



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 3, 2016

CBCA 4978-RELO

In the Matter of TIMOTHY J. FISHER

Timothy J. Fisher, Sacramento, CA, Claimant.

Chris Barned, Relocation Specialist/Certifying Officer, National Operations Center, Bureau of Land Management, Department of the Interior, Denver, CO, appearing for Department of the Interior.

**DANIELS**, Board Judge (Chairman).

The Department of the Interior's Bureau of Land Management (BLM) asks us to reconsider our decision in *Timothy J. Fisher*, CBCA 4978-RELO, 15-1 BCA ¶ 36,172. In that decision, we granted Mr. Fisher's claim for reimbursement of days thirty-one through sixty of actually-incurred temporary quarters subsistence expenses (TQSE). We did this because his request for that benefit had been approved by BLM's deputy state director, as permitted by the Department of the Interior's Permanent Change of Station Policy.

BLM believes that the Policy should be construed to preclude the claim, since the claim was made after Mr. Fisher's initially-authorized thirty days of TQSE had concluded. BLM maintains that whether to allow TQSE is a matter of agency discretion, and it directs us to a statement in the General Accountability Office's (GAO's) *Principles of Federal Appropriations Law*, vol. I at 3-43 (3d ed. 2004), that generally, "[d]iscretion must be exercised before the obligation is incurred."

BLM is correct in observing that whether to grant TQSE to a transferring employee, and whether to grant certain extensions of the period of eligibility for TQSE, are determinations which are within the discretion of the agency. See, e.g., *Nelson A. Kraemer*, CBCA 5017-RELO (Jan. 15, 2016); *Michael R. Lujan*, CBCA 4613-RELO, 15-1 BCA

¶ 36,096; *Stephen J. Collier*, CBCA 4395-RELO, 15-1 BCA ¶ 35,979; *Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633 (all citing 5 U.S.C. § 5724a(c)(1) (2012)); *see also* 41 CFR 302-6.6 (2014)). In looking to GAO’s exposition of the law, however, BLM ignores the statement that “[b]y issuing regulations, an agency may voluntarily (and perhaps even inadvertently) limit its own discretion. A number of cases have held that an agency must comply with its own regulations, even if the action is discretionary by statute.” *Principles of Federal Appropriations Law*, vol. I at 3-47.

As we explained in our earlier decision in this case, the Department of the Interior has provided in its Permanent Change of Station Policy that some requests for extensions of the period of eligibility for TQSE – those made by transferred employees for whom a househunting trip was authorized and taken – “must be made **prior** to the end of the first 30-day period.” The Policy does not limit, however, when such requests may be made by employees like Mr. Fisher for whom a househunting trip was *not* authorized and taken. Thus, as we concluded, those requests may be made and considered after the end of the first thirty-day period of TQSE.

This may not be the rule that the writers of the Policy intended, but it is the rule that they established. It is therefore the rule we must enforce. We consequently affirm our earlier conclusion, after considering BLM’s request for reconsideration.

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STEPHEN M. DANIELS  
Board Judge