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United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-196466

[Entitlement to Home Leave and Travel Expenses]

February 4, 1981

Mr. Alexander Sambolin  
Box 490  
Luquillo, Puerto Rico 00673 *Do not make available to public reading*

Dear Mr. Sambolin:

We refer further to your letters dated May 3, 1980, and June 13, 1980, with enclosures, wherein you present questions concerning your entitlement to round-trip travel expenses to the United States and related home leave, and your entitlement to 45 days' annual leave accumulation. In addition, you ask about reimbursement of the expenses for your dependents' advance return travel to the United States.

The information which you have provided shows that you were initially hired by the Civil Aeronautics Administration in 1959 while you were in Puerto Rico where you had resided from September 3, 1934, to August 1941, and from January 9, 1959. In January 1963, you became an Air Traffic Control Specialist with the Federal Aviation Administration (FAA). You state that upon completion of a tour of duty in Alaska from August 1967 to August 1969 you were assigned to work in the San Juan Air Traffic Control Center until you transferred to the Miami, Florida, Air Traffic Control Center in August 1972.

You state that you resided in Sunrise, Florida, for a period of three years and that you consider Sunrise to have been your principal actual dwelling place. The enclosures with your letter show that on April 29, 1975, you designated Sunrise, Florida, as your actual place of residence incident to your reassignment to San Juan, and that this designation was approved by the FAA on June 22, 1975, the date of your transfer. Accordingly, the SF-50 issued incident to your reassignment to San Juan states that you are entitled to return rights and 45 days' leave accumulation.



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On August 16, 1979, you were advised by the agency that its determination that your actual place of residence was Florida at the time of your transfer to San Juan was an administrative error as you were initially appointed by the FAA on January 20, 1963, while you were in San Juan. Thus, you were informed that you are a "local hire" with a place of residence in Puerto Rico. Accordingly, a Standard Form 50, dated August 22, 1979, was issued to correct the personnel action of June 22, 1975, to show that you are ineligible for 45 days' leave accumulation and home leave travel.

The authority for the granting of round-trip travel expenses for an employee for the purpose of taking leave upon completion of a tour overseas is pursuant to 5 U.S.C. 5728 which provides as follows:

"(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."

Paragraph 2-1.5g(3)(c) of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973) provides guidance in the determination of an employee's actual place of residence and provides in part that this concept views residence as the employee's principal actual dwelling place in fact, without regard to intent. Thus, one of the guidelines in the FTR, para. 2-1.5g(3)(c)(ii)

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provides, in pertinent part, 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."

This determination of the place constituting an employee's "actual residence" is an administrative responsibility which must be made on the basis of all the facts in each individual case. See Matter of Shirley Kallish, B-187754, January 3, 1977, and 35 Comp. Gen. 244 (1955), copies enclosed. Such determination by the agency will not be disturbed by our Office unless plainly erroneous or inconsistent with the law or regulations. B-178654, July 6, 1973, copy enclosed.

In Matter of Rafael F. Arroyo, B-197205, May 16, 1980, copy enclosed, our Office held that an agency could not properly predicate its determination of an employee's actual place of residence solely on our decision in B-157548, September 13, 1965, 45 Comp. Gen. 136, copy enclosed, as the applicable regulations require an independent determination based on the facts of each case. Furthermore, in Arroyo we held that the fact that an employee was originally a "local hire" should not be made the sole criterion of residency determinations as such action would have the arbitrary and capricious effect of preventing a local hire from ever establishing a different place of residence. Accordingly, we held therein that the determination of the employee's actual place of residence was to be made on the facts after giving the employee a full opportunity to provide evidence in support of his residence designation.

Thus, as set forth in Arroyo the requirement that the agency make an independent determination of the employee's actual place of residence based on all the facts of the case also applies where the employee in question was originally a local hire.

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Concerning entitlement to 45 days' annual leave accumulation, 5 U.S.C. 6304 provides in pertinent part as follows:

"(b) Annual leave not used by an employee of the Government of the United States in one of the following classes of employees stationed outside the United States accumulates for use in succeeding years until it totals not more than 45 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay period, occurring in a year:

"(1) Individuals directly recruited or transferred by the Government of the United States from the United States or its territories or possessions including the Commonwealth of Puerto Rico for employment outside the area of recruitment or from which transferred."

The above provision of law would permit you to accumulate 45 days of leave if it is determined that you have an actual place of residence in the United States, its territories or possessions other than Puerto Rico. See 48 Comp. Gen. 437 (1968). Thus your entitlement to 45 days' annual leave accumulation would be contingent upon your agency's independent determination as to your actual place of residence.

Lastly, your letter of June 13, 1980, indicates that in 1979 your two older sons, having reached age 21 while in Puerto Rico, returned to the United States at your expense. You now ask about your entitlement to reimbursement for such expenses.

The authority for the advance return travel of the dependents of an employee stationed overseas is provided by 5 U.S.C. 5729(b) which states in part as follows:

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"(b) Under such regulations as the President may prescribe, an agency shall reimburse from its appropriations an employee whose post of duty is outside the continental United States for the proper transportation expenses of returning his immediate family and his household goods and personal effects to the United States or its territories or possessions, when--

"(1) their return was made at the expense of the employee before and for other than reasons of public interest; and

"(2) he acquires eligibility for those transportation expenses."

The applicable implementing regulations provide in part at paras. 2-1.5g(5) and 2-1.5g(6) of the FTR as follows:

"(5) Prior return of immediate family.

"(a) When employee is eligible for return transportation. When an employee has become eligible for return transportation by satisfactorily completing an agreed period of service at a post of duty outside the conterminous United States, the Government shall pay one-way transportation expenses for returning the employee's immediate family and household goods prior to the employee's return to his place of actual residence in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or the United States territories or possessions.

\* \* \* \* \*

"(f) Prior return at employee's expense - reimbursement. There may be circumstances in which an employee elects

to return his immediate family and his household goods or any part thereof at his own expense to any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or a United States territory or possession when he is not eligible for such transportation under 2-1.5g(5). In such an instance after the employee becomes eligible for transportation at Government expense, he may be reimbursed for the proper expenses which he had previously paid. He will be reimbursed in accordance with the applicable provisions of 2-1.5g(5) only for expenses which are supported by receipts or other appropriate documentation furnished to the Government in accordance with regulations prescribed by the head of the agency concerned.

"(6) Return of family member over 21. With respect to overseas travel, if a member of the immediate family, as defined in 2-1.4d, reaches his twenty-first birthday while the employee is assigned to duty overseas, that person may be returned to the United States (or foreign location at which the actual residence is located) at Government expense, provided his last travel overseas was at Government expense as a member of the employee's immediate family. Return of that person is authorized by the employee's next entitlement to travel to the United States (or foreign location at which the actual residence is located) but not beyond the end of the employee's current agreed tour of duty."

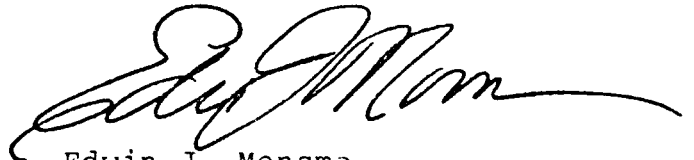
Pursuant to the above regulations, where an employee is eligible for return transportation to his actual place of residence, he is also entitled to the reimbursement of the expenses he has incurred for the prior return of his dependents to his actual place of residence. Accordingly, the matter of your entitlement to reimbursement for the expenses of the travel

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of your two sons is to be determined in accordance with the agency's decision as to your actual place of residence.

We trust that the above information will answer the purposes of your inquiry.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Edwin J. Monsma". The signature is written in black ink and is positioned above the typed name and title.

Edwin J. Monsma  
Assistant General Counsel

Enclosures