

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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November 17, 2000

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GSBCA 15178-TRAV

In the Matter of LAWRENCE J. BRENNER

Lawrence J. Brenner, Anchorage, AK, Claimant.

J. Patrick O'Toole, Director, Division of Travel Management, Social Security Administration, Baltimore, MD, appearing for Social Security Administration.

**HYATT**, Board Judge.

Claimant, Lawrence J. Brenner, is seeking a decision on when his current tour of duty in Alaska should be considered to have begun, and when it will end, for purposes of entitlement to tour renewal agreement travel under the Federal Travel Regulation (FTR).

Background

Mr. Brenner, who works for the Social Security Administration (SSA), transferred from the continental United States to Anchorage, Alaska, in 1974. Under SSA's personnel manual, tour renewal agreement travel, or round-trip transportation to the employee's home of record in the continental United States, is authorized for employees recruited from the continental United States to work in Alaska at the completion of each twenty-two month tour of duty.

It appears that the last tour of duty completed by Mr. Brenner prior to the occurrence of this dispute was to have run from August 30, 1996, to June 30, 1998. His tour renewal agreement travel was to have begun on July 2, with his new tour to begin August 1, 1998. Instead, Mr. Brenner postponed his tour renewal travel until August.<sup>1</sup> He completed his travel and returned to Anchorage on August 30, 1998, which is when SSA contends the new tour of duty began.

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<sup>1</sup>Mr. Brenner states that he asked SSA if he could postpone his tour renewal agreement travel and was given no response. Based on his understanding of procedures in effect at other agencies, Mr. Brenner assumed he could postpone travel for a brief period and did so.

SSA's Personnel Manual states that:

A tour of duty at an overseas station begins on the date the employee enters on duty at the overseas duty station. The tour ends at the close of business on the last workday before departure for separation or for assignment in the continental U.S.

Consecutive overseas tours of duty are 22 months, excluding any periods of home leave.<sup>2</sup>

HHS [Health and Human Services] Personnel Manual, Instruction 301-1-70A, B.2.

SSA contends that under the personnel manual the prior tour of duty ended the day before Mr. Brenner commenced his tour renewal agreement travel in early August 1998, and that the new tour of duty commenced upon his return on August 30, 1998. Claimant maintains that the postponement of travel did not extend his prior tour of duty and that the new twenty-two month tour began in the beginning of July 1998, when, in his view, he completed the previous tour.

#### Discussion

Under 5 U.S.C. § 5728(c)(2) (1994) employees such as Mr. Brenner, who have been recruited for posts of duty in Alaska or Hawaii, are authorized overseas tour renewal agreement travel between consecutive tours of duty.<sup>3</sup>

The expenses payable . . . are 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 in Alaska or Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, incurred after he has satisfactorily completed an agreed upon period of service in Alaska or Hawaii and in returning to his actual place of residence to take leave before serving another tour of duty at the

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<sup>2</sup>Home leave, which accrues in addition to, and separately from, annual leave, is not available to employees recruited to work in Alaska. The concepts of tour renewal agreement travel and home leave are independent entitlements that are often provided coincidentally to qualified employees. Estelle D. Maldonado, 62 Comp. Gen. 545 (1983). Although the SSA provision refers to home leave, the concept of an overseas tour of a specific duration is equally applicable to those employees in Alaska who are still eligible for tour renewal agreement travel.

<sup>3</sup>Under current law, employees recruited to work in Alaska and Hawaii are limited to two trips in five years. 5 U.S.C. § 5728(c)(3); 41 CFR 302-1.13 (1999). This claimant is not affected by this rule because he was stationed in Alaska prior to September 1982.

same or another post of duty in Alaska or Hawaii under a new written agreement made before departing from the post of duty.

This provision is implemented by the FTR, which authorizes an agency to pay the round-trip transportation expenses 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 residence in the United States and designated territories for the purpose of returning home to take leave "between tours of duty." 41 CFR 302-1.13.

The General Accounting Office (GAO), which previously decided these claims, has recognized that the statutory provision for tour renewal agreement travel to the continental United States should be given a liberal construction to effect the beneficial purpose for its enactment. Charles E. Potts, 65 Comp. Gen. 213 (1986). Consistent with this principle, GAO has suggested that while the statute refers to travel upon the completion of one tour of duty and prior to commencing a subsequent tour, it is permissible to allow employees stationed overseas or in Alaska or Hawaii to take tour renewal travel for up to six months before and six months after completing a tour of duty. Department of the Army, B-199643 (Sept. 30, 1981). The Board also has stated that tour renewal travel should be taken "between tours of duty or within a reasonable time after entering into a renewal agreement." George E. Lingle, GSBCA 13946-TRAV, 97-2 BCA ¶29,292, modified on reconsideration,

98-1 BCA ¶ 29,439. This recognizes that given work commitments, school schedules, and other matters, it may not always be possible for an overseas employee, and his or her family, to take tour renewal agreement travel precisely at the expiration of the current tour. This interpretation also permits reasonable flexibility in the scheduling of such travel. Department of the Army; see also Charles E. Potts; Dick D. Hendricks, B-205137 (May 18, 1982). GAO permitted this approach by adjusting the length of the tours of duty to account for the earlier or later travel times. It held that the time of completion of the prior tour and the period of leave taken should both be accounted for in determining the period of the subsequent tour of duty. Department of the Army. For example, if travel is postponed for two months, the earlier tour would be extended by two months and the following tour, which would begin upon the employee's return from tour renewal travel, would be shortened by two months.<sup>4</sup>

Under this reasoning, claimant's previous tour of duty should be considered to have been extended until August 1, 1998. In calculating the period of the subsequent tour, however, which began upon Mr. Brenner's return, the agency should have taken into account the additional time served in the prior tour and credited Mr. Brenner with that time.<sup>5</sup> It appears that Mr. Brenner generally takes about a month for tour renewal travel. Assuming he took a month of renewal travel in August 1998, the new tour would have begun on or about August 30, 1998, and continued for twenty-one months until the end of May 2000.<sup>6</sup> Again, assuming about thirty days of tour renewal travel were taken at that time, the next 22 month tour would begin on about July 1, 2000, and continue through the end of April 2002. If tour renewal agreement travel was not taken at these times, the tours should be adjusted accordingly.

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CATHERINE B. HYATT  
Board Judge

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<sup>4</sup>This is an acceptable way of permitting flexibility in the taking of tour renewal travel so long as the actual subsequent overseas tour is longer than one year. Department of the Army.

<sup>5</sup>This interpretation best reconciles the two potentially conflicting requirements in SSA's personnel manual: that overseas tours be for twenty-two months and that the prior tour end and tour renewal travel be taken before the next tour commences.

<sup>6</sup>It appears from the record that claimant normally took about this much time. If he did not take such an amount when completing this particular tour renewal travel, the dates should be adjusted to reflect the actual period of time taken.