

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548****FILE:** B-212697**DATE:** December 23, 1983**MATTER OF:** Leon H. Liegel**DIGEST:**

The Forest Service determined that an employee's actual place of residence at the time of his appointment to the Federal service was Puerto Rico because that had been his principal place of abode and employment during the previous 2 years. The agency's determination is not clearly erroneous in fact or contrary to law, so that no basis exists for changing it. Although the employee asserts that he was a legal domiciliary of Wisconsin, that has no bearing on the issue because a person's "domicile" and "residence" are not necessarily the same, and he had actually been residing in Puerto Rico long before he obtained Government employment there. Accordingly, the employee is not entitled to periodic home leave or round-trip travel expenses for trips to Wisconsin.

Dr. Leon H. Liegel has asked for reconsideration of his claim for home leave and associated travel benefits.<sup>1</sup> We conclude that he is not entitled to those benefits and sustain the denial of his claim.

**BACKGROUND**

Dr. Liegel was appointed to a position in Puerto Rico with the Forest Service, U.S. Department of Agriculture, in June 1973. Prior to that time he had been employed as a specialist in tropical forestry by the Commonwealth of Puerto Rico for nearly 2 years beginning in September 1971.

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<sup>1</sup>Action taken by our Claims Group in Settlement No. Z-2786650, issued January 3, 1983, denied the claim, and that settlement is reviewed here under 4 C.F.R. Part 32 on the basis of Dr. Liegel's request for reconsideration.

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His "actual place of residence" at the time of his initial employment with the Federal Government in 1973 was determined by the Forest Service to be Santurce, Puerto Rico. On the basis of that determination he was classified as a "local hire," without entitlement to tour renewal travel, home leave, or other benefits extended to Federal employees who are assigned or transferred to Puerto Rico from outside areas. He has been employed with the Forest Service in Puerto Rico continuously ever since he received his appointment in 1973.

In 1980 Dr. Liegel requested that his "actual place of residence" as determined in 1973 be changed from Puerto Rico to Wisconsin and that he be granted home leave and travel benefits. The Forest Service denied this request. On July 12, 1982, Dr. Liegel filed a claim with the Claims Group of our Office contesting that action. In addition to requesting that the Claims Group determine that he was a resident of Wisconsin at the time of his appointment, Dr. Liegel requested reimbursement of \$5,470 as compensation for home leave benefits not received in prior years. Our Claims Group denied Dr. Liegel's requests, and he has asked for a further review of the matter.

It is Dr. Liegel's contention that at the time of his 1973 appointment to a position with the Federal Government in Puerto Rico, his legal residence or domicile was Wisconsin. He indicates that prior to 1971 his permanent place of residence had always been in Wisconsin, and he suggests that his employment by the Commonwealth of Puerto Rico from 1971 to 1973 did not operate to change his domicile from Wisconsin to Puerto Rico, since at the time he considered his employment and living arrangements in Puerto Rico to be of a temporary nature. He contends that the Forest Service determination in 1973 that his actual place of residence was Puerto Rico was in error and based solely on his use of a Puerto Rican address on his employment application.

#### GENERAL LEGAL AUTHORITY

##### 1. Home Leave

Home leave for Federal employees stationed in Puerto Rico is authorized by 5 U.S.C. § 6305(a), which provides:

"(a) After 24 months of continuous service outside the United States, an employee may be granted leave of absence, under regulations of the President, at a rate not to exceed 1 week for each 4 months of that service without regard to other leave provided by this subchapter. \* \* \*"

The implementing regulations restrict eligibility for home leave to an "employee who meets the requirements of section 6304(b) of title 5, United States Code, for the accumulation of a maximum of 45 days of annual leave."<sup>2</sup> Under that statute, employees in Puerto Rico generally qualify for this annual leave accumulation benefit only if they were recruited or transferred by the Government from areas outside of Puerto Rico.<sup>3</sup> Employees hired in Puerto Rico may also qualify if at the time of their appointment they maintained a "residence" elsewhere and were in Puerto Rico temporarily for the purpose of travel or study, or if they were discharged from military service to accept civilian Government employment in Puerto Rico and were otherwise "not normally residents" of that place.<sup>4</sup>

## 2. Tour Renewal Travel

When an employee who is not already residing in Puerto Rico accepts an appointment or transfer to a position in Puerto Rico, he is generally required to execute a written agreement to remain in Government service for a minimum period of 12 months in order to qualify for relocation at

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<sup>2</sup>See 5 C.F.R. § 630.602.

<sup>3</sup>See 5 U.S.C. §§ 6304(b)(1) and 6304(b)(2)(A).

<sup>4</sup>See 5 U.S.C. §§ 6304(b)(2)(B) and 6304(b)(3).

Government expense when moving to and from Puerto Rico.<sup>5</sup> Upon completing that tour of service the employee may agree to perform another duty tour in Puerto Rico or at some other overseas location, rather than either accept transfer to a post of duty in the continental United States or be separated from Government service with home relocation benefits. Authority for granting round-trip travel expenses to an employee and his family in those circumstances is found at 5 U.S.C § 5728, which provides:

"(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States \* \* \* to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States \* \* \* under a new written agreement made before departing from the post of duty."  
(Emphasis added.)

Implementing directives contained in the Federal Travel Regulations provide guidance in the determination of an employee's "actual place of residence." The regulations state that this is generally to be viewed as the employee's principal actual dwelling place in fact, without regard to

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<sup>5</sup>See 5 U.S.C. §§ 5722(b) and 5724(d); and paragraphs 2-1.5a(1)(b), 2-1.5g, Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973 and September 1981 ed.).

intent.<sup>6</sup> Thus, one of the guidelines is that "the place at which the employee physically resided at the time of selection for appointment or transfer frequently constitutes the place of actual residence and shall be so regarded in the absence of circumstances reasonably indicating that another location may be designated as the place of actual residence."<sup>7</sup>

### 3. Determination of Residence

Reimbursement for the expenses of tour renewal travel under the authority of 5 U.S.C. § 5728 is not necessarily dependent upon the granting of home leave under 5 U.S.C. § 6305 since, as indicated, the provisions of statute and regulation authorizing each of these benefits are somewhat different.<sup>8</sup> However, neither home leave nor tour renewal travel benefits are available to residents of Puerto Rico and other overseas areas who obtain Government employment locally near their place of abode or "actual place of residence."<sup>9</sup>

The courts have defined "residence" as indicating the place of dwelling, and "domicile" as the fixed and permanent residence to which, when absent, one has the intention of returning. This distinction is the same as is sometimes made between "actual residence" and "legal residence." The actual residence is not always the legal residence or

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<sup>6</sup>Paragraph 2-1.5g(3)(c), FTR.

<sup>7</sup>Paragraph 2-1.5g(3)(c)(ii), FTR.

<sup>8</sup>Compare Matter of Daly, B-200945, August 24, 1981.

<sup>9</sup>See, e.g., 53 Comp. Gen. 966 (1974); and Matter of Yatar, B-201358, August 24, 1981 (home leave). See also 45 Comp. Gen. 136 (1965) (tour renewal travel).

domicile of an individual.<sup>10</sup> Hence, we have adopted the view that whenever a person buys or rents a house or apartment and sets up a household with his family near his principal place of work or employment, he becomes a resident of that locality within the meaning of the term "actual place of residence" as used in statutory and regulatory provisions, even though the individual may claim another place as his domicile.<sup>11</sup>

We have stated that the "law and regulations do not preclude correction of errors in the overseas assignment or transfer records when it is later shown clearly that, in fact, the place of actual residence was other than the place named in the agreement and related papers."<sup>12</sup> However, we have consistently held that the responsibility for determining the place of actual residence of an employee is on the administrative agency based on the facts of each case, and we will not question any reasonable determination made by the agency concerning an employee's "actual place of residence."<sup>13</sup>

#### DISCUSSION AND CONCLUSION

In the present case the Forest Service based its determination concerning Dr. Liegel's actual place of residence on the fact that he had been employed by the Commonwealth of Puerto Rico and had maintained his principal place of abode there for nearly 2 years prior to the time of his

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<sup>10</sup>See Weible v. United States, 244 F.2d 158, 163 (1957).

<sup>11</sup>See B-177292, January 24, 1973.

<sup>12</sup>See 39 Comp. Gen. 337, 339 (1959).

<sup>13</sup>See, e.g., 37 Comp. Gen. 848 (1958), 35 id. 244, 246 (1955). An employee's contentions concerning his state of domicile based on voting registration, bank accounts, ownership of real estate, etc., are alone insufficient to overcome the agency's determination. B-177292, cited above.

Civil Service appointment in 1973. We are unable to conclude that the agency's determination, which went unquestioned for many years, was clearly erroneous in fact or contrary to law. Dr. Liegel was initially hired by the Commonwealth of Puerto Rico and moved there of his own accord. He did not go to Puerto Rico for transitory purposes of education or travel. He had no return travel benefits in his job prior to his appointment to the Federal service. While he may have retained certain bonds with the State of Wisconsin and may consider himself to be a legal domiciliary of Wisconsin, a person's "domicile" and "place of actual residence" are not necessarily the same, and it is evident as a matter of fact that he has been residing in Puerto Rico since 1971. Therefore, we have no basis to question the Forest Service determination that his actual residence in 1973 was in Puerto Rico rather than Wisconsin.

Accordingly, we conclude that Dr. Liegel is not entitled to the home leave and tour renewal travel benefits in question, and we sustain the denial of his claim for those benefits.

*for* *Harry R. Ann Clave*  
Comptroller General  
of the United States