



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 25, 2016

CBCA 5388-RELO

In the Matter of RENA C. DOUGLAS

Rena C. Douglas, Fort Worth, TX, Claimant.

Arthur B. Archambeau, Assistant District Counsel, United States Army Corps of Engineers, Fort Worth, TX, appearing for Department of the Army.

SULLIVAN, Board Judge.

Claimant, Rena C. Douglas, a civilian employee of the Army Corps of Engineers (Corps), was transferred from Indianapolis, Indiana, to Fort Worth, Texas, pursuant to permanent change of station (PCS) orders. The Corps denied Ms. Douglas' claim for reimbursement of real estate expenses resulting from her relocation to Texas because the settlement date for the purchase of her new house was more than two years after the date she first reported for duty in Fort Worth. For the following reasons, we uphold the agency's denial and deny Ms. Douglas' claim for reimbursement.

Background

Ms. Douglas reported for duty at her new duty station on May 5, 2014. Her travel orders authorized the reimbursement of real estate expenses but advised that the "rights and allowances granted" by the orders would expire "one year from the reporting date to the new duty station." On June 30, 2015, Ms. Douglas received a one-year extension of the date by which she could incur real estate expenses. With this extension, she had until May 6, 2016, to incur these expenses.

On March 31, 2016,¹ Ms. Douglas signed a contract for the purchase of a new home at her new duty station. After signing the contract, Ms. Douglas was advised by an agency official² that “as long as [she] entered/signed [a] purchase [] sale agreement prior to the expiration date [of her orders, she] would be reimbursed some of the purchase cost.” Ms. Douglas and her supervisor confirmed this understanding with another individual within the agency. On June 9, 2016, Ms. Douglas settled on the new house and, on June 10, 2016, Ms. Douglas submitted her claim for reimbursement of real estate expenses in the amount of \$4680. On June 30, 2016, the agency denied Ms. Douglas’ claim because the settlement date was after May 6, 2016.

Discussion

Employees who are transferred by an agency in the interest of the Government from one permanent duty station to another are entitled by statute, subject to regulations issued by the Administrator of General Services, to reimbursement from the agency for real estate expenses associated with the selling of the employee’s residence at the old duty station and the purchase of a residence at the new duty station. 5 U.S.C. §§ 5724a(d), 5738(a)(1) (2012). The Federal Travel Regulation (FTR), issued by the Administrator of General Services, sets forth the deadlines for incurrence of these expenses. 41 CFR 302-11.21 to .23 (2013).³

To be reimbursed for real estate expenses associated with the purchase of a property at an employee’s new duty station, the employee must complete the purchase no later than one year after the date that the employee reports to the new duty station:

How long do I have to submit my claim for reimbursement of expenses incurred in connection with my residence transactions?

¹ Ms. Douglas states that she signed the sale contract on April 2, 2016, but the sale contract included in the record bears the date March 31, 2016.

² Ms. Douglas states that the agency official she spoke with after she signed the purchase contract was the same individual who denied her claim. The agency identifies a different individual as the person who denied Ms. Douglas’ claim. The discrepancy does not alter the Board’s analysis of Ms. Douglas’ claim.

³ We cite to the versions of the FTR and Joint Travel Regulations (JTR) in effect on the day that the employee reported for duty at the new duty station. 41 CFR 302-2.3; *Emelda J. Hadley*, CBCA 4264-RELO, 15-1 BCA ¶ 35,930, at 175,611 n.1.

Your claim for reimbursement should be submitted to your agency as soon as possible after the transaction occurred. However, the settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested must occur not later than 1 year after the day you report for duty at your new official station.

41 CFR 302-11.21. An agency may extend this time limit for one additional year under appropriate circumstances:

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.

Id. 302-11.22. An agency cannot extend the time limit for incurrence of these expenses beyond what is prescribed in the FTR. *Gary D. Turner*, CBCA 4178-RELO, 14-1 BCA ¶ 35,797, at 175,082 (citing *Kenneth T. Donahoe*, CBCA 3619-RELO, 14-1 BCA ¶ 35,746); *see also Aresh Raychaudhuri*, CBCA 2449-RELO, 11-2 BCA ¶ 34,821, at 171,344, *reconsideration denied*, 11-2 BCA ¶ 34,835.

The JTR, which implement the FTR for civilian employees of the Department of Defense, reiterate the time limits for the settlement date for a purchase of a new residence:

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).

....

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.

....

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 C5750.

Although Ms. Douglas, in her appeal to the Board, states that the term “settlement date” is not clearly defined in the JTR, signing a contract for sale or purchase of real estate does not constitute settlement. Board precedent clearly establishes that “the date of settlement and not the date the contract was signed determines eligibility.” *Marlene L. Barger*, GSBCA 15036-RELO, 99-2 BCA ¶ 30,423, at 150,383 (quoting *Mark W. Muirheid*, GSBCA 14198-RELO, 98-1 BCA ¶ 29,594, at 146,717). Pursuant to these regulations, the agency properly denied Ms. Douglas’ claim because the settlement date for the purchase was after the date by which she was required to incur PCS expenses.

In support of her claim, Ms. Douglas cites two decisions which state that “real estate transaction costs are incurred at the point in time a contract for purchase or sale is entered into” – *Tyler D. Warner*, CBCA 5215-RELO, 16-1 BCA ¶ 36,364, and *Bernard J. Silbert*, B-202386 (Sept. 8, 1981). These cases both involve claims for real estate expenses incurred before formal travel orders were issued; they do not address the need to complete a transaction within a given time period. The proposition cited by Ms. Douglas from these cases does not alter the determination set forth in the cases above, that the settlement date must occur before the deadline for the incurrence of real estate expenses.

Ms. Douglas also contends that her claim should be allowed because she was advised that she only had to sign the sale contract prior to the expiration date of her orders. The Board has repeatedly held that incorrect advice cannot create entitlements that are not permitted by statute or regulation. *See, e.g., John D. McGuire*, CBCA 4373-RELO, 15-1 BCA ¶ 35,869, at 175,366. Thus, although Ms. Douglas received incorrect guidance from the agency regarding this matter, that incorrect advice cannot alter the regulatory requirement that the settlement date occur before the deadline set forth in her travel orders.

Finally, Ms. Douglas notes that she sought a second extension of the deadline because she was on temporary duty away from home at the time the deadline was to expire, but she

was told that the agency would not grant a second extension. Pursuant to the regulations set forth above, the Corps could not extend the deadline further.

MARIAN E. SULLIVAN
Board Judge