



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thomas Cho - Temporary Duty Allowances -
Place of Residence

File: B-242848.2

Date: July 6, 1992

DIGEST

The agency's determination that an employee's residence was San Francisco for purposes of temporary duty travel allowances is reasonable and supported by the record, including the employee's statement on a civil service retirement system form. Although the employee alleged that he also maintained a second residence in Sacramento, his permanent duty station, from which he commuted to work, the employee failed to provide sufficient evidence of residency in Sacramento during the period in question. However, he is authorized mileage payment for an initial trip from his permanent station, Sacramento, to his temporary duty station and for a return trip to Sacramento at the conclusion of the temporary duty.

DECISION

Mr. Thomas L. Cho, a former employee of the U.S. Army Audit Agency, requests reconsideration of our decision, Thomas Cho, B-242848, June 17, 1991, denying his claims for expenses arising from several periods of temporary duty (TDY) travel.¹ For the reasons stated below, we affirm our prior decision with the exception that we now authorize payment of mileage for one round trip between his permanent station and his TDY point.

BACKGROUND

Mr. Cho had filed a number of discrimination complaints against his former agency that included the travel claims. As part of a settlement of the discrimination claims, the parties agreed that the matter concerning Mr. Cho's travel claims would be forwarded to our Office for determination. As stated in our earlier decision, the parties agreed that the dispositive issue regarding the travel claims was the

¹Mr. Cho's request for reconsideration was submitted on his behalf by Elaine W. Wallace, Attorney and Counselor at Law.

location of Mr. Cho's residence at the time of the TDY, which was between October 1986 and March 1987.

Mr. Cho had stated that his "home" was the Presidio of San Francisco, California, because that was where his family was, and that he also maintained a residence at his permanent duty station in Sacramento, California, from which he commuted to work. Sacramento is about 90 miles northeast of San Francisco. During the times in question, the agency assigned Mr. Cho on TDY to perform extended audit work at Fort Ord near Monterey, California, which is about 70 miles south of San Francisco and thus much closer to San Francisco than to Sacramento.

The record includes a series of travel orders directing Mr. Cho to travel 116 days between October 8, 1986, and March 2, 1987. With the exception of a training course in Alexandria, Virginia, all of the TDY was performed at Fort Ord. The travel orders for the TDY periods at Fort Ord authorized per diem "in accordance with the JTR" and transportation by privately owned conveyance as more advantageous to the government.

The travel orders issued for the periods prior to February 1, 1987, stated the itinerary as, "From: Residence, Sacramento, CA/ To: Fort Ord, Monterey, CA and return." Mr. Cho filed travel vouchers during this period claiming mileage from Sacramento to Fort Ord through San Francisco and partial per diem (meals, but not lodging) for weekends spent at the Presidio during the TDY assignment. Mr. Cho asserts that he maintained a residence in Sacramento and therefore is entitled to mileage from that point to Fort Ord. He claims he is entitled to per diem while he stayed with his family at the Presidio because he had not returned to his Sacramento residence.

During a review of Mr. Cho's vouchers, his supervisor noted that on a civil service retirement system form dated October 9, 1986, Mr. Cho stated as his address an apartment in the Presidio. Mr. Cho's supervisor stated that he then contacted the owner of the Sacramento residence and was informed that Mr. Cho no longer lived there. The supervisor, by memorandum dated February 5, 1987, formally advised Mr. Cho of these facts and that unless Mr. Cho could provide documentation to show that the Presidio address was not his residence, he should resubmit his travel voucher on the basis that it was. Mr. Cho did not submit any such evidence. Based on these facts, the travel orders issued for TDY periods at Fort Ord on and after February 1, 1987, showed Mr. Cho's residence in the itinerary block as the Presidio of San Francisco and the agency retroactively amended Mr. Cho's prior orders to show that his residence

was at the Presidio, and recomputed his travel entitlements accordingly.

In our June 17, 1991 decision, we concluded that there was sufficient evidence in the record to support the Army's determination that Mr. Cho's residence was, in fact, in the Presidio of San Francisco and not in Sacramento. In particular, we noted that Mr. Cho had failed to respond to the supervisor's February 5, 1987, memorandum with any evidence that he actually resided in Sacramento during the relevant time periods, such as a lease, rental receipts or utility bills.

Neither does Mr. Cho include any such documents with his request for reconsideration. However, he does provide an affidavit dated August 30, 1991, from the owner of the Sacramento residence. In the affidavit the owner states that he, too, was employed by the Army Audit Agency at the time in question, that he personally spoke with the supervisor at the agency's Western Regional Office and that the supervisor asked him, "Is Tom Cho still living at your house." According to the owner, he answered "No" because Mr. Cho then was performing TDY at Fort Ord. He further states, however, that if the supervisor had asked whether Mr. Cho had "moved out", he would have clarified that Mr. Cho had not moved out of his house and that Mr. Cho did not vacate the premises until Mr. Cho separated from the agency in November 1987. The owner also states that when Mr. Cho was on TDY trips, Mr. Cho always left his belongings, clothes and other personal things there, and that Mr. Cho had his own room for his use only.

We referred that affidavit to the Army for comment, and the Army obtained a responding affidavit from the supervisor. In his affidavit, the supervisor states that he was aware Mr. Cho and other auditors often stayed with the owner when they were required to be at the Sacramento office for extended periods and that he told the owner that the purpose of his question "was related to determining Mr. Cho's entitlement to mileage and per diem on travel vouchers from an audit site at Fort Ord, California." The supervisor affirms his prior statement that during that conversation he was told that Mr. Cho no longer lived there.

ANALYSIS

The location of an employee's residence is a question of fact for the employee's agency and we will overturn an agency's determination of residence only upon a showing that it was clearly erroneous or inconsistent with the law. Mary Ann Redford, B-224636, June 1, 1987; Estelle C.

Moldonado, 62 Comp. Gen. 545, 552 (1983)². Thus, the pertinent question is whether Mr. Cho has presented sufficient evidence to show that the agency's determination was erroneous.³

We do not believe that the Sacramento owner's affidavit furnished in August 1991, 4-1/2 years after the period in question, is sufficient evidence to establish that the Army's determination is clearly erroneous or inconsistent with the law. As noted above, on February 5, 1987, Mr. Cho's supervisor sent Mr. Cho a memorandum advising Mr. Cho of his contemporaneous conversation with the property owner, the substance of which the supervisor recently reaffirmed, and further advising Mr. Cho that, without documentation to the contrary, he would require Mr. Cho to resubmit his vouchers to reflect the change in address. Mr. Cho did not submit a statement from the owner then, and he still has not submitted any other documentary evidence to show that he actually maintained a residence in Sacramento at the time he performed TDY at Fort Ord. Moreover, whatever arrangement Mr. Cho may have had to stay with the property owner in Sacramento when he had periods of work at his permanent duty station,⁴ that alone is not

²Through counsel, Mr. Cho asserts that the location of his residence is not the only issue requiring a decision by the our Office. He notes that the settlement agreement states that the "computation of Mr. Cho's travel entitlements" will be submitted to this Office, and asks for the computation. However, the dispositive issue in this case is the determination of Mr. Cho's residence based on evidence provided by the agency and the claimant. See 4 C.F.R. § 31.7 (1991). We will address that issue. We will not conduct a line-by-line review of the disputed vouchers on the basis of that determination, leaving that to parties.

³The burden is on the claimant to establish his entitlement to payment. 4 C.F.R. § 31.7 (1992). Where there is substantial doubt as to the validity of a claim, it is the duty of the government's accounting officers to disallow the claim and leave the claimant to pursue his remedy in court. See, e.g. 49 Comp. Gen. 656, 662 (1970), and decisions cited therein.

⁴When an employee is in a travel status the majority of the time, we have not considered the renting of a room on a daily basis when he performs work at his official station as constituting a "residence," within the meaning of the travel regulations. See Gilbert C. Morgan, 57 Comp. Gen. 32 (1977); and B-157760, Nov. 16, 1965. We have been advised by the agency that Mr. Cho's duties as an auditor required that he work away from his permanent duty station a majority

responsive to the Army's determination that between October 1986 and March 1987, when Mr. Cho was performing TDY work at Fort Ord, Mr. Cho's residence was at the Presidio in San Francisco.

Based on these facts, the Army's retroactive correction of the travel orders and determination that Mr. Cho was not entitled to per diem for the weekends he spent at his residence at the Presidio are correct. The general rule regarding per diem (subsistence allowance) was well stated in Herbert A. Bornhoft v. United States, 137 Ct. Cl. 134 (1956): "A subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants, and for having to rent a room in another city while maintaining his own table and his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling." (Emphasis in original.) See also 31 Comp. Gen. 264 (1952) and Sanford O. Silver, 56 Comp. Gen. 223 (1977).

While we have recognized that an agency may authorize partial per diem when an employee stays at his family residence near his TDY station, this is limited to situations where the employee incurs extra expenses because he regularly commutes from a second residence to his permanent station, and when the agency specifically authorizes it or it is specifically provided for in agency regulations. See e.g. Durel R. Patterson, B-211818, Feb. 14, 1984.

In this case, the agency has determined that Mr. Cho did not have a residence in Sacramento during the times in question, and neither the travel orders nor the regulations required payment of per diem in these circumstances.⁵ Accordingly, the agency properly denied Mr. Cho's claims for per diem for the weekends he spent at his San Francisco residence.

As to Mr. Cho's claims for mileage to Fort Ord from Sacramento rather than San Francisco, his orders as amended provided for travel from his residence (San Francisco), not from his permanent duty station. To support his claims Mr. Cho cites several Comptroller General's decisions,

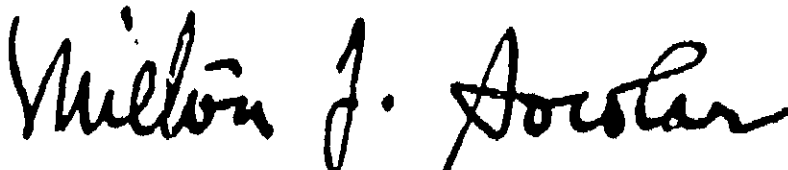
of the time.

⁵Prior to September 1, 1986, 2 JTR, para. C4552-2, Ch. 237, authorized partial per diem for an employee who performed TDY at the place of his family domicile which is other than the place from which he commuted to his permanent station; however that provision was prior to the period of Mr. Cho's claim, and in view of the facts as to Mr. Cho's alleged "residence" in Sacramento, it would not appear applicable in any event.

primarily John C. Schwappach, B-201361, July 30, 1981 and Joe B. Knight, B-210660, Dec. 26, 1984. However, these cases involve employees who maintained two homes, one at their official duty stations and another near their temporary duty stations. Since, as explained above, we find that the record supports the agency's determination that Mr. Cho had only one residence (San Francisco) during the TDY period in question, these cases are not applicable.

As to Mr. Cho's arrangements to stay with the property owner when he was required to work in Sacramento, we will accept his statement that he did maintain a second residence at Sacramento when he was required to work there. However, this entitles him only to mileage for the initial trip from Sacramento to Fort Ord and return travel to Sacramento at the conclusion of the TDY. On this basis we authorize payment for the additional mileage allowance for one round trip between Sacramento and Fort Ord by the direct route, less any mileage allowance Mr. Cho has been paid for the first and last trips based on the distance between Fort Ord and San Francisco.

The remainder of Mr. Cho's claims for additional mileage and per diem are denied.

for 
Comptroller General
of the United States