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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

DLB-0271

FILE: B-195743

DATE: September 17, 1979

MATTER OF: Gerald E. Kosh - [Entitlement to Transportation, Living Quarters, and Foreign Post Allowances]

- DIGEST:**
1. Although letter from Government official advised him that he might obtain position if he went to Vietnam, employee of Defense Attache Office, Vietnam, is not entitled to transportation, living quarters, or foreign post allowances. Letter was not firm offer of appointment, employee was hired in Vietnam, and he was not eligible in accordance with applicable regulations for allowances.
 2. Employee who had traveled to Vietnam at own expense and had obtained position there claims transportation, living quarters, and foreign post allowances on basis of trip to United States for hospitalization. He is not entitled to allowances since agency determined that employee was not recruited again in United States since he did not have break in service and round trip between Vietnam and United States was performed at Government expense under temporary duty orders, and there is no evidence that agency determination was arbitrary or capricious.

Mr. Gerald E. Kosh appeals the denial by our Claims Division of his claim for entitlement to transportation, living quarters, and foreign post allowances. The claim was based on Mr. Kosh's employment with the Defense Attache Office, Department of the Navy, Saigon, Vietnam.

The record shows that Mr. Kosh was employed by the Defense Attache Office from December 10, 1973, until August 1, 1975. His agency states that its first contact with Mr. Kosh regarding employment occurred after he arrived in Vietnam. Therefore, it was determined that Mr. Kosh did not meet the eligibility requirements for overseas allowances prescribed in the Standardized Regulations (Government Civilians, Foreign Areas), issued by the Secretary of State. The record also shows that the question as to his eligibility for return travel and transportation allowances to the United States upon

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completion of his employment was moot since he was provided Government transportation as part of the evacuation of civilian employees from Vietnam.

Mr. Kosh says that a letter dated October 20, 1973, from the Deputy Chief, Mission Warden Office, American Embassy, Saigon, was an offer of employment from a U.S. Government agency which prompted his presence in Vietnam and justified his entitlement to overseas allowances. In addition, Mr. Kosh returned to the United States, at Government expense, for hospitalization, and subsequently returned to Vietnam. He states that this return should have satisfied all conditions for his entitlement.

Mr. Kosh's claim for overseas allowances was filed with our Claims Division since it had been denied by the Defense Attache Office in Saigon, and the Office of Civilian Manpower Management of the Department of the Navy. For the reasons stated below, we hold that Mr. Kosh is not entitled to the allowances claimed.

✓ Section 5722 of title 5, United States Code, provides that an agency may pay travel and transportation expenses for a new appointee to his place of appointment outside the continental United States and pay similar expenses incident to the employee's return to his actual residence at the time of appointment upon the completion of a specified tour of duty. Sections 5922, 5923, and 5924 of title 5 provide for payment of quarters and post allowances to an employee stationed overseas. Paragraph C4002-3, Volume 2, Joint Travel Regulations, provides that a local commander in a foreign area will negotiate an agreement with a locally hired employee if certain conditions are met. The conditions are essentially the same as those in section 031.12 of the Standardized Regulations applicable to the granting of living quarters allowances. That section reads as follows:

"031.12 Employees Recruited Outside the United States

"Quarters allowances prescribed in Chapter 100 may be granted to employees recruited outside the United States, provided that

"a. the employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his employment by the United States Government; and

"b. prior to appointment, the employee was recruited in the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States, by

"(1) the United States Government, including its Armed Forces;

"(2) a United States firm, organization, or interest;

"(3) an international organization in which the United States Government participates; or

"(4) a foreign government;

and had been in substantially continuous employment by such employer under conditions which provided for his return transportation to the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or

"c. as a condition of employment by a Government agency, the employee was required by that agency to move to another area, in cases specifically authorized by the head of agency.

"Subsection 031.12b may be waived by the head of agency upon determination that unusual circumstances in an individual case justify such action."

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The preceding regulations are also applicable to post allowances. Standardized Regulations, sections 031.2 and 040i.

The letter of October 20, 1973, which Mr. Kosh believes was an offer of appointment, reads in pertinent part as follows:

"I have learned through our mutual friends here in Saigon that you are actively seeking employment in South East Asia. Although you are aware we do not have any openings now, we may have positions sometime in early January 1974, that you are certainly qualified for.

"We do not hire from the United States, so it would be to your advantage to come to Saigon of your own volition. If and when you are employed with us, your transportation would be reimbursed; we would provide housing and all benefits. We can better discuss salary and duty position when you arrive.

"Again, it would be to your advantage to come to Saigon in December, and if the present trends continue, things should be most favorable."

The agency determined that the letter was not a recruitment or offer of employment and did not enter into any agreement with Mr. Kosh to provide the allowances claimed by him.

We agree with the agency determination that the letter Mr. Kosh received was not a firm offer of appointment. For example, the letter states: "Although you are aware we do not have openings now, we may have positions sometime in early January 1974 * * *. If and when you are employed with us * * *. * * * if the present trends continue, things should be most favorable." (Emphasis supplied.) Thus, at most the letter can be considered as being a notice to Mr. Kosh of the possibility of future job openings in Vietnam. Further, the letter states: "We do not hire from the United States * * *." Since the letter put Mr. Kosh on notice that the agency did not hire from the United States, it follows that the provisions applying to employees recruited in the United States would not apply in the event that he was hired.


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It is clear that none of the provisions of section 031.12b apply to Mr. Kosh since he was not recruited in the United States nor in continuous employment with any organization overseas which would entitle him to return transportation to the United States. Therefore, the agency had no basis to negotiate an initial agreement with Mr. Kosh under the provisions of 2 JTR para. C4002-3 which would have entitled him to the allowances claimed. Leola M. Broadnax, B-168161, December 15, 1977; Angelo Raffin, B-184972, May 5, 1976; B-173424, September 2, 1971.

A request for waiver of the provisions of section 031.12b, Standardized Regulations, was made since Mr. Kosh had traveled to the United States for hospitalization following his release as a prisoner of war. The agency declined to grant the waiver. The agency also determined that Mr. Kosh was recruited overseas and was not recruited again in connection with his hospitalization in the United States since there was no break in his service and the round-trip travel between Vietnam and the United States was authorized under temporary duty orders. An administrative determination made by an agency in the course of performing its official functions will not be overturned by this Office in the absence of a showing that such determination was arbitrary or capricious. Wesley L. Goecker, B-170177, August 23, 1979, 58 Comp. Gen. ___; Dale W. Sherfey, B-191228, September 29, 1978; B-167629, March 18, 1970. There is nothing in the record which would cause us to question the agency's determination.

The letter of October 20, 1973, indicates that if Mr. Kosh was hired his transportation would be reimbursed and he would be provided housing and all benefits. That statement was unauthorized since, as stated above, a local hire is not entitled to the allowances in question. Therefore, it does not provide entitlement for the allowances claimed because the Government is not bound by the unauthorized acts of its agents. 54 Comp. Gen. 747 (1975).

Accordingly, the Claims Division disallowance of Mr. Kosh's claim is sustained.


Deputy Comptroller General
of the United States