



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

B-178514

May 22, 1973

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The Honorable Rogers C. B. Morton
The Secretary of the Interior

Dear Mr. Secretary:

We refer to the letter of the Chief, Division of Fiscal Services, Office of the Secretary, U.S. Department of the Interior, dated April 20, 1973, concerning the use and amount of home leave which may be granted or credited to Mr. Lawrence D. Morderosian, an employee of the Bureau of Reclamation in Denver, Colorado, incident to his service with the Trust Territory of the Pacific Islands with duty at Saipan, Mariana Islands, in view of the facts set out below.

Mr. Morderosian entered on duty in Saipan on April 15, 1970. On February 25, 1972, he departed that station for return to the United States as a result of his separation by reduction in force (RIF). Upon appeal of the RIF action to the Civil Service Commission, the separation was found to be invalid and reinstatement to a position in Saipan or an equivalent position was ordered. Subsequently, Mr. Morderosian was offered and accepted the position he now holds in Denver in lieu of the position in Saipan which the Commission determined he should have been offered at the time of the RIF. The following questions are presented with respect to Mr. Morderosian's accrual of home leave and the grant of home leave properly accrued:

1. Since Mr. Morderosian was not physically in his foreign duty assignment on April 1972, through no fault of his own (erroneous RIF action), is he in fact entitled to have leave accrual through:
 - (a) April 1972 (completion of two-year agreement).
 - (b) September 10, 1972 last day on rolls of Trust Territory of the Pacific Islands before entering on duty in Bureau of Reclamation, Denver, Colorado.
2. If it is contemplated that the Department returns Mr. Morderosian to a foreign duty assignment in the near future, can Mr. Morderosian use the home leave to which he would have been entitled in (a) or (b) above?

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3. If it is not contemplated that Mr. Hordrosian returns to a foreign duty assignment, but in fact is given an assignment in the continental United States after his Reclamation-Denver assignment, can he use the home leave to which he would have been entitled in (a) or (b) above?

Home leave is accrued and granted under 5 U.S.C. 6305(a) and the regulations promulgated by the Civil Service Commission pursuant thereto as contained in 5 CFR 630.601 - 630.607. Those regulations provide for the accrual of home leave in appropriate amounts for employees who are assigned to overseas posts at which home leave may be earned. An employee's accrual of such leave is without regard to his later entitlement to a grant of some or all of the home leave so accrued. Regarding your first question 5 U.S.C. 5596, which authorizes back pay and related benefits for employees who have undergone unjustified or unwarranted personnel actions, provides in part that employees improperly separated shall, upon reinstatement, be deemed for all purposes "to have performed service for the agency during that period, except that the employee may not be credited * * * leave in an amount that would cause the amount of leave to his credit to exceed the maximum amount of leave authorized for the employee by law or regulation." It is well settled that an employee who has been improperly separated is entitled to include in his back pay the foreign or territorial (now nonforeign) differentials he was receiving at the time of his improper separation even though he may not have remained at the post where such differential was payable during the period of separation. Vitarelli v. United States, 150 C. Cls. 59 (1960); 40 Comp. Gen. 479 (1961). In view of the fact that the statutory provision quoted above allows the crediting of leave to employees during periods of erroneous separation and in view of the cited decisions, we conclude that the employee should be credited with home leave for the period of his erroneous separation. Therefore, the conclusion stated in question 1(b) is correct.

With respect to questions 2 and 3, it follows from the answer to question one that an employee may count time he did not spend at his foreign post because of an erroneous separation for the purpose of fulfilling the 24 months overseas service requirement of 5 U.S.C. 6305(a) and 5 CFR 630.606(a). However, the grant of home leave is limited in 5 CFR 630.606(c) in the following terms:

(c) Limitations. An agency may grant home leave only:

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(1) For use in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(2) During an employee's period of service abroad, or within a reasonable period after his return from service abroad when it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States.

Home leave not granted during a period named in subparagraph (2) of this paragraph may be granted only when the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may not be less than the tour of duty prescribed for the employee's post of assignment, except when the agency determines that an earlier grant of home leave is warranted in an individual case.

As indicated in our decision of February 5, 1962, B-147031, copy enclosed, these limitations on the use of home leave were in keeping with the treatment of home leave grants under prior authorities and were contemplated by the Congress when it enacted the Overseas Differentials and Allowances Act (Public Law 86-707), part of which is now 5 U.S.C. 6305(a).

Since the Chief, Division of Fiscal Service, has advised us in his submission that after Mr. Morderosian accepted the position in Denver there was no intention on the part of the Department to return him to a foreign assignment, he did not qualify for a grant of home leave at that time. Further, in view of the final paragraph of the quoted regulation, the home leave credited to Mr. Morderosian may not be granted to him until he has served another qualifying period overseas.

Accordingly, your second and third questions are answered in the negative. We have considered the contentions in Mr. Morderosian's telegram of April 12, 1973, to your Department which contentions were expanded in his letter to us of April 30, 1973. However, we do not find that any delay which might have occurred in his reinstatement could change the conclusion reached herein. Further, the fact that the duties

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performed in the position in Denver are not the duties specified in the job description which might require a further transfer would not entitle him to a grant of home leave under the controlling regulations.

Sincerely yours,

PAUL G. DEMELING

For the Comptroller General
of the United States