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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Timothy S. Haymend

File: B-255822

Date: May 17, 1994

DIGEST

An employee transferred to an overseas location in Korea, and sold his residence at his old duty station in Hawaii. He is entitled to reimbursement for real estate expenses on the basis of a statutory exception in 5 U.S.C. § 5724a(a)(4)(A) (1988), which provides reimbursement of real estate expenses when an employee returns from an overseas assignment to a different location in the United States. The employee (1) was notified that he would not be returning to his old duty station; (2) he sold his residence pursuant to such notice; (3) an agency regulation precluded his return; and (4) he returned from overseas to another duty station in the United States. Robert M. Hooks, B-249184, Mar. 5, 1993, 72 Comp. Gen. 130.

DECISION

Mr. Timothy S. Haymend, requests reconsideration of a Claims Group settlement[1] that denied his request for reimbursement for real estate expenses. For the reasons that follow, we overrule our Claims Group settlement and allow reimbursement.

Mr. Haymend was assigned to the U.S. Army Material Command (AMC), Logistic Assistance Program (LAP) at Fort Shafter, Hawaii, during the period 1988 through 1991. In April 1991, Mr. Haymend was notified that he would receive a permanent change of station to Fort McPherson, Georgia. In anticipation of the pending transfer, he signed a listing agreement on April 15, 1991, effective until November 1, 1991, to sell his residence in Hawaii. However, in June 1991, Mr. Haymend accepted a position in Seoul, Korea, and reported for duty there in September 1991. His residence in Hawaii was sold on November 15, 1991, and he has requested reimbursement for real estate expenses totaling $12,916.29.

[1] Z-2868443, August 31, 1993.

Mr. Haymend's request for reimbursement of real estate expenses was denied by both the AMC and our Claims Group on the basis of statutory and regulatory provisions that provide that both the old and new duty station must be located within the United States or other named locations in order for such expenses to be reimbursable. Mr. Haymend states that he is entitled to reimbursement because his position is mandatory mobility[2], and governing regulations prohibit him from staying overseas for more than 5 years. Since he would have completed 5 years overseas after his assignment in Korea, he states that it would have been impossible for him to return to Hawaii. By travel orders issued March 12, 1993, Mr. Haymend was transferred from Seoul, Korea, to his current duty station in Huntsville, Alabama.

Under the provisions of 5 U.S.C. § 5724a(a)(4)(A) (1988), the implementing regulations, the Federal Travel Regulation, 41 C.F.R. § 302-6.1(a) (1993), and the Joint Travel Regulations, Vol. 2, para. C14000-1-1, both the old and new duty stations must be located within the United States (the 50 states) or other named locations to entitle an employee to reimbursement of the expenses of selling or purchasing a residence.[3] However, section 5724a(a)(4) was amended in 1987 to allow reimbursement of real estate expenses to an employee transferred to a foreign duty station who is transferred back to a duty station in the United States other than the one from which he transferred overseas. Such reimbursement shall not be allowed for any real estate transaction that occurs "prior to official notification" that the employee's return to the United States would be to an official station other than the one from which he was transferred to the foreign post of duty.

This Office recently allowed reimbursement under circumstances similar to Mr. Haymend's in <u>Robert M. Hooks</u>, B-249184, Mar. 5, 1993, 72 Comp. Gen. 130. In <u>Hooks</u>, the employee was notified prior to his transfer from Alaska to Singapore that he would not be allowed to return to Alaska, and that his return rights would be to his prior position in Savannah, Georgia. These instructions were given by agency officials pursuant to an agency regulation which did not permit a return to Alaska. Subsequently, the employee transferred back from Singapore to Charleston, South Carolina, since his former position had been moved to that

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[2]Employees are designated as emergency essential and participate along with military personnel in major field exercises or mobilizations.

[3]<u>Donald E. Clay</u>, B-242558, June 19, 1991, <u>aff'd on reconsideration</u>, B-242558.2, Dec. 18, 1991; <u>Frederick J. Donnelly</u>, B-237607, May 21, 1990.

new location. Therefore, he came within the purview of the statutory exception since he returned from an overseas assignment to a duty station other than the one that he was initially assigned to prior to going overseas.

Thus, the criteria enunciated in Hooks are: (1) official notice prior to an overseas assignment that the employee would not be returning to that duty station; (2) sale of the residence after such official notice; (3) an agency regulation that provides that an employee will not return to his/her old duty station; and (4) the employee's return to another official duty station.

We believe that Mr. Haymend's circumstances fall within the criteria for reimbursement outlined in Hooks so as to permit reimbursement. The record contains a memorandum from the then Director, LAP activity, who states that he told Mr. Haymend in June that his assignment in Korea would be followed by an assignment to Headquarters, which at that time was Alexandria, Virginia, or in the alternative, Huntsville, Alabama, if the function was transferred there. We believe that this constitutes official notice to Mr. Haymend that he would not be returning to his old duty station in Hawaii. And Mr. Haymend sold his residence in Hawaii after receiving the official notice.

In addition, Mr. Haymend signed a Mobility Agreement in August 1991, incident to his overseas assignment to Korea. One of the provisions of the Agreement refers to AMC Regulation 700-19, and provides that, unless otherwise approved by LAP management, assignments outside the continental United States will be limited to 5 consecutive years. Upon completion of 5 consecutive years, the employee will be reassigned to the continental United States. Mr. Haymend's 3-year assignment to Hawaii, together with his 2-year assignment to Korea satisfies this criteria. Lastly, Mr. Haymend has returned to a different duty station, Huntsville, Alabama, other than that from which he was first assigned to the overseas assignment.

Therefore, the criteria in Hooks have been met, and Mr. Haymend is entitled to reimbursement of the allowable expenses of selling his residence in Hawaii.

Seymour Efros

for

Robert P. Murphy
Acting General Counsel