

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: James J. Gormley - Home Service Transfer
Allowance - Lack of Service Agreement

File: B-247466

Date: June 5, 1992

DIGEST

A Foreign Service employee who was transferred from Bangkok, Thailand, to Washington, D.C., under involuntary retirement orders, appealed those orders and was granted prescriptive relief by the Foreign Service Grievance Board pending resolution of his appeal. After employee served 13 more months with Washington, D.C., as his permanent duty station and voluntarily retired in September 1990, he claimed eligibility for the home service transfer allowance. His claim for the subsistence expense portion was disallowed because he was transferred under retirement orders and could not certify that he would be able to serve at least 12 months when he transferred. The absence of a signed service agreement is not fatal when an otherwise eligible employee in fact performs the required minimum service. Since the employee here performed the minimum service required under section 251.2c of the Standardized Regulations (Government Civilians, Foreign Areas), after his transfer to Washington, D.C., his claim for the subsistence expense portion of the home service transfer allowance may be allowed.

DECISION

Mr. James J. Gormley, a retired employee of the Department of State appeals that part of our Claims Group's settlement which disallowed his claim for reimbursement of expenses under the subsistence expense portion of the home service transfer allowance.¹ For the following reasons, we reverse our Claims Group's disallowance. We hold that Mr. Gormley may be paid the subsistence expense portion of the home service transfer allowance and remand this matter to the State Department for determination of the allowable amount due.

¹Settlement Certificate Z-2867297, Nov. 21, 1991.

BACKGROUND

The record shows that during the period relevant to this claim (October 27, 1987 through September 30, 1990), Mr. Gormley was a Foreign Service employee with the State Department. On October 27, 1987, while stationed in Bangkok, Thailand, Mr. Gormley was notified by the State Department that he was to be involuntarily retired effective on September 30, 1988. However, he appealed the retirement order, and the Foreign Service Grievance Board granted him prescriptive relief pending resolution of his appeal, to which the State Department agreed on September 26, 1988. As the State Department's letter to Mr. Gormley notes, the effect of prescriptive relief is to suspend a retirement order, but it does not alter or remove the retirement order.

Mr. Gormley remained at his post in Bangkok, Thailand, until August 15, 1989, when he was transferred to Washington, D.C., for separation under those retirement orders, but still on prescriptive relief. Mr. Gormley worked in Washington until September 15, 1989, when he was sent on temporary duty to Lima, Peru, for a month. He then returned to Washington and resumed working there for the State Department. He subsequently voluntarily retired on September 30, 1990.²

After Mr. Gormley arrived in Washington, D.C., in August 1989, he requested his home service transfer allowance. In order to qualify for this allowance, an employee must certify in writing he will be able to complete 12 months additional government service. The State Department would not accept his certification because there was no assurance that he would remain in government service for at least 12 months, since his grievance of the State Department's involuntary retirement order could be resolved at any time. On August 16, 1990, when Mr. Gormley had completed 12 months of service after his return from Bangkok, he renewed his request for his home service transfer allowance. The State Department again denied his request, this time based on the fact that his transfer from Bangkok was under retirement orders, and at that time he had no assignment in Washington, D.C.³

²Since Mr. Gormley voluntarily retired, the Foreign Service Grievance Board apparently did not resolve his grievance in regard to the State Department's retirement order.

³We note that, in all other respects, the State Department has treated Mr. Gormley's transfer from Bangkok to Washington, D.C., in August 1989 as a permanent change of station in the interest of the government and has paid for his other relocation expenses.

Our Claims Group granted his claim for the miscellaneous expense portion of the home service transfer allowance, but denied his claim for the subsistence expense portion of that allowance. On appeal, Mr. Gormley contends that, while he could not assure the government initially that he could complete 12 months of service when he transferred, nevertheless he did complete at least 12 months of service after his transfer. Thus, he claims he is entitled to the subsistence expense portion of the home service transfer allowance for his permanent change-of-station transfer from Bangkok to Washington, D.C., in August 1989.

OPINION

Since Mr. Gormley was initially transferred overseas as a Foreign Service employee of the State Department, he is entitled to receive allowances and benefits under section 901 of the Foreign Service Act of 1980, Public Law 96-465, 94 Stat. 2071, 2124-2127 (October 17, 1980), 22 U.S.C. § 4081 (1988).

Section 901 provides in part:

"The Secretary may pay travel and related expenses of members of the Service and their families, including costs or expenses incurred for--

"(14) the travel and relocation of members of the Service, and members of their families . . . if an agreement similar to that required by section 3375(b) of . . . [title 5, United States Code] is executed by the member of the Service.

Section 3375(b) of title 5, United States Code (1988), requires that the employee agrees in writing to complete either his entire period of assignment or 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the agency concerned.⁴

Language in compliance with that requirement is contained in section 077.32c(2) of the Standardized Regulations (Government Civilians, Foreign Areas), for Foreign Service employees who are transferred from an overseas post of duty to a post of duty in the United States. Thus, by executing that agreement, a Foreign Service employee becomes

⁴See also 5 U.S.C. § 5724(i) (1988), and 41 C.F.R. § 302-1.5 (1991).

immediately eligible to receive the home service transfer allowance upon transfer.

The home service transfer allowance consists of three separate portions to cover expenses incurred incident to establishing an employee at his new post of assignment. They are the miscellaneous expense portion, the wardrobe expense portion, and the subsistence expense portion. While there is nothing in the Federal Travel Regulation (FTR) governing relocation allowances comparable to the wardrobe expense portion, the language used in the Standardized Regulations to describe the scope and amounts payable for the miscellaneous and the subsistence expense portions⁵ are parallel to the language contained in the FTR governing the miscellaneous expense allowance and temporary quarters subsistence expense allowance entitlements of non-Foreign Service employees under 5 U.S.C. § 5724a (1988).⁶

In this regard, our decisions involving relocation expenses under the FTR have held that the absence of a signed service agreement is not fatal to payment of relocation expenses where an otherwise eligible employee did in fact perform the required minimum service. Thomas D. Mulder, 65 Comp. Gen. 900 (1986); Baltazar A. Villareal, B-214244, May 22, 1984, and cases cited therein. Thus, an otherwise eligible employee need only remain in government service without a break in service for the required minimum service period--usually 12 months--following the transfer for which reimbursement is claimed in order to be eligible to receive relocation benefits, including reimbursement for temporary quarters subsistence expenses.

In the present case, we do not perceive any reason for treating the 12-month service certification requirement under section 077.32c(2) of the Standardized Regulations (Government Civilians, Foreign Areas) any different from the 12-month service agreement requirement under 41 C.F.R. § 302-1.5 (1991) of the FTR. Therefore, even though Mr. Gormley did not execute a 12-month service certification, he completed 12 months of service in Washington, D.C., and, thus, became eligible to receive the subsistence expense portion of the home service transfer allowance under

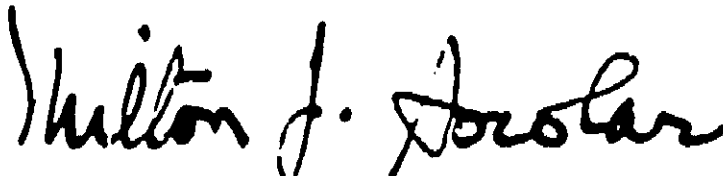
⁵Sections 251.2 and 252 of the Standardized Regulations (Government Civilians, Foreign Areas). Certain other employees may also receive a home service transfer allowance under the separate statutory authority of 5 U.S.C. § 5924(2)(B) (1988), but with an additional limitation not operative here. See Dennis H. Shimkoski, 68 Comp. Gen. 692 (1989) for a detailed discussion.

⁶41 C.F.R. Part 302-3 and Part 302-5 (1991).

section 901(14) of the Foreign Service Act of 1980, supra, and section 251 of the Standardized Regulations (Government Civilians, Foreign Areas).

The fact that Mr. Gormley returned to the United States on involuntary separation orders and the fact that he served the additional 12 months under a prescriptive relief order does not, in our opinion, affect his entitlement to receive the home service transfer allowance. We believe the 12-month period actually served can be construed as an assignment to Washington, D.C., for purposes of the allowance.

Accordingly, we reverse, in part, our Claims Group's action in this matter, and we hold that Mr. Gormley may be paid the subsistence expense portion of the home service transfer allowance. We remand this matter to the State Department for its determination of the amount of the subsistence expense portion of the home service transfer allowance due Mr. Gormley.

for 
Comptroller General
of the United States