unfortunate that Mr. Moss was misled, the controlling regulation in effect for the entire period of his detail clearly provides for use of actual expenses.

Effective March 13, 1977, the State Department revised section 134 of its Standardized Regulations (Government Civilians, Foreign Areas) to allow reimbursement only for actual housing expenses. Therefore, Customs' use of actual housing expenses in its computation of an equalization allowance was correct and in accordance with governing regulations. Further, these regulations were promulgated pursuant to statutory authority and therefore have the full force and effect of law. As such, there is no authority for this Office or any agency to waive the various provisions of

the regulations. Michael A. Weedman, B-226666, Nov. 23, 1987.

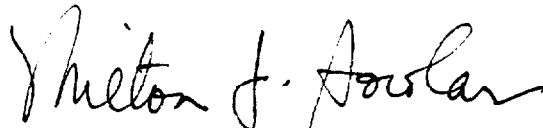
#### Computation of Equalization Allowance

Customs computed Mr. Moss's equalization allowance salary and benefits for the entire 5 years he was with the Council, including a negative amount for 1980 when his Council salary and benefits were greater than the federal government's salary and benefits. Mr. Moss objects to the use of this negative amount in calculating his equalization allowance for the 5 years he was with the Council.

It is clear from the statutory language in 5 U.S.C. § 3582(b) that an employee's equalization allowance is effective only upon reemployment, and that, if an employee earns as much as or more while serving with an international organization than would have been earned as a federal employee, no payment is required. 50 Comp. Gen. 173 (1970).

Since any equalization pay due Mr. Moss can be paid only upon reemployment, the computation must be based on the entire 5-year period, and not on each individual year. Edward Napoliello, 59 Comp. Gen. 130 (1979). Thus, Customs was correct when it based Mr. Moss's equalization allowance on the entire 5-year period inclusive of the negative amount for 1980. To hold otherwise would violate the intent of the statute.

Accordingly, Mr. Moss's claim for additional reimbursement is denied, and our Claims Group's settlement is hereby sustained.



Acting Comptroller General  
of the United States