



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 2, 2014

CBCA 4118-RELO

In the Matter of REXFORD D. BELLEVILLE

Rexford D. Belleville, Tyndall Air Force Base, FL, Claimant.

Jean R. Love, Division Chief, Air Force Compensation and Travel, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

VERGILIO, Board Judge.

The agency should have considered the claimant's request to extend the one-year period for completing residential transactions. The request was made more than thirty calendar days after that period had expired but prior to the agency providing the claimant with written approval that he was entitled to recover reimbursable real estate transaction expenses and after the agency incorrectly had informed the claimant that the initial period to complete a purchase was two years. The determination not to consider the request was based upon incorrect factual determinations and was unreasonable. The agency must now decide whether to extend the one-year period.

The claimant, Rexford D. Belleville, accomplished a permanent change of station from outside the continental United States to within the continental United States, with a reporting date of February 11, 2013. The effective transfer date was his reporting date. 41 CFR 302-2.3 (2013) (Federal Travel Regulation (FTR) 302-2.3); Joint Travel Regulations (JTR) C5025. Applicable regulations state that all aspects of the relocation must be completed within one year of the effective date of the transfer. However, the agency may extend that prescribed period for up to one year. To be eligible for consideration of an extension request, the claimant must submit a request to the agency not later than thirty calendar days after the expiration date, unless the agency specifically extends the thirty-day period. FTR 302-2.8, 302-2.11, 302-11.21 to -11.23; JTR C5750-C (settlement for the purchase transaction should be not later than one year from the transfer effective date). As detailed in the JTR, "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.” JTR C5750-C.6. Further, an extension may be granted only if extenuating circumstances prevented the employee from completing the purchase within the initial one-year period and the delayed transactions are reasonably related to the permanent change of station. JTR C5750-C.7.

Prior to the actual transfer, the claimant received a briefing that identified as a mandatory entitlement, only in certain circumstances, the transaction expenses incurred in the purchase of real estate at the new duty station. The briefing specified that this entitlement must be utilized within twelve months of the start date, although one twelve-month extension could be requested in very limited circumstances. At the time of the transfer, the claimant’s written authorization did not indicate approval of real estate expenses for reimbursement. When at the new duty station, the claimant questioned that the real estate block on his orders had not been checked. The agency informed the claimant that the box did not need to be checked because real estate expenses were considered a basic entitlement, and that he would be informed if this was not the case. In April 2013, the claimant contacted an agency finance office to learn the process for claiming reimbursement of real estate expenses. The agency provided to the claimant a set of rules and instructions for claim submission; these incorrectly stated that the initial period to complete transactions is two years, subject to a one-year extension, and that the request for an extension must be made within the initial two-year period.

On April 30, 2014, the claimant completed settlement on a home purchase. During May, the claimant sought reimbursement of real estate closing cost expenses. By letter dated June 25, after learning both that a request would not be approved without a written approval and authorization to recover real estate transactions and that the initial period to complete a purchase without an extension was one, not two years, the claimant submitted a request for an extension of the one-year period. The request summarizes the situation as stated herein. Thereafter, on July 23, 2014, the agency amended the authorization to indicate approval of real estate transaction costs as reimbursable.

In a decision dated August 19, 2014, a commanding official made a determination on the request. The decision notes that the request was made beyond thirty days after the one-year period had expired, and concludes: “Based upon the untimeliness of the request, and the lack of any evidence that would indicate extenuating circumstances that prohibited a timely request, I elect not to consider the request.”

The agency determination utilizes a standard not found in the regulation in concluding that there need be extenuating circumstances that “prohibited” a timely request. This claimant could have submitted a request for an extension during the twelve or thirteen month

period following the entry of duty date. However, even as of the time of the submission, the latest formal information provided by the agency to the claimant stated that the claimant lacked formal approval to recover any real estate expenses and the claimant had two years to complete a residential purchase. Given that the agency had placed the claimant in this position, without formal approval and with the mis-information that an initial two-year period existed, there were circumstances that explained the request being made just beyond sixteen months after the start date. The election by the agency official not to consider the request (made within the maximum two-year period to complete a purchase) is improperly premised, unreasonable, and not supported by the record, and is therefore hereby overturned.

The agency should have considered the merits of the claimant's request for an extension. Accordingly, the matter is returned to the agency to consider the circumstances and make a determination to grant or deny the extension request.

JOSEPH A. VERGILIO
Board Judge