Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: James McKibben—Tour Renewal Agreement Travel

File: B-256704

Date: January 26, 1996

DIGEST

After reimbursing an employee authorized home leave travel (Overseas Tour Renewal Agreement Travel) for transportation between his Petersburg, Alaska, duty station and Los Angeles, California, the agency learned that the employee and his family actually traveled through Los Angeles enroute to Mexico. Upon being queried about the travel, the employee claimed to have stopped in Los Angeles for a 4-5 day visit on the return trip to Alaska. Home leave travel benefits may not be used to travel to the United States merely as a stopping off point enroute to or from foreign destinations. Absent evidence from the employee that he spent a substantial amount of time in the United States, the agency may take action to recoup the travel allowances paid to or on behalf of the employee.

DECISION

An authorized certifying officer of the United States Forest Service, Department of Agriculture, requests our decision whether it would be proper for the agency to seek recovery of costs it incurred for the tour renewal agreement travel performed by James McKibben, an agency employee assigned to Tongass National Forest, Petersburg, Alaska, in 1992. The agency asserts that Mr. McKibben did not perform this travel for its authorized purpose, to visit the United States, but instead, used it to travel to Mexico to visit property he owned there. We agree with the agency that the travel does not appear to have been used for the authorized purpose, and it would, therefore, be proper to seek recovery from Mr. McKibben for the cost the agency incurred.

BACKGROUND

Overseas tour renewal agreement travel available for an employee such as Mr. McKibben, whose post of duty is in Alaska or Hawaii, is authorized by 5 U.S.C. § 5728(c), as implemented by the Federal Travel Regulation (FTR),

41 C.F.R. § 302-1.3.[1] Under these provisions, an agency may pay the expenses of round-trip transportation for an employee and his or her immediate family from the employee's post of duty in Alaska or Hawaii to his or her place of actual residence or other authorized location in the United States for the purpose of returning home to take leave between tours of duty in Alaska or Hawaii.

Mr. McKibben's place of actual residence--his residence at the time of his selection for the post in Alaska—was McKay, Idaho. However, when Mr. McKibben completed the agency form in January 1992 requesting renewal agreement travel for himself and five family members, he requested such travel to an alternate location, Los Angeles, California. The travel was to be performed during the period of March 13 through 29, 1992. The form he completed contained the statement that "I realize that travel is limited to the United States and its possessions." The agency approved the request and issued a transportation authorization, dated February 12, 1992, for such travel which contained the statement "Travel limited to the United States, its territories or possessions, or Puerto Rico." Incident to this authorization, the agency procured commercial air transportation at agency expense for Mr. McKibben and his family from Alaska to Los Angeles and return. Upon completion of the travel, Mr. McKibben filed a travel voucher stating that he and his family traveled from Alaska on March 13 and arrived in Los Angeles on March 14; that they were not in a travel status from March 15 through 27; and that they left Los Angeles on March 28 and arrived back in Alaska on March 29. Mr. McKibben was allowed $125.50 in per diem for his travel time in addition to the $4,470.00 in airline fares the agency had paid the air carrier for his and his family's transportation.

The certifying officer states that in July 1993 the agency was informed that in fact Mr. McKibben and family had traveled on to Mexico during the March 1992 trip. In response to the agency's inquiry, Mr. McKibben furnished a written statement in which he says that in February 1991 he and his wife had purchased property in Cabo San Lucas, Baja, Mexico,[2] and immediately began planning to take their family to visit there in March 1992. He said their plans included visiting Disneyland and friends [apparently in Los Angeles]. He further states that about a month before departure on the scheduled tour renewal trip, he learned of the agency's policy against using such travel in conjunction with foreign travel, but after much soul searching he and his wife decided to go ahead with the trip, as planned, since all

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[1]5 U.S.C. § 5728(c) applies to an employee assigned, appointed or transferred to a post of duty in Alaska or Hawaii after September 8, 1982. The agency states that Mr. McKibben is such an employee.

[2]Cabo San Lucas, Baja, Mexico, by highway, is over 1,600 miles south of Los Angeles, California.

the arrangements had been made and because they felt "our employer had no right to tell us how we could spend our earned leave." He also furnished an itinerary of the trip in which he states that he and his family traveled to Los Angeles on March 13 and 14, as shown on his travel voucher, but continued on to Cabo San Lucas, Mexico, where they arrived on March 14 and remained until March 23. They then returned to Los Angeles on the 23rd remaining there until departing for Alaska on the 28th and arriving on the 29th. Mr. McKibben states that while in Los Angeles, he and his family visited Disneyland and Forest Service friends. He also states that his reservations for the travel to Mexico were made totally separate from his government travel and in no way encumbered the government.

The certifying officer states that although Mr. McKibben has furnished no receipts covering his travel expenses between Los Angeles and Cabo San Lucas, Mexico, there is no reason to question Mr. McKibben's statement that the government incurred no expense for this portion of his travel. As to Mr. McKibben's assertion that he and his family spent the period between March 23 and 28 in Los Angeles visiting friends and Disneyland, the certifying officer notes that no tickets or other documentation have been provided to support this assertion.

The certifying officer notes that the FTR requires that to be allowed tour renewal travel at government expense, an employee must spend a substantial amount of time in the United States (FTR § 302-1.13(b)), and he indicates it is Forest Service policy not to authorize tour renewal travel that involves travel to locations outside the United States, except for the purpose of passing through enroute to the United States. Thus, even if Mr. McKibben and family did in fact spend several days in Los Angeles after their return from Mexico, under the agency's policy, Mr. McKibben's travel would not have been authorized at agency expense had the agency been advised that he intended to spend the major portion of the period in Mexico. The certifying officer also notes that it is clear that Mr. McKibben was well aware of the Forest Service policy and that he made a conscious decision to mislead or deceive the approving official and others by stating that his travel was only to Los Angeles when in fact he intended to, and did, travel directly to Mexico, with Los Angeles being only a connection point enroute to Mexico.

The certifying officer indicates that the agency views its policy as conforming to the purpose of tour renewal agreement travel, as expressed in the legislative history of the authorizing statute, and our decision 41 Comp. Gen. 146 (1961) (response to question 2). However, the certifying officer notes that the FTR provision requires only that the employee spend a "substantial amount of time" in the United States, to qualify for the travel benefit, and we have allowed payment in a case in which the employee did not spend his entire leave time in the United States. See 53 Comp. Gen. 468 (1974) in which we the employee spent 16 days of a 61-day period in the United States. Therefore, in view of the lack of clear guidance on what is meant by

a substantial amount of time, the certifying officer asks for our views in this case before proceeding with collection action against Mr. McKibben.

The certifying officer also asks the collateral question of whether Mrs. McKibben, who is also a Forest Service employee but not personally eligible for tour renewal agreement travel because she was locally hired in Alaska, also may be held liable for the cost of the travel since she too was aware of the Forest Service's restriction on use of such travel.

ANALYSIS

As noted above, the statutory authority for home leave travel entitles eligible employees stationed at a post outside the continental United States, or in Alaska, or Hawaii, upon completion of a tour of duty, to reimbursement for travel for themselves and their families to return to their places of actual residence at the time of assignment to their posts of duty, provided the employee signs an agreement to complete another tour of duty at the current or another qualifying post. 5 U.S.C. § 5728.[3] We have noted that the primary purpose of this statute, as evidenced by its legislative history, is to bring the employee to the United States periodically for what has been termed re-Americanization leave. 46 Comp. Gen. 153, 155 (1966). The statute authorizes the President, and by delegation, the General Services Administration, to prescribe regulations governing this entitlement. Id.; Ex. Order No. 11609, July 22, 1971, 36 F.R. 13747.

Also as noted above, for an employee whose actual residence is in the United Sates, the implementing regulations permit the employee to travel to an alternate destination within the United States, and our decisions have recognized that travel may be included to locations outside the United States, provided the employee spends "a substantial amount of time" in the United States. 41 C.F.R. § 302-1.13(b)(3);[4] and 53 Comp. Gen. 468, supra. The cost to the government, however, may not exceed the amount which would have been allowed for travel from the post of duty to the place of actual residence and return to the post of duty. Id. In addition, we have held that the principle that allowable travel, under the statute, is for the purposes of returning overseas employees to their homeland for the taking of leave there, reasonably could not be extended to the mere stopping off of an employee at or near his place of residence as an incidence of a tour outside the country. 41 Comp. Gen. 146, supra. And, in the same decision, to

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[3]Originally enacted in 1954. Act of Aug. 31, 1954, 68 Stat. 1008.

[4]For this purpose, the "United States" includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands or a United States territory or possession. Id.

which the certifying officer refers as supporting the Forest Service policy, we stated that we are not aware of any legal prohibition against the issuing of an administrative regulation requiring an employee to spend a minimum amount of time at his or her actual place of residence or previously indicated [alternate] place within the country, territory, or possession of his or her residence. 41 Comp. Gen. at 148 (response to the second part of question 2).

As the certifying officer notes, while we have not attempted to fix a standard for general use in determining what is a sufficient stay to meet the requirement of a substantial amount of time in the United States, we have held that short stopovers of 1 to 4 days were not sufficient where it was apparent that the leave was not taken for the purpose of visiting the United States. See 41 Comp. Gen. 146, supra, and B-171174, Dec. 18, 1970. See also B-148858, May 24, 1962.

In the present case, in Mr. McKibben's statement provided in response to the agency's inquiry in July 1993 when agency officials became aware that the travel included the trip to Mexico, he stated that the original purpose of the trip for which he and his wife began planning in 1991 after purchasing the property in Mexico, was to bring their family to visit that property, although he also said the plans included visiting Disneyland and friends. While Mr. McKibben indicates that he and his family did stop in Los Angeles for 4 or 5 days for the latter purposes enroute back to Alaska, he has furnished no documentary evidence to support that assertion, and no explanation is provided as to why none was furnished. Also, as the certifying officer states, Mr. McKibben consciously misled agency officials as to the true destination of the travel. Concerning Mr. McKibben's statement that he felt that his employer had no right to tell him how he could spend his earned leave, the question is not how he may use his leave, it is a question as to under what conditions he is entitled to travel for himself and his family at government expense. In these circumstances, it appears that the agency's determination that the travel was not for the purpose of visiting a designated location in the United States, but was for the purpose of visiting Mexico, a purpose for which tour renewal travel at government expense is not authorized. Although the agency may not have incurred expenses in addition to what it would have incurred had the travel been for the purpose of visiting Los Angeles, as authorized, under the statute and regulations discussed above, tour renewal agreement travel at government expense is not authorized for employees in Mr. McKibben's position for the purpose of traveling to Mexico.

Accordingly, we believe it is appropriate for the Forest Service to proceed with the proposed collection action against Mr. McKibben. As to collection action against Mrs. McKibben, although we agree with the agency that as a Forest Service

employee she had a responsibility not to participate in misleading agency officials, since she had no entitlement to tour renewal travel in her own right, we believe it appropriate to limit the collection action to Mr. McKibben.

/s/Seymour Efros
for Robert P. Murphy
General Counsel