



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 16, 2016

CBCA 5186-RELO

In the Matter of SUSAN G. HASHEMI

Susan G. Hashemi, Peyton, CO, Claimant.

David Van Steenburg, Headquarters Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

SULLIVAN, Board Judge.

Claimant, Susan G. Hashemi, seeks review of the denial by the agency, Department of the Air Force, of her request for a one-year extension to claim real estate expenses incurred as a result of her relocation in 2012. The Air Force denied Ms. Hashemi's request for an extension because she had not established that the area in which she sold her house was economically depressed. Because we find that the agency decisionmaker did not consider properly all of the extenuating circumstances in evaluating Ms. Hashemi's extension request, we remand the matter to the agency for a re-evaluation.

Background

On September 20, 2012, the Air Force issued orders to Ms. Hashemi for a permanent change of duty station from Wright Patterson Air Force Base, Ohio, to the United States Air Force Academy, Colorado. Among other expenses, Ms. Hashemi was authorized to seek reimbursement of real estate expenses. The travel orders indicated in a section labeled "Administrative Information," block 27, that "[a]llowable travel and transportation must begin within 1 year from employee's transfer or appointment effective date. Beyond the initial year, employee will be responsible for PCS travel and transportation allowances." As support for this requirement, the orders cited Joint Travel Regulations (JTR) C1057, a provision that had been deleted from the JTR before Ms. Hashemi's orders were issued.

At the time of her transfer, Ms. Hashemi was provided with a checklist that indicated real estate expenses had to be incurred within two years of the date that she reported to her new duty station and that the two-year time limit could be extended if a written extension request was submitted prior to the expiration of the two-year period. Ms. Hashemi reported for duty on November 5, 2012. Ms. Hashemi sold her house on April 21, 2014.

The regulations applicable to Ms. Hashemi's claim are those that were in effect at the time she reported to her new duty station (November 2012). 41 CFR 302-2.3; *Emelda J. Hadley*, CBCA 4264-RELO, 15-1 BCA ¶ 35,930, at 175,611 n1. At that time and still today, the Federal Travel Regulation (FTR) requires that all activities related to the relocation be completed within one year of the report date. 41 CFR 302-2.8 (2012). The one-year time limit may be extended by the agency. 41 CFR 302-2.11.

Ms. Hashemi submitted a formal request for an extension of the date by which to incur real estate expenses on April 9, 2015.¹ Ms. Hashemi sought the extension because she had been provided incorrect information regarding the date by which she had to close on the sale of her house and the housing market in which her home was located was economically depressed.

According to the agency's decision on appeal, although Ms. Hashemi's request for an extension was untimely, the agency considered the merits of her request because she had received incorrect information regarding the deadlines for incurring expenses. In considering the merits, the agency only examined her claim that the housing market was depressed. The Air Force denied Ms. Hashemi's request for an extension, finding that Ms. Hashemi's request for an extension based upon the depressed housing market was not borne out and therefore there were not "extenuating circumstances to justify a time extension."

Ms. Hashemi filed her request for review of the agency's decision with the Board on February 4, 2016.²

¹ According to the agency's response, Ms. Hashemi first made inquiries about an extension in February 2015.

² Ms. Hashemi attached the agency's decision letter to her request for review. A copy of the Board's docketing notice was sent to the agency official who signed the decision letter, at the address on the letter. The docketing notice advised the agency that it had thirty days from the date of docketing to provide a response to Ms. Hashemi's claim. On March 15, 2016, when the Board had not received a response from the agency, the Board contacted Ms. Hashemi to ascertain whether she had any contact information for the individual to whom the docketing notice was sent. Ms. Hashemi provided the contact

With its response to Ms. Hashemi's claim, the agency has provided a set of briefing slides that it explains are provided to every civilian employee when transferring to a new duty station. On page 11, the materials state that "real estate [allowances] . . . [m]ust be utilized within 12 months [entry on duty]." The agency contends that Ms. Hashemi received this briefing on August 28, 2012, as part of counseling prior to her transfer.

In her reply to the agency's response, Ms. Hashemi denies that she was provided the briefing slides that contained the correct information regarding deadlines for incurrence of costs and points out that the initials on her travel orders (SB) indicating receipt of PCS counseling are not hers. Ms. Hashemi also details a long series of email messages in which she attempted to obtain assistance from the personnel office at her new station. Ms. Hashemi also provided the chronology of her attempts to sell her house.

Discussion

Governing statutory and regulatory framework

Subject to regulations promulgated by the Administrator of General Services, agencies are required to reimburse employees for expenses incurred in the sale of a residence resulting from the transfer of the employee in the interest of the Government:

[A]n agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence . . . of the employee at the old official station . . . when the old and new official stations are located within the United States.

5 U.S.C. § 5724a (2012); *Judith A. Sukol*, CBCA 2092-RELO, 10-2 BCA ¶ 34,574, at 170,460 (noting that payment of residence expenses is mandatory when required conditions are met).

information for the individual who had provided the decision letter to her, a different person than had signed the decision letter. The Board provided a copy of the docketing notice and Ms. Hashemi's request for review to this individual, which prompted the agency to request an extension of thirty days to respond because the agency had not received Ms. Hashemi's submission to the Board prior to that day. The Board granted the agency's request for an extension.

With regard to residence sale expenses, the FTR directs that the expenses must be incurred within one year of reporting for duty at the new permanent duty station, 41 CFR 302-11.21, although an employee may seek an extension to this time limit:

May the 1-year time limitation be extended by my agency?

Yes, your agency may extend the 1-year limitation for up to one additional year for reasons beyond your control and acceptable to your agency.

41 CFR 302-11.22. A request to extend the time limit must be submitted within thirty days of the original expiration date “unless this 30-day period is specifically extended by your agency.” 41 CFR 302-11.23.

The FTR authorizes agencies to grant extensions of the one-year time limit:

How long can we authorize an extension for completion of the sale and purchase or lease termination transactions?

You may authorize an additional period of time, not to exceed 1 year, for completion of the sale and purchase or lease termination transactions.

41 CFR 302-11.420.

What must we consider when authorizing an extension of time limitation?

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.

41 CFR 302-11.421.

Ms. Hashemi, as a civilian employee of the Department of Defense, is also subject to the requirements of the JTR, which contain refinements of the requirements regarding the time limits for the incurrence of residence expenses:

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.
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4. The 1-year period may be extended for up to an additional year by the funding activity's commanding officer/designee.
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.

JTR C5750 (Nov. 2012) (citations omitted).

In evaluating claims arising from requests for extension, the decisions of this Board and its predecessor board for these matters, the General Services Board of Contract Appeals (GSBCA), recognize that the agency's decision on an extension request is left to the agency's discretion and will not be overturned absent a showing of an abuse of discretion. *Sukol*, 10-2 BCA at 170,459-60. However, the boards have decreed that these regulations require the agency official to make three determinations when considering a request for an extension: "(1) Did extenuating circumstances prevent the employee from completing the sale within the [time allowed]? (2) Were those circumstances acceptable to the official? (3) Were the residence transactions reasonably related to the permanent change of station?" *Id.* (citing *David B. Yorkowitz*, GSBCA 15337-RELO, 00-2 BCA ¶ 31,052; *Stephanie P. Riddle*, GSBCA 15027-RELO, 99-2 BCA ¶ 30,533). Extenuating circumstances include "[a]ny action which has contributed to the predicament in which the employee finds herself." *Riddle*, 99-2 BCA at 150,798.

The agency did not consider properly all extenuating circumstances

Ms. Hashemi sought the extension of the one-year requirement on two bases: (1) she had been provided the incorrect information regarding the time limit in which to incur real estate expenses and (2) the market in which she was attempting to sell her home was economically depressed. As noted in the agency's decision, the agency official only considered Ms. Hashemi's second ground for seeking an extension – that the area was economically depressed – when evaluating whether there were extenuating circumstances. The agency considered the fact that Ms. Hashemi had been provided incorrect information only in deciding to waive the requirement to submit a timely extension request. The agency must also consider whether the misinformation that Ms. Hashemi received regarding the deadlines to complete such transactions also contributed to Ms. Hashemi's failure to sell her home within the one-year time limit. *See Sukol*, 10-2 BCA at 170,460 (agency is required to consider all of claimant's individual circumstances).

The deciding official also determined that Ms. Hashemi received "conflicting" information, believing that Ms. Hashemi had received both the incorrect checklist and the PCS briefing slides and that Ms. Hashemi's order put her on notice regarding the one-year time limit. As the deciding official noted, the travel orders indicated that PCS counseling had been provided on August 28, 2012. But, as Ms. Hashemi has explained to the Board, she did not receive this briefing and her initials are not set forth on the orders. Moreover, the notation in block 27 of Ms. Hashemi's orders was only that "travel and transportation" were to be completed within one year. This warning did not mention residence expenses and residence expenses are listed separately from travel and transportation expenses on the first page of the order. Further, as noted, this warning cited a provision of the JTR (C1057) that had been deleted from the JTR but, when this provision did exist, it was guidance for travel and transportation costs only. Therefore, the agency should consider, as the possible extenuating circumstance, that Ms. Hashemi received incorrect information regarding the deadlines, rather than "conflicting" guidance. While incorrect guidance from an agency regarding periods for reimbursement cannot be the basis for overcoming regulatory limitations on those periods, *Gary D. Turner*, CBCA 4178-RELO, 14-1 BCA ¶ 35,797, at 175,083, the agency may consider the effect this incorrect guidance had upon Ms. Hashemi's actions to sell her house in the exercise of its discretion to grant the requested extension. *See Rexford D. Belleville*, CBCA 4118-RELO, 15-1 BCA ¶ 35,824, at 175,182 (2014).

Based upon our review, we determine that the agency failed to consider properly the possible extenuating circumstances identified by Ms. Hashemi as the basis for her extension request. We return the matter to the agency for re-evaluation, taking into consideration our analysis of the facts and law and further information the agency may ascertain. Ms. Hashemi

may ask the Board to review the agency official's new determination if she is dissatisfied with it.

Ms. Hashemi's motion to strike the agency's response is denied

Ms. Hashemi has moved to strike the agency's response to her claim because it was untimely. Ms. Hashemi argues that the agency should be held to the Board's thirty day deadline for the filing of a response set forth in the Board's rules and the notice of docketing. Because she was denied her reimbursement request because it was untimely, she asserts that the agency should be held to the same standard.

The Board denies Ms. Hashemi's motion. It would be unusual for the Board to reach a decision in this matter without receiving a response from the agency as provided for by the Board's rules. The agency did not receive the notice of docketing until the Board identified, with Ms. Hashemi's assistance, another individual at the agency to receive the notice of docketing. It was appropriate to give the agency additional time to prepare its response to Ms. Hashemi's claim.

Decision

The claim is returned to the agency for a re-evaluation of Ms. Hashemi's request for an extension in light of the Board's analysis of the applicable facts and law.

MARIAN E. SULLIVAN
Board Judge