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30 Jan 70
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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

*Home leave
file*

B-159334

July 29, 1966

Mr. Mark Motis
Box 56
Mayville, North Dakota 58257

Dear Mr. Motis:

We refer to your letter of May 25, 1966, concerning your entitlement to a grant of home leave and transportation back to the United States for leave purposes as an employee of the Federal Aviation Agency, Wake Island.

In the consideration of your problem it was necessary to obtain from the Federal Aviation Agency further information as to the conditions surrounding your employment. That report now has been received.

We understand from the record that you terminated your former employment as a school teacher with the Trust Territory of the Pacific Islands by resignation effective July 16, 1965. Prior to your resignation you apparently had received the Federal Aviation Agency's message of July 6, 1965, informing you of your tentative selection as a school teacher at Wake Island subject to a preemployment check. We understand that you did not receive, prior to your resignation and departure from the Trust Territory, the Agency's letter of the same date suggesting that you not terminate your employment with the Trust Territory government until informed of a firm offer from the Agency. However, seemingly for personal reasons you resigned from your position and departed for the continental United States, having received a lump-sum payment for so much of your accumulated and accrued annual leave as was subject to such payment. While you communicated with Agency officials at Honolulu en route to the mainland, United States, your appointment with the Agency as a school teacher at Wake Island was not effected until August 27, 1965, when you were in the contiguous 48 states, and thus there occurred a break in your overseas service.

You had been informed while still in the Trust Territory, in response to your query of May 19, 1965, that the school term began in September and ended in June. Also, in response to your question whether you would be entitled to home leave after one year, the Agency replied--

"As mentioned on page 15 of the Wake brochure, home leave may be used only after completing 24 months of continuous overseas service and upon a certification by the supervisor that the employee will return to an overseas assignment."

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The efforts of the Federal Aviation Agency to arrange for your transfer from the Trust Territory effective August 15, were unsuccessful because of your earlier resignation from the latter post, and since you returned to the mainland after your tour in the Trust Territory your employment with the Federal Aviation Agency could only be incident to your appointment for service at Wake Island and without regard to your former service in the Trust Territory.

The agreement with the Federal Aviation Agency as far as transportation expenses were concerned called for 22 months of continuous service at Wake Island which, excluding the summer months and beginning effective with your arrival at Wake Island on or about August 31, 1965, would terminate near school midterm 1967-1968, a period in which your release for leave could not readily be arranged. We are informed, however, by the Federal Aviation Agency as follows:

"We should note here that his travel entitlement will occur at the end of the next school year, approximately in early June 1967. This is because the Agency, based on our request, approved a change in duty tours of teachers. Specifically, the teachers' standard tour is 21 months and 2 weeks. Repeat tours of 20 months may now be approved; whereas single and final tours must be 21 months and 2 weeks."

As you apparently are aware transportation at Government expense for leave purposes is based upon section 7 of the Administrative Expenses Act of 1946, as amended, 5 U.S.C. 73b-3, third proviso, which reads in part as follows:

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leave*

"* * * Provided further, That expenses of round trip travel of employee and transportation of immediate family but excluding household effects, from their posts of duty outside the continental United States to the places of actual residence at time of appointment or transfer to such overseas posts of duty, shall be allowed in the case of persons who have satisfactorily completed an agreed period of service overseas and are returning to their actual place of residence for the purpose of taking leave prior to serving another tour of duty at the same or some other overseas post, under a new written agreement entered into before departing from the overseas post * * *"

Your service agreement is within the scope of the statute and as modified by the Agency would appear to establish your eligibility for transportation for leave purposes (other than a grant of home leave as indicated below)

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in June 1967 rather than June 1968.

A grant of home leave as distinguished from transportation at Government expense for leave purposes is authorized by section 203(f) of the Annual and Sick Leave Act of 1951, 5 U.S.C. 2062(f) which reads in part as follows:

"Upon completion of twenty-four months of continuous service outside the United States, officers and employees may be granted, in accordance with regulations of the President, leave of absence at a rate not to exceed one week for each four months of such service without regard to any other leave provided by this chapter, for use in the United States, or, if their respective places of residence are outside the area of employment, in the Commonwealth of Puerto Rico or the possessions of the United States. * * *

Section 630.606(a) of the Civil Service Commission's Regulations issued under the above-quoted language reads:

"Except as otherwise authorized by statute, an employee is entitled to home leave only when he has completed a basic service period of 24 months of continuous service abroad. This basic service period is terminated by (1) a break in service of one or more workdays, or (2) an assignment (other than a detail) to a position in which an employee is no longer subject to section 203(f) of the act."

Since prior to completing 24 months of continuous service overseas there was in fact a break in service immediately prior to your employment with the Federal Aviation Agency it appears you could not be credited with the period of time you served with the Trust Territory so as to permit tacking on the service with the Federal Aviation Agency to complete such 24 months. Before being eligible for a grant of home leave you would have to complete a new period of 24 months of continuous service overseas beginning with your service with the Federal Aviation Agency toward which service we understand annual leave and 2 weeks of leave without pay during the summer period is creditable.

A copy of this letter is being transmitted to Senator Milton R. Young who has evinced an interest in your case.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States