



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 10, 2014

CBCA 4178-RELO

In the Matter of GARY D. TURNER

Gary D. Turner, McCordsville, IN, Claimant.

Sheila Melton, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

WALTERS, Board Judge.

Claimant, Gary D. Turner, an employee of the Defense Finance and Accounting Service (DFAS), was transferred from Cleveland, Ohio, to Indianapolis, Indiana, under a permanent change of station (PCS). DFAS denied Mr. Turner reimbursement of real estate expenses he incurred in conjunction with his relocation to Indianapolis. For the reasons explained below, we find the agency to have been correct in that denial.

Background

Mr. Turner's PCS transfer was done under orders issued on June 9, 2011. His report date to the DFAS office in Indianapolis was August 14, 2011. Mr. Turner initially applied to participate in the guaranteed home sale program under the Defense National Relocation Program (DNRP). Because of difficulties encountered with the relocation contractor, however, he opted out of the DNRP and had his orders amended on October 27, 2011, in order to permit him reimbursement for normal relocation related real estate expenses pursuant to the Joint Travel Regulations (JTR). In connection with the transfer, in June 2011, claimant was provided with written agency guidance, the DFAS PCS Booklet and Resource Guide, that advised that he would have a two-year benefit period within which real estate

expense reimbursement could be obtained and that the two-year benefit period could be extended, upon request, for up to two additional years.

In May 2012, claimant submitted a written request for a two-year extension for real estate expense reimbursement. Mr. Turner states that, at the time, he sought confirmation that his request was proper, and the agency team concurred. Ultimately, the agency amended Mr. Turner's orders to provide for a one-year extension, rather than the two-year extension requested. The amendment read as follows:

AMENDS BLK 28. (REMARKS) ADD: EMPLOYEE HAD EXTENUATING CIRCUMSTANCES THAT PREVENTED HER [sic] FROM COMPLETING THE PURCHASE TRANSACTIONS WITHIN THE INITIAL 2-YEAR PERIOD AND THAT THE DELAYED TRANSACTIONS ARE REASONABLY RELATED TO THE PCS. THEREFORE THE REAL ESTATE EXPENSES ARE AUTHORIZED FOR ADDITIONAL 1 YEAR.

On July 3, 2012, the agency confirmed that Mr. Turner had until August 2014, i.e., three years from his report date, to claim for real estate expense reimbursement.

On March 28, 2014, Mr. Turner closed on the purchase of a home that had been constructed for him in Indiana. He initiated a claim for real estate expense reimbursement in the amount of \$3713 with the DFAS real estate claims examiner on April 7, 2014. The claim, which was endorsed by Mr. Turner's supervisor, was approved by the claims examiner and forwarded to DFAS Rome (the travel pay office) for payment on April 21, 2014. When Mr. Turner contacted the DFAS Travel Pay Customer Care Center on May 9, 2014, he was surprised to learn that DFAS Rome had decided to deny the claim. Though the denial purportedly was communicated on April 28, 2014, via electronic mail message, it seems that the message may have been improperly addressed to another DFAS employee named Turner. The agency states that the April 28 message had advised that it was denying the claim in accordance with JTR chapter 5, which, effective August 1, 2011, had been revised to provide an employee with only a one-year benefit period for recovery of relocation-related real estate expenses, with a possible extension of only one additional year – such that the total period of possible reimbursement eligibility would be two years from the employee's PCS report date, rather than four. The message, the agency indicates, also “informed that there was no authority to waive the 2 year time limitation.”

Claimant was told that, if he wished to do so, he could prepare an appeal package and that his supervisor (as the travel authorizing official) would have to provide an endorsement letter concurring with the appeal. Mr. Turner relates that, on May 14, 2014, he assembled the appeal package after obtaining further instructions, that he eventually received the

endorsement letter from his supervisor in early August 2014, and that he forwarded the package to DFAS Rome on August 6, 2014. The agency subsequently filed the appeal with this Board on Mr. Turner's behalf on September 25, 2014. The Board sought additional information from Mr. Turner and the agency, in the form of a direct detailed statement from the claimant and an agency reply, and both were subsequently received.

Discussion

For PCS transfers with a reporting date on or after August 1, 2011, the Federal Travel Regulation (FTR) imposes a time limitation of one year from the reporting date within which the sale and/or purchase of real estate must occur in order to obtain reimbursement for related costs. 41 CFR 302-11.21 (2011). And, although the FTR permits an agency to extend that time limitation for "up to one additional year for reasons beyond [the employee's] control and acceptable to [the] agency," 41 CFR 302-11.22, with one exception (i.e., 41 CFR 302-2.106, under which the head of the agency or designee may waive the time limitation, where the employee is relocating to or from a "remote" or "isolated" location), there is no authority for an agency to extend the time limitation beyond the two-year total. *Kenneth T. Donahoe*, CBCA 3619-RELO (Sept. 10, 2014). These FTR time limitations are mirrored under the JTR, which implements the FTR for civilian employees of the Department of Defense such as claimant. JTR chapter 5, part P provides, in this regard:

C. Time Limit for Residence/Lease Termination Transactions

- *1. Settlement for the sale, purchase, or lease termination transactions should be not later than 1 year after the employee's transfer effective date (see APP A).
- 2. For an employee eligible under par. C5750-D, the new PDS is the PDS to which the employee reports for duty when reassigned/transferred from a foreign area.
- *3. The 1-year period begins on the employee's transfer effective date and ends on the first anniversary of that date. . . .
- *4. The 1-year period may be extended for up to an additional year by the funding activity's commanding officer/designee. See par. C5750-C10 for extension limits.
- *5. The employee should submit a written time extension request to the appropriate authority within the initial 1-year period.

*6. Action on a request, submitted more than 30 calendar days after the initial 1-year expiration date, is at the option of the commanding officer of the activity bearing the cost.

*7. An extension may be granted only if extenuating circumstances prevented the employee from completing the sale, purchase and/or lease termination transactions within the initial 1-year period and that the delayed transactions are reasonably related to the PCS.

*8. Costs for transactions completed after the 2-year period may not be reimbursed.

*9. The 1-year extension is effective for an employee whose transfer effective date (APP A) is on or after 1 August 2011.

10. *There is no authority to waive the 2-year time limitation under any circumstances. The time limitation is imposed in FTR §302-2.8 and 302-2.11 which have the force and effect of law.

JTR C-5750 (citations omitted).

The time limitation for recovery of relocation-related real estate expenses is dependent on the PCS reporting date and whether or not it preceded the August 1, 2011, effective date of the current regulations. *See Richard O. Dickson, CBCA 2793-RELO, 12-2 BCA ¶ 35,133, at 172,485.* In the present case, the parties are in agreement that Mr. Turner's PCS reporting date was on August 14, 2011, after the effective date of the regulations. Thus, per the regulations, claimant's entitlement to reimbursement for relocation related real estate expenses expired on August 14, 2013, notwithstanding the agency's assurance that he had until August 2014 to incur such expenses. And, as DFAS correctly asserts, despite such prior assurance, it is without authority to waive the two-year time limitation and may not reimburse Mr. Turner for the costs of any transactions completed after the two-year period. Certainly, neither Cleveland nor Indianapolis could be considered a "remote" or "isolated" location.

There is no question that the unfortunate situation in which Mr. Turner finds himself was brought about by incorrect agency guidance. Although, technically, the DFAS PCS Booklet and Resource Guide was accurate in June 2011, when Mr. Turner's orders were first issued, it ceased being accurate shortly thereafter, and agency personnel should have made Mr. Turner aware that the regulation change that went into effect on August 1, 2011, halved the benefit period and any possible extension period. Instead, not only did cognizant agency personnel confirm the propriety of Mr. Turner's request for an extension of the benefit period

beyond the initial two years, but they amended his orders to provide for a third year long after the new regulations took effect and approved his claim for the costs he expended in that third year, at least up until that claim reached DFAS Rome. Still, as the agency indicates, neither it nor this Board has the authority to waive, modify, or depart from the Government's official travel regulations for the benefit of any federal employee who is subject to them, absent a specific provision in statute or regulation granting an exception under specified circumstances. *Donahoe*, slip op. at 10 (citing *Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614, at 161,405). Agency communications of information that conflict with regulations cannot be binding on the agency and, indeed, the agency is prohibited from honoring its commitments based on such communications, even if the employee relies to his detriment on the agency's assurances. *Id.* (citing *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255, at 164,834).

Decision

For the foregoing reasons, we sustain the agency's decision denying reimbursement for the relocation related real estate expenses.

RICHARD C. WALTERS
Board Judge