



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 7, 2016

CBCA 5155-RELO

In the Matter of DUSTIN L. SAUER

Dustin L. Sauer, Midwest City, OK, Claimant.

Maili Peters, Section Chief, Joint Base San Antonio-Randolph, TX, appearing for Department of the Air Force.

SHERIDAN, Board Judge.

Claimant, Dustin L. Sauer, a civilian employee of the Department of the Air Force (Air Force or agency), has asked this Board to review the agency's denial of his request for a six-month extension of time to settle the sale of his house at his old duty station after a permanent change of station (PCS) move. The Air Force denied the request concluding that no extenuating circumstances existed to justify a time extension. We conclude that the agency reasonably exercised its discretion.

Background

Pursuant to PCS orders, claimant moved from Barksdale, Louisiana, and reported for duty at Joint Base San Antonio-Randolph, Texas, on August 13, 2014.

In accordance with the Joint Travel Regulation (JTR) 5908-C.1, claimant had one year to complete his real estate transactions in order to file a real estate reimbursement claim and have it paid. Such one-year period is subject to an extension upon request and provided exigent circumstances prevented the employee from selling his house at his old permanent duty station (PDS).

On July 31, 2015, claimant submitted a request asking for a six-month extension to file for reimbursement of real estate expenses associated with the sale of his house.

As reason for the request claimant explained that the house in issue, located in Bossier City, Louisiana, was purchased in May 2012 while claimant was in a three-year internship at Barksdale Air Force Base (AFB). Claimant expected to be placed at Barksdale AFB after the internship was completed, and had made approximately \$30,000 in improvements on the house between May 2012 and August 2014. Instead, claimant was transferred to Tinker AFB in Oklahoma.

On June 5, 2014, claimant placed his house on the market and listed it for \$95,000. The house stayed on the market until September 29, 2014, when claimant rented the house to tenants. The house stayed off the market until June 16, 2015, when it was re-listed at \$87,500.¹ The sale price was reduced again to \$84,900 in July. It was sold, and the sale was closed on November 20, 2015.

On December 2, 2015, the Air Force denied claimant's request for an extension finding that "extenuating circumstances did not prevent [claimant] from selling his house during his initial one-year reimbursement period":

Rather, a major factor in his failure to sell his house was his decision to rent it for approximately three-fourths of his initial one-year period. Such a decision was found not to be an extenuating circumstance that authorized an extension. In fact, had his renters not breached the lease, such period of rent would have consumed even more of his one-year period for selling the house.

Claimant raises several arguments to justify the existence of extenuating circumstances. He asserts that home improvements complicated finding an appropriate selling price that the local market would bear and that he had been assured that he did not have to worry about finding a job after his internship because of the large number of openings at Barksdale AFB, the home to several Air Force commands. In concluding that no extenuating circumstances existed to justify an extension, the Air Force responds that claimant had no reason to be surprised by his PCS orders as he knew mobility was a condition of his internship, and that he might be required to move to another location.

¹ In June 2015, the renters broke the lease.

Discussion

Statute provides that under regulations prescribed by the Administrator of General Services, agencies “shall pay” real estate transaction expenses to an employee who transfers in the interest of the Government when the old and new official stations are located within the United States. 5 U.S.C. § 5724a(d)(1) (2012).

The Federal Travel Regulation (FTR) implements this statutory directive by establishing procedures that agencies use to process claims for real estate transaction expenses. 41 CFR 302-11.1-.451 (2015). The FTR establishes a one-year window for claiming real estate transaction expenses that starts the day after the employee reports for duty at his or her new duty station. *Id.* at 302-11.21. The agency may extend the one-year window for up to an additional year, for reasons beyond the control of the employee and for reasons acceptable to the agency. *Id.* at 302-11.22. In that regard, the FTR provides:

When authorizing an extension of time limitation, you must determine that the:

- (a) Employee 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 one year; and
- (b) Employee’s residence transactions are reasonably related to his/her transfer of official station.

Id. at 302-11.421. The JTR echoes the FTR in JTR 5908-C. Specifically, JTR 5908-C sets time limits for sale of residence 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).

.....

3. The 1-year period begins on the employee’s transfer effective date and ends on the first anniversary of that date. For example: If an employee’s transfer effective date was 20 October 2011, settlement must occur no later than 20 October 2012.

4. The 1-year period may be extended for up to an additional year by the funding activity's commanding officer/designee. See par. 5908-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. (CBCA 2092-RELO, 13 October 2010)

In *Eugene Andruchowicz*, CBCA 3022-RELO, 13 BCA ¶ 35,200, at 172,700 we noted:

The FTR vests 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. Because this discretion is considerable, we will not disturb an agency's decision unless it is arbitrary, capricious, or clearly erroneous. *Nhat D. Nguyen*, GSBCA 15859-RELO, 02-2 BCA ¶ 31,986.

We find the Air Force reasonably exercised its discretion in considering the fact that claimant's house was off the market much of the initial one-year period.²

² Claimant has inferred that AF personnel lead him to believe he was likely to be stationed at Barksdale AFB after his internship ended and that representation was, in part, why he purchased the house. While the facts do not support such a holding, even were we to find that Barksdale AFB personnel had mislead claimant about a future posting at Barksdale AFB, we could not find in favor of claimant. It is well-established that "erroneous advice by government employees forms no basis for us to grant relief to a claimant. Only expenses that are authorized by statute and regulations may be reimbursed." *Andruchowicz*, at 172,700 (citing *Terry L. Patrick*, CBCA 1200-RELO, 08-2 BCA ¶ 33,978).

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge