



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May30, 2012

CBCA 2595-RELO

In the Matter of WILLIAM F. BROOKS, JR.

William F. Brooks, Jr., Boerne, TX, Claimant.

Walter C. Ingram, Budget Analyst, Headquarters Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

We affirm the determination of the Department of the Air Force not to extend the period of time in which the Government will pay for temporary storage of a transferred employee's household goods.

Background

In 2010, William F. Brooks, Jr., and his wife, who were living in Colorado and working for the Federal Government, decided to move to San Antonio, Texas. Mrs. Brooks found a job first; she moved to San Antonio in August.

In San Antonio, Mrs. Brooks lived at first in a motel. In mid-September 2010, seeking more economical housing, she moved into an apartment under a lease which would not expire until October 31, 2011. Mr. and Mrs. Brooks elected this lease, rather than one for a shorter term, because they considered that the monthly rent was far more reasonable.

Mr. Brooks's job search was finally successful in March 2011, when the Air Force selected him for a position in San Antonio. His orders provided for relocation benefits,

including storage of his household goods for a period of ninety days. He moved in April and took up residence with his wife in her apartment.

Because the apartment was too small to hold most of the couple's household goods, Mr. Brooks kept those goods in storage after his move. The goods remained there until December 2011, when the couple moved to a rented house.

Discussion

By statute, an employee who is transferred in the interest of the Government is entitled to be paid for the temporary storage of household goods which are being moved from the old duty station to the new one. 5 U.S.C. § 5724(a)(2) (2006). The Federal Travel Regulation (FTR) limits the time during which the Government is responsible for this storage. The initial period is not to exceed ninety days. At the employee's written request, "an additional 90 days may be authorized by the designated agency official." 41 CFR 302-7.8 (2010).

The FTR provides that –

[r]easons for justifying temporary storage beyond the initial 90-day limit include, but are not limited to:

- (a) An intervening temporary duty or long-term training assignment;
- (b) Non-availability of suitable housing;
- (c) Completion of residence under construction;
- (d) Serious illness of employee or illness or death of a dependent;
- (e) Strikes, acts of God, or other circumstances beyond the control of the employee; or
- (f) Similar reasons.

41 CFR 302-7.9. The Joint Travel Regulations, which implement and supplement the FTR with application to Department of Defense employees, contain the same examples of reasons justifying authorization of an additional ninety days of storage of household goods at government expense. JTR C5190-B.2.

The Air Force denied Mr. Brooks's request for an additional ninety days of storage on the ground that none of the cited reasons apply to his situation. The agency explained, "Mr. Brooks was aware that the apartment was not able to accommodate their HHGs [household goods] prior to his spouse signing the contractual agreement with the rental agency and/or renter and [it] was well [with]in their control to accept or look further for a

more spacious accommodation for their HHGs. Therefore, [the cost of] additional storage will be borne by the employee.”

Mr. Brooks maintains that the Air Force should have granted his request because the predicament in which he found himself qualifies as “other circumstances beyond the control of the employee” or a “similar reason.” The employee contends that remaining in the apartment was the only practical course for the couple, given the considerable savings in rental costs from signing a one-year lease. He argues that because his goods would not fit in the apartment, the Government should have paid to store them for an additional ninety days. In his reply to the agency’s explanation to the Board, Mr. Brooks also notes that from March to July of 2011, his wife was seriously ill. “Needless to say, that was the priority and the last thing we thought about was finding another place to live.”

We follow the practice of our predecessor in settling claims for federal civilian employee relocation benefit claims, the General Services Board of Contract Appeals, that when regulations vest discretion in an agency with respect to the authorization of particular relocation expenses, the agency’s judgment will not be disturbed unless the determination is arbitrary, capricious, or clearly erroneous. *Jacqueline Lazu Laboy*, GSBCA 16738-RELO, 06-1 BCA ¶ 33,205; *Sherwood McIntyre*, GSBCA 16345-RELO, 04-2 BCA ¶ 32,687; *Larry E. Olinger*, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877; *see also John Celmer*, CBCA 1435-RELO, 09-2 BCA ¶ 34,167 (relating to extensions of time in which to make real estate transactions for which expenses will be reimbursed); *David Eichamer*, CBCA 1090-RELO, 08-2 BCA ¶ 33,910 (same). We do not find arbitrary, capricious, or clearly erroneous the agency’s reasoning and determination as to Mr. Brooks’s request to have his goods stored for more time at government expense. We therefore do not set aside the determination. Thus, even if we were to agree with Mr. Brooks that the Air Force, in applying the regulations governing temporary storage of household goods, could have granted his request, we would still uphold the agency’s determination. *Richard Whitley*, GSBCA 16734-RELO, 06-1 BCA ¶ 33,169 (2005); *Jennifer Chapman*, GSBCA 16680-RELO, 05-2 BCA ¶ 33,074; *Michèle A. Fennell*, GSBCA 16015-RELO, 03-1 BCA ¶ 32,177; *Olinger*.

We note that Mr. Brooks raised in his final filing with the Board one reason for granting additional storage time which the Air Force has not had an opportunity to consider: his wife was seriously ill at the time he arrived in San Antonio, and he devoted his time outside work to caring for her, leaving no opportunity to find a home which would accommodate his goods. Mr. Brooks has made clear, however, that even if his wife had

remained in good health, the couple intended to remain in the apartment for the entire duration of the lease. Thus, the agency's reasoning and determination should not have changed had the information about Mrs. Brooks's health been made known earlier.

STEPHEN M. DANIELS
Board Judge