



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 9, 2009

CBCA 1435-RELO

In the Matter of JOHN CELMER

John Celmer, Castro Valley, CA, Claimant.

Robert Weeden, Defense Finance and Accounting Service, Indianapolis, IN,
appearing for Department of Defense.

KULLBERG, Board Judge.

Claimant, Mr. John Celmer, has requested review of the denial of his request for an extension of time beyond the two-year period in which he was allowed to submit his claim for real estate expenses after his permanent change of station (PCS). Mr. Celmer contends that the Defense Finance and Accounting Service (DFAS) should have granted an extension due to his extenuating circumstances, which included his unsuccessful efforts in negotiating terms for the purchase of a home. For the reasons stated below, the claim is denied.

Background

On November 30, 2006, Mr. Celmer, a Department of the Army employee, was issued PCS orders that transferred him from the DFAS office in Oakland, California, to the Army Corps of Engineers office in Sacramento, California. Mr. Celmer's reporting date at his new duty station was December 11, 2006. His orders provided for reimbursement of real estate expenses.

Subsequent to his reassignment in Sacramento, Mr. Celmer entered into his first contract for a home and applied for a loan on February 6, 2007, but he was unable to

negotiate satisfactory terms and canceled the contract on July 11, 2007. Mr. Celmer entered into a contract for another home and applied for a loan on August 4, 2007. Negotiations were again unsuccessful, and Mr. Celmer canceled that second contract on March 25, 2008. Mr. Celmer then entered into an agreement on July 6, 2008, for the construction of a home that was to be ready at some time during February of 2009. While attempting to arrange for the purchase of a new home, Mr. Celmer did not attempt to sell his home in the San Francisco Bay area.

On November 5, 2008, Mr. Celmer requested from DFAS an extension of the two-year period from the date of his assignment to Sacramento in which to submit a claim for reimbursement of his real estate expenses. Mr. Celmer explained that he needed the extension because of the difficulties he had experienced in attempting to purchase a home. On December 2, 2008, DFAS notified Mr. Celmer that his request for an extension had been denied in that he had not shown extenuating circumstances. DFAS' letter noted that Mr. Celmer had canceled two contracts for the purchase of homes due to disagreements about the terms of the sale, and, finally, Mr. Celmer had contracted for the construction of a house that would not have been completed until February of 2009, which was more than two years after his reassignment. Finally, DFAS' letter noted that Mr. Celmer had not sold his former residence. Mr. Celmer then sought review of DFAS' determination at this Board.

Discussion

Under the Federal Travel Regulation (FTR), a government employee's claim for costs related to the sale or purchase of a house in connection with his or her PCS move "must occur not later than 2 years after the day [an employee] report[s] for duty at [his or her] new official station." 41 CFR 302-11.21 (2008) (FTR 302-11.21). An employee's agency may extend that two-year period by an additional two years "for reason[s] beyond [the employee's] control and acceptable to the agency." FTR 302-11.22. An agency's determination of whether to grant a two-year extension is subject to a finding that the "[e]mployee has extenuating circumstances which have prevented him/her from completing his/her sale and purchase or lease termination transactions in the initial authorized time frame of two years" FTR 302-11.421. The Joint Travel Regulations (JTR), which are also applicable in this case, similarly require a finding of extenuating circumstances for granting an extension beyond the two-year period allowed for filing a real estate expenses claim. JTR C5750-C.7. The General Services Board of Contract Appeals (GSBCA), which previously decided employee relocation cases, recognized that "[t]he FTR and the JTR vest broad discretion in agencies to decide whether to approve requests for additional periods of time in which transferred employees' real estate transactions may . . . generate reimbursable expenses." *Michele A. Fennell*, GSBCA 16015-RELO, 03-1 BCA ¶ 32,177, at 159,080. Determinations by agencies to grant or deny such extensions "are subjective, and because the

law grants broad discretion to the agency, we will not disturb any of them unless we find that a determination is arbitrary, capricious, or clearly erroneous.” *Larry E. Olinger*, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877, at 147,931.

Although Mr. Celmer contends that the rejection of his good faith efforts in attempting to purchase homes on two different occasions were extenuating circumstances, he has not shown any grounds for this Board to reverse DFAS’ denial of his request for a time extension. DFAS took a different view of Mr. Celmer’s circumstances and found that his personal choices contributed to his failure to purchase a new home and sell his former home within two years after his assignment. Those choices included canceling two contracts and contracting to build a house that would not be completed within two years after his reassignment. Also, DFAS viewed Mr. Celmer’s decision not to sell his former residence until he had purchased a new home as a matter of personal convenience. This Board, consequently, does not find that the denial of Mr. Celmer’s request for an extension was arbitrary, capricious, or clearly erroneous.

Mr. Celmer also contends that he had no control over the sellers who rejected his good faith terms when he twice attempted to purchase a home. This Board recognizes that “[v]irtually all transferred employees encounter some sort of difficulties in finding new residences” *Larry E. Olinger*, 98-2 BCA, at 147,931. By allowing two years in which to submit a claim for real estate expenses, the FTR and JTR “take into consideration the normal range of difficulties.” *Id.* Inherent in any arms-length real estate transaction is that both parties are free to accept or reject its terms. Mr. Celmer did not encounter anything beyond the normal range of difficulties when his terms were rejected. The fact remains that Mr. Celmer had two years in which to conclude all such real estate transactions, and DFAS determined that there were no extenuating circumstances that prevented him from doing so. The Board finds no basis for reversing that determination.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge