



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 21, 2022

CBCA 7504-RELO

In the Matter of DANIEL T.

Daniel T., Claimant.

Tracey Z. Taylor, Office of Counsel, Humphreys Engineer Center Support Activity, United States Army Corps of Engineers, Alexandria, VA, appearing for Department of the Army.

LESTER, Board Judge.

Claimant asks that the Board require the United States Army Corps of Engineers (Corps) to reimburse real estate expenses that he incurred in purchasing a new residence at his permanent duty station in Winchester, Virginia, three-and-a-half years after his transfer to that location. Under the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR), a transferring employee who has been authorized real estate transaction expense reimbursement has one year after relocating to purchase a residence at the new permanent duty station (PDS). The regulations also allow agencies, in appropriate circumstances, to extend the employee's deadline for purchasing a residence by no more than an additional year. Although the General Service Administration (GSA), because of difficulties associated with the COVID-19 pandemic, recently authorized agencies to waive that two-year maximum time limit, that waiver authority is not retroactive to claimant's November 2018 relocation. As a result, we have no choice but to deny claimant's reimbursement request.

Background

Effective November 26, 2018, claimant transferred from a PDS in Nebraska to a new PDS in Winchester, Virginia. In the travel orders supporting that transfer, the Corps

authorized claimant to be reimbursed for expenses incurred in the purchase of a residence at the new PDS.

When claimant and his wife arrived in Winchester in November 2018, they did not immediately purchase a new residence. Instead, they entered into an eighteen-month lease agreement for a temporary residence because, according to claimant, they wanted time to learn more about Winchester and, as his wife was expecting their first child, to identify a neighborhood in which they would want to raise a family. Beginning in March 2020, the COVID-19 pandemic essentially shut down their search for a new residence and caused them to extend their existing lease for an additional twelve months (through June 2021). During the extension period of their lease, claimant and his wife learned that they would have another child. They resumed house hunting for their family in April 2021 but allege that, “due to the competitive nature of the market[,] [they] were consistently outbid.” Further, claimant alleges that a temporary illness and hospitalization of the second child, which caused the claimant’s spouse to quit her job, left the family in a position where, at least temporarily, the purchase of a house was not feasible.

On May 16, 2022, after claimant’s child had recovered from illness and claimant’s wife had accepted a new job, claimant and his wife purchased a house in the Winchester area. Claimant then applied for reimbursement from the Corps of real estate closing costs.

The Chief of Logistics for claimant’s office notified claimant on August 26, 2022, that the Corps could not approve his reimbursement request. He asserted that the Corps lacked authority to approve reimbursement for real estate transaction expenses incurred three-and-a-half years after claimant had arrived at his new PDS. Claimant sought the Board’s review of that decision.

Discussion

Generally, for reimbursement purposes, an employee transferred to a new PDS has a year from the date that the employee reports for duty at the new PDS to complete the purchase of a new home. FTR 302-2.9, -2.110, -11.21 (41 CFR 302-2.9, -2.110, -11.21 (2018)); JTR 054501-B (Nov. 2018). That one-year period may be extended, at the agency’s discretion, for up to an additional year. FTR 302-2.12, -2.110, -11.22. Beyond that, however, “[c]osts for transactions completed after the 2-year period may not be reimbursed,” JTR 054501-B, and there has generally been “no authority [allowing an agency] to waive the 2-year time limitation under any circumstances.” *Id.*; see *Emelda J. Hadley*, CBCA 4264-RELO, 15-1 BCA ¶ 35,930, at 175,610 (“[T]he regulations do not grant any authority to an agency or the Board to extend the period of eligibility, even if a good reason is cited for an extension.”). Applying those rules to claimant’s situation, he would not be able to

recover his real estate transaction expenses because they were not incurred within two years of his November 26, 2018, initial reporting date at his new PDS.

Claimant, however, contends that the normal time limits for purchasing a home at a new PDS no longer apply. Beginning in April 2020, the General Services Administration (GSA), citing the difficulties arising from the COVID-19 pandemic, issued a series of FTR bulletins authorizing agencies temporarily to waive the time deadlines established in FTR 302-2.9 (and, by implication, FTR 302-11.21 and -11.22) for completing relocation “if COVID-19 restrictions are delaying employee use of the aforementioned relocation entitlements.” GSA Bulletin FTR 22-07 ¶ 4 (June 30, 2022) (available at https://www.gsa.gov/cdnstatic/GSA_Bulletin_FTR_22-07_-_FTR_Waiver_for_Relocation_and_Renewal_Agreement_Travel_%28RAT%29_%281%29.pdf).¹ GSA Bulletin FTR 22-07 provides that “certain provisions of the FTR governing official relocation travel,” including “[t]he requirement in [FTR] 302-2.9 and 302-2.110 to complete all aspects of relocation within one year,” could “be temporarily waived for individuals during the COVID-19 pandemic.” *Id.* ¶¶ 1, 4(a). Agencies are authorized to waive the time deadlines “up to the duration of this bulletin,” which is identified in GSA Bulletin FTR 22-07 as expiring on December 31, 2022. *Id.* ¶¶ 4, 6.²

In its response to claimant’s claim, the Corps does not address whether, if it was authorized to extend the deadline for completing real estate transactions in the circumstances here, it would have granted claimant’s request for a time extension. Its sole defense to the claim is that payment is barred because the GSA bulletin does not provide for an extension of the length of time necessary to encompass claimant’s transaction. The Corps argues that the deadline for residence transaction expense benefits was only “extended by 1 year”

¹ The first three bulletins that GSA issued—GSA Bulletin FTR 20-6, 85 Fed. Reg. 23029 (Apr. 24, 2020); GSA Bulletin FTR 21-04, 86 Fed. Reg. 14326 (Mar. 13, 2019); and GSA Bulletin FTR 22-04, 86 Fed. Reg. 73279 (Dec. 27, 2021)—were essentially incorporated into and replaced by GSA Bulletin FTR 22-07, issued June 30, 2022. *See* 87 Fed. Reg. 41126 (July 11, 2022) (providing that GSA Bulletin FTR 22-07 “rescinds [the earlier] expiring GSA bulletin pertaining to relocation allowances during the pandemic and re-establishes information therein”). The language in all four bulletins is, for all intents and purposes, substantially the same.

² Apparently, when submitting its response to claimant’s claim, GSA was unaware of GSA Bulletin FTR 22-07 or that the time-limit waiver in GSA Bulletin FTR 22-04 had been extended beyond June 30, 2022. We need not address untimeliness arguments that the Corps has raised in its briefing founded upon the presumption, which is incorrect, that GSA Bulletin FTR 22-04 established the final waiver deadline and that GSA has not further extended that deadline through a new bulletin.

(beyond the two years normally allowed by the FTR) by the GSA bulletin, “for a total time period of 3 years.” Agency Response ¶ 2. As a result, it argues, claimant could have viably sought an extension of his deadline only if he had closed on a new residence within three years of his November 2018 relocation, which he did not.

The defense that the Corps raises is meritless because it misreads the GSA bulletin. Nothing in the GSA bulletin restricts the available time-limit waiver to an extra year beyond the two years authorized by the FTR. To the contrary, for relocations to which the GSA bulletin is applicable, agencies have the ability to waive time limits up through the December 31, 2022, deadline identified in the bulletin. Neither the bulletin nor any of its predecessors supports the agency’s argument that the bulletin created a hard-and-fast three-year maximum limit.

Nevertheless, in reviewing GSA Bulletin FTR 22-07 and its predecessors, we discovered a problem in its application to claimant that the agency did not raise: none of the GSA bulletins applied retroactively to the date of his relocation. Each bulletin contains the following language about the extent to which the time-limit waiver that they identify will be retroactively applied:

What is the effective date of this bulletin? This bulletin is retroactively effective for official relocation travel performed after March 13, 2019, one year prior to the date of the Presidential national emergency proclamation concerning COVID-19.

GSA Bulletin FTR 22-07 ¶ 5; *see* 87 Fed. Reg. at 41126.

Here, claimant traveled to his new PDS before his start date of November 26, 2018—three-and-a-half months before the March 13, 2019, date identified in the GSA bulletins. Because his travel to his new PDS was complete prior to March 13, 2019, the GSA bulletins are not retroactive to his relocation. GSA could have written the bulletins to provide a time-limit waiver for any relocation in which, as of March 13, 2020, the time for completing the purchase of a new residence had not yet expired. GSA did not do that. Instead, the bulletins expressly tied the time-limit waiver to relocation travel that occurred a year or less before the pandemic began. Because the time-limit waiver in the GSA bulletins does not apply to claimant, he is bound by the pre-bulletin rules that preclude any extensions of time for the completion of the purchase of a new residence beyond the two-year maximum limit set forth in the FTR. *See Emelda J. Hadley*, 15-1 BCA at 175,610. Under those rules, claimant had to complete the purchase of a new residence by November 26, 2020. Because he did not, he is not entitled to real estate transaction expense reimbursement.

Claimant asserts that there are humanitarian reasons for extending his real estate transaction benefits through May 2022, inclusive of health issues with his second child that necessitated his attention. The FTR and JTR preclude the agency from extending a transferred employee's deadline for purchasing a new residence beyond the two-year time limit. "[E]quities cannot overcome an agency's lack of authority." *Victor M. Rivers*, CBCA 5027-RELO, 16-1 BCA ¶ 36,353, at 177,235.

Claimant also alleges that no one ever told him that there was a time limit for purchasing a residence at the new PDS and that, based upon that lack of disclosure, he should not be bound by any limit. "It is well established that an employee subject to the FTR and JTR is responsible for knowledge of those regulations" and that "[a]n employee's lack of knowledge . . . will not justify reimbursement for relocation-related expenses that are not authorized." *Jay Kruse*, CBCA 985-RELO, 08-1 BCA ¶ 33,865, at 167,615.

Decision

For the foregoing reasons, the claim is denied.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge