



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 1, 2018

CBCA 6250-RELO

In the Matter of MICHAEL J. JENKINS

Michael J. Jenkins, Fairborn, OH, Claimant.

David Van Steenburg, Deputy Director, Personnel Operations, 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, Michael J. Jenkins, seeks review of the denial of his request for an extension beyond the one-year period within which a relocating employee entitled to real estate expense reimbursement must settle on a property purchase. The Department of the Air Force (Air Force) denied Mr. Jenkins's request upon finding that Mr. Jenkins had not shown that extenuating circumstances related to his relocation prevented him from completing the purchase of a home within one year of arriving at his new duty station. We deny Mr. Jenkins's claim.

Background

Mr. Jenkins relocated with his family from a United States Army installation in Weilerbach, Germany, to Wright-Patterson Air Force Base, Ohio. Mr. Jenkins's new duty date was April 30, 2017, and he was required to physically report to his new duty station on May 1, 2017. Mr. Jenkins's amended orders permitted Mr. Jenkins to seek reimbursement of real estate expenses incurred as a result of his relocation.

Because they were unfamiliar with the area and to avoid the need for extended temporary quarters subsistence expense (TQSE), Mr. Jenkins and his wife signed a one-year lease on a single-family home upon arrival in Ohio. In January 2018, Mr. Jenkins began his search to purchase a new home—eight months after arrival and four months prior to his lease's end date. Mr. Jenkins waited to begin his search because he did not want to incur

both lease and mortgage payments. On January 13, 2018, Mr. Jenkins viewed, signed a purchase order for, and deposited good faith money on the construction of a home. The building company informed Mr. Jenkins that the home would not be complete until early-to mid-June 2018.

In April 2018, Mr. Jenkins requested an extension of the deadline to seek reimbursement of real estate expenses incurred upon the closing on his new home. The Air Force Personnel Center denied Mr. Jenkins's request, finding no extenuating circumstances that delayed Mr. Jenkins's closing on a new home. Mr. Jenkins appeals this denial and seeks to recover \$4736.

Discussion

Pursuant to the Federal Travel Regulation (FTR), a government employee may submit a claim for reimbursement of expenses incurred in connection with the purchase of a home if settlement occurs no later than one year after the date the employee reports to his/her new official station. 41 CFR 302-11.21 (2017) (FTR 302-11.21). The agency can extend this time limitation up to one additional year if it determines the extension is required for reasons beyond the employee's control and acceptable to the agency. FTR 302-11.22.

Consistent with the FTR and also applicable in this case, the Joint Travel Regulations (JTR) permit a civilian employee of the Department of Defense to recover costs for certain expenses incurred during the purchase—including construction—of a home at a new duty station. JTR 5908-A.1.¹ The JTR mirrors the FTR with a one-year limitation to conduct settlement on a purchase underlying a claim. JTR 5908-C.1. The agency may grant an extension to this time limitation “only if *extenuating circumstance* prevented the employee from completing the [purchase] transactions within the initial 1-year period and that the delayed transactions are reasonably related to the [permanent change of station].” JTR 5908-C.7 (emphasis added).

This Board consistently has held that the decision to extend this time limitation falls under an agency's broad discretion. *Jennifer A. Miller*, CBCA 5625-RELO, 17-1 BCA

¹ An employee's allowances for relocation are determined by the regulatory provisions in place at the time the employee reports to the new duty station. FTR 302-2.3; *Daniel W. Catalano*, CBCA 4637-RELO, 15-1 BCA ¶ 36,012, at 175,889 n.1 (citing *Emelda J. Hadley*, CBCA 4264-RELO, 15-1 BCA ¶ 35,930, at 175,611 n.1). Because Mr. Jenkins reported to his new station on May 1, 2017, the Board reviews Mr. Jenkins's claim against the requirements found in the May 2017 version of the regulations.

¶ 36,806, at 179,389; *Judith A. Sukol*, CBCA 2092-RELO, 10-2 BCA ¶ 34,574, at 170,460. When reviewing an agency's decision, this Board will not disturb the agency's determination unless it is found to be arbitrary, capricious, or clearly erroneous. *Miller*, 17-1 BCA at 179,388-89. The Board will not question the agency's exercise of discretion so long as the agency had a reasonable basis for its determination. *Id.* at 179,389.

The delays attendant to the building of a home, rather than purchasing one already built, are the result of an employee's personal choice. *See, e.g., Michèle A. Fennell*, GSBCA 16015-RELO, 03-1 BCA ¶ 32,177, at 159,081. In *Fennell*, the employee endured construction delays due both to weather—i.e., “abnormal rainfall, tornado watches”—and disputes with builders. The agency denied the request for a two-month extension, finding that the delays encountered fell within the employee's control. The Board held that the agency correctly exercised its discretion in determining the facts did not demonstrate extenuating circumstances. *Id.*

Here, the agency denied Mr. Jenkins's request for an extension and claim for reimbursement because Mr. Jenkins made a choice to have a home built and started the building process eight months after his arrival at his new duty station. Although Mr. Jenkins explained to the agency that “a lengthy winter and rainy spring delayed closing,” the agency properly exercised its discretion when it determined these facts did not constitute extenuating circumstances beyond Mr. Jenkins's control related to his relocation.

Mr. Jenkins, in his appeal to the Board, argues that it would have been a financial hardship for him to pay for the lease of the home he rented when he first arrived and also begin to pay the mortgage on his new home. The fact that Mr. Jenkins rented a house for a year and waited eight months to begin looking for a new house to be built created the potential overlap in lease and mortgage payments. This choice does not constitute an extenuating circumstances related to his relocation that would justify an extension.

Decision

The claim is denied.

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge