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DECISION



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

FILE: R-191121

DATE: August 29, 1978

MATTER OF: Linderman and Hestir - Real Estate
Expenses Incident to Overseas Transfer

DIGEST: Employees, who were transferred to duty station not within United States, its territories or possessions, Puerto Rico, or Canal Zone, are not entitled to reimbursement for real estate expenses. See 5 U.S.C. § 5724a(a)(4) (1970). Erroneous information by Government officials provides no basis for payment, and these payments may not be waived under 5 U.S.C. § 5584 (1976).

This action is in response to a request for an advance decision from Matthew N. Novick, Financial Manager, Office of the Secretary, Department of the Interior (Interior), concerning the entitlement of two Interior employees, Robert V. Linderman and Willis A. Hestir, to reimbursement for real estate expenses incident to their transfer to an overseas duty station.

The record indicates that effective January 19, 1975, Mr. Linderman transferred from his position with the Department of the Navy, Port Hueneme, California, to a position with Interior in the Office of the Secretary, Assistant Secretary Management, Office of Management Consulting, Financial Systems Division. On October 26, 1975, Mr. Hestir was reassigned to a position with this same Interior office from his position with the Bureau of Indian Affairs, Albuquerque, New Mexico. In both instances, the employees' Standard Form 50 listed the location of the employing office in Washington, D.C., but also indicated that the duty station would be Saipan, Mariana Islands. The report from the agency states that in order to attract both employees to their jobs, the agency advised them that they would be reimbursed for the sale of their homes when they moved. The agency states further that these promises were made in good faith and without the knowledge that real estate expenses may not be reimbursed upon transfer to an overseas duty station. The employees have stated, on their own behalf, that their new duty station was actually Washington, D.C., and that

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they have been detailed or temporarily assigned to Saipan. The employees have also requested waiver of collection of the payments in the amount of \$3,373.22 to Mr. Linderman and \$2,489.60 to Mr. Hestir.

The authority for reimbursement of travel, transportation, and relocation expenses for these employees is contained in 5 U.S.C. §§ 5724 and 5724a (1970) and the implementing regulations contained in the Federal Travel Regulations (FTR) (FPMR 101-7, May, 1973). Section 5724a(a)(4) provides, in pertinent part, for the reimbursement of:

"Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. * * * (Emphasis added).

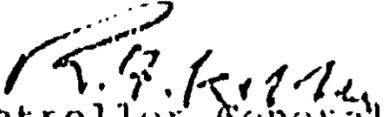
See also FTR para. 2-6.1a. Since we have held that Saipan, one of the Mariana Islands which are part of the Trust Territories of the Pacific Islands, is not considered to be a territory or possession of the United States, there is no authority for the reimbursement of the real estate expenses of these two employees. See B-163113, June 27, 1968.

Our Office has no authority to waive, extend, or modify the applicable statute or regulations so as to validate these erroneous payments. In addition, as the agency has so advised the employees, travel, transportation, and relocation expenses are specifically excluded from the authority for waiver of erroneous payments contained in 5 U.S.C. § 5584 (1976) and 4 C.F.R. Part 91 (1977). It is unfortunate that these two employees were misinformed as to their entitlement to real estate expenses under these circumstances, but it is well settled that the United States can be neither bound nor estopped by the unauthorized acts of its agents. See Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947).

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Finally, while the employees contend that Washington, D.C., was their actual duty station, we would point out that the location of an employee's official duty station presents a question of fact and constitutes the place at which he performs the major part of his duties and is expected to spend the greater part of his time. See 32 Comp. Gen. 87 (1952). On the basis of the record before us, we must agree with the agency's determination that Saipan was their duty station. Furthermore, we have held that an employee may not properly be transferred to a place at which he is not expected to remain for an extended period of time for the purpose of increasing his entitlement of travel, transportation, and relocation allowances. See B-166181, April 1, 1969. Thus, we do not believe the agency would have been authorized, as the employees suggest, to transfer Messrs. Linderman and Hestir to Washington, D.C., and authorize them relocation expenses when it was contemplated that they would be transferred to Saipan after a very short time.

Accordingly, the claims may not be paid and action should be taken to recover the erroneous payments.


Deputy Comptroller General
of the United States