



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 19, 2018

CBCA 5802-RELO

In the Matter of KELLY L. GUNN

Kelly L. Gunn, Auburn, WA, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

HYATT, Board Judge.

Claimant, Kelly L. Gunn, a civilian employee of the United States Army Corps of Engineers (Army), was transferred to a new permanent duty station in Seattle, Washington. She has requested the Board's review of the agency's establishment of a debt in the amount of \$3680, to recoup charges incurred for eighty days of storage in transit (SIT or temporary storage) paid by the agency incident to Ms. Gunn's permanent change of station (PCS) move. For the reasons explained below, under the applicable provisions of the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR), the Board cannot overturn the agency's determination, but is returning the matter for consideration of whether special circumstances apply that might warrant the grant of an extension pursuant to JTR 5764.

Background

Ms. Gunn transferred from Port Orchard, Washington, to Seattle, Washington, in October 2016. Claimant's travel orders initially authorized sixty days of temporary storage of her household goods. On November 21, 2017, the Army approved Ms. Gunn's request to extend temporary storage of her household goods for an additional ninety days, for a total of 150 days, through February 18, 2017.

As of February 2, 2017, Ms. Gunn had not secured permanent housing at her new duty station. She states in her submission to the Board that she tried "everything in [her] power"

to make arrangements to remove her household goods to another storage facility prior to the expiration date for reimbursable storage of her household goods. The Naval Supply System Command SIT Management Team provided Ms. Gunn with instructions for moving her household goods. Following those instructions, Ms. Gunn endeavored, on multiple occasions, to contact the Navy's Personal Property Office (PPO), the transportation service provider responsible for moving and storing her household goods, and the Traffic Management Office (TMO).

Ms. Gunn's first email to the PPO, explaining her circumstances and requesting assistance with the removal of her household goods from storage, was sent on February 2, 2017. After receiving no response, and making several unsuccessful attempts to contact the PPO by telephone, Ms. Gunn followed up with a second email. Ms. Gunn eventually spoke to a PPO employee on February 7, 2017. This employee suggested that she contact the transportation service provider directly to make arrangements and told her to follow up with the PPO at the same email address if she needed further assistance. The transportation service provider told claimant that the company could not deliver her household goods to another storage unit and referred her back to the PPO. Ms. Gunn sent three more emails to the PPO in her attempts to obtain a timely resolution of this matter; however, she received no response. After a sixth email to the PPO, Ms. Gunn emailed the traffic management specialist assigned to facilitate her move, who referred her back to the PPO and the transportation service provider.

On March 6, 2017, nearly three weeks later, Ms. Gunn received the first written communication from the PPO, advising that she complete form DD1875 and return it with an explanation of the need for an extension. Ms. Gunn completed the form and returned it to the PPO on March 9, 2017. The PPO did not acknowledge or respond to the request and Ms. Gunn did not follow up with the PPO. When claimant purchased a residence at the new duty station, she made arrangements to have the household goods delivered to her new home. Ms. Gunn's household goods remained in storage with the Government's transportation service provider for a total of 230 days, or eighty days beyond the 150-day maximum.

On June 27, 2017, the Corps contacted Ms. Gunn, advising that she owed the Government the amount of \$3680 for the cost of the temporary storage of household goods in excess of the 150-day maximum authorized. Ms. Gunn argues that, because she contacted the appropriate parties multiple times to no avail, and was effectively prevented from removing her HHG from the storage facility, she should not be required to repay the additional storage fees. The Corps did not rebut or otherwise respond to Ms. Gunn's narrative detailing her efforts to resolve the situation. The agency did acknowledge that it is "unfortunate" that Ms. Gunn did not receive the "expected" guidance from the

transportation office, but maintains that it has no statutory authority to pay for temporary storage beyond the 150-day limit.

Discussion

An employee who is transferred in the interest of the Government is entitled to be paid for the temporary storage of household goods which are being moved from the old duty station to the new one. 5 U. S. C. § 5724(a)(2) (2012); *William F. Brooks, Jr.*, CBCA 2595-RELO, 12-2 BCA ¶ 35,064. Under the FTR, temporary storage of household goods at Government expense for domestic shipments may not exceed sixty days unless additional time is requested and approved. To the extent an extension of time is approved, “[u]nder no circumstances may temporary storage at Government expense for . . . shipments [within the Continental United States] exceed a total of 150 days.” 41 CFR 302-7.9 (2016).

The JTR, which implement and supplement the FTR with application to civilian employees of the Department of Defense, similarly provide that temporary storage of household goods ordinarily may not be approved in excess of the 150-day maximum, except in severely limited circumstances, to be evaluated on a “case-by-case basis,” with respect to “[Department of Defense] civilian employees who have relocated and have had unforeseen circumstances beyond their control.” JTR 5674-A. Such extensions of the 150-day maximum period may only be authorized by the Per Diem, Travel, and Transportation Allowance Committee (PDTATAC).¹ JTR 5674-B. In such cases, the PDTATAC considers various eligibility criteria, including serious illness or death, a long-term temporary duty deployment, transportation delays caused by embargos, acts of God, terrorism, and other circumstances beyond the employee’s control. JTR 5674-C.

Ms. Gunn made a diligent effort to remove her household goods from the transportation service provider’s storage facility to avoid paying for these storage charges by contacting the appropriate parties prior to the expiration of the 150-day deadline. She was unable even to secure the agency’s cooperation to remove it from the storage facility, and thus was effectively forced to incur these charges. It does not appear that the procedure for requesting the PDTATAC to authorize additional temporary storage was considered in her case. Given the obstacles encountered by Ms. Gunn in her efforts to remove her household goods from the storage facility in a timely manner, it would seem appropriate for the agency to submit Ms. Gunn’s case to the PDTATAC for the committee’s consideration of the merits

¹ This exception is authorized under a General Services Administration (GSA) waiver memorandum initially issued for the period from March 2014 through March 2017, and extended by GSA effective from March 2017 through March 2020. JTR 5674-C.

of her claim. We see nothing in the JTR that would bar the PDTATAC from retroactively considering this matter and, if it agrees the circumstances were beyond her control and otherwise eligible under JTR 5764, authorizing an extension covering some or all of the temporary storage time in excess of 150 days.

In addition, although the Board has no authority to waive the agency's assessment of a debt based on a proper application of the FTR, the head of the agency does possess such authority. *Sydney C. Kaus*, CBCA 3744-RELO, 14-1 BCA ¶ 35,731, at 174,899. In light of Ms. Gunn's diligent efforts to have her household goods removed from the government storage facility, and the Government's failure to cooperate in this endeavor, it might alternatively be appropriate for the Corps to assist Ms. Gunn in seeking a waiver of all or part of the debt to the extent she can show that if she had been able to proceed as she requested, the costs of storage and delivery of her household goods to her permanent residence would have been lower than the amount the Corps now seeks to collect from her.

Decision

This matter is returned to the agency to determine whether Ms. Gunn is eligible for relief either under JTR 5674 or a waiver of all or part of the debt.

Catherine B. Hyatt

CATHERINE B. HYATT

Board Judge