

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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February 13, 2006

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GSBCA 16790-RELO

In the Matter of PETER J. GRACE

Peter J. Grace, Starkville, MS, Claimant.

James A. Wagoner, III, Assistant District Counsel, Office of Counsel, Mobile District, United States Army Corps of Engineers, Mobile, AL, appearing for Department of the Army.

**DANIELS**, Board Judge (Chairman).

Peter J. Grace was transferred by his employing agency, the Army Corps of Engineers, from one permanent duty station to another. The Corps denied Mr. Grace's requests for reimbursement of expenses he incurred in selling a residence at his old station and buying one at his new location. The employee has asked the Board to review the agency's determinations. We conclude that the Corps' decisions cannot be affirmed because they were made without considering relevant information. The agency must revisit the matters raised here.

## Background

As 2003 began, Mr. Grace was living in Amory, Mississippi, and working for the Corps in nearby Smithville. On February 20, Mr. Grace was orally informed that he had been selected for a position with an agency office in Columbus, Mississippi.

On February 28, Mr. Grace purchased a residence in Starkville, Mississippi, near his future duty station of Columbus.

On April 7, he reported for duty in Columbus. Later, the Corps prepared paperwork appropriate to the move. On April 25, it had Mr. Grace sign an agreement whereby he promised to remain in Government service for at least twelve months after the transfer. On June 19, it issued travel orders to him. These orders authorized relocation benefits, including reimbursement of expenses incurred in selling the residence from which he commuted to his old job in Smithville and buying a home from which he would commute to his new position in Columbus. On August 15, the Corps amended these travel orders but made no change in the authorization of reimbursement of real estate transaction expenses.

By September 2004, Mr. Grace had entered into a contract for the sale of his old residence in Amory. The buyer would not complete the transaction, however, until her pending divorce became final. The sale did not actually occur until June 2, 2005. In filing this case with the Board, Mr. Grace maintains that he could not sell the house earlier “[d]ue to the poor housing market in northeast Mississippi.”

### Discussion

#### Purchase of new residence

The Corps denied reimbursement of expenses Mr. Grace incurred in buying his home in Starkville because he made the purchase before he signed his service agreement and before he received his travel orders.

The fact that the employee bought the house before he signed the service agreement is irrelevant. Although payment of relocation benefits may not be made unless an employee has signed a service agreement, neither statute nor regulation precludes payment of an otherwise valid claim merely because the expense in question was incurred before the agreement was signed. 5 U.S.C. § 5724(i) (2000); 41 CFR 302-11.2, -11.3 (2002).

In the circumstances of this case, denial of reimbursement cannot be justified simply because the home was purchased before the employee received his travel orders. As the Corps points out, the Federal Travel Regulation (FTR) says that an employee should not begin his transfer or relocate to his new duty station until after he has received a written travel authorization. 41 CFR 302-2.1, -2.2. The Board has held, however, that an exception to this rule may be made if prior to issuing travel orders, the agency had manifested a clear administrative intent to transfer the employee. *Rudolph Gomez, Jr.*, GSBCA 15735-RELO, 02-2 BCA ¶ 31,984. The Defense Department’s Joint Travel Regulations (JTR) explicitly incorporate this holding. JTR C14000-D.1. Especially when an agency has directed an employee to transfer before issuing a written travel authorization, we look to evidence other than the travel orders for the manifestation of intent. *Michael L. Scott*, GSBCA

16310-RELO, 04-1 BCA ¶ 32,526 (2003). We must do that here because the Corps improperly required Mr. Grace to move well before it ordered him in writing to do so. *See* JTR C1050-C.1.a (“When Government-funded PCS [permanent change of station] is authorized, a written travel authorization must be issued to [an] employee prior to the . . . employee reporting to the . . . new official station.”) The agency has not denied the employee’s contention that he was told of the transfer on February 20, 2003, so we accept that date as the one on which a clear administrative intent of transfer was manifested.

Mr. Grace bought his home near his new duty station after the date on which he was directed to move, and he has signed a service agreement. These facts make possible reimbursement of the expenses of the purchase. We cannot say whether reimbursement is appropriate here, however, because we do not know the date on which Mr. Grace entered into the contract for the purchase. Real estate transaction expenses are reimbursable only if the purchase or sale of a residence is incident to the employee’s transfer. For that reason, we have established that when a contract for purchase or sale is entered into before an agency manifests an intent to transfer the employee, the transaction will be considered to have been entered into for some reason other than the transfer. That reason may have been anticipation of a transfer, but unless the transfer has been announced, anticipation is insufficient to make the sale incident to the transfer. *Marko Bourne*, GSBCA 16273-RELO, 04-1 BCA ¶ 32,544 (2003); *Connie F. Green*, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175 (2000). Thus, if Mr. Grace entered into the contract for the purchase of his Starkville residence on or after February 20, 2003, the expenses he incurred in buying the house are reimbursable; if he entered into the contract at an earlier date, the purchase is considered not to have been incident to the transfer and the expenses are not reimbursable.

#### Sale of old residence

The FTR provides that expenses of the sale of a transferred employee’s residence at his old duty station are reimbursable if the settlement date of the sale occurs “not later than 2 years after the day [the employee] report[s] for duty at [his] new official station.” 41 CFR 302-11.21. The agency may extend the two-year limitation “for up to two additional years for reason beyond [the employee’s] control and acceptable to the agency.” *Id.* 302-11.22. The employee should submit a request for an extension not later than thirty calendar days after the two-year period expires, but the agency may consider requests which are made later than that date. *Id.* 302-11.23. The Department of Defense has given its commanding officers the following guidance regarding extensions of the two-year limitation:

An extension may be granted only if a determination is made that extenuating circumstances prevented the employee from completing the sale . . . within the

initial 2-year period and that the delayed transaction[ is] reasonably related to the PCS (as opposed to being unrelated to the actual PCS).

JTR C14000-B.

Mr. Grace sold his residence at his old duty station nearly two months after the second anniversary of his reporting to his new station. He therefore would be ineligible for reimbursement of the expenses of selling that house unless the Corps grants him an extension of the two-year limitation. He did request such an extension, and although the request was made more than thirty days after the two-year period had expired, the Corps considered it. In asking for the extension, Mr. Grace asserted that written materials the Corps had given him said that the expenses would be reimbursable if the transaction occurred within two years, but did not explain the date from which the two years would be measured. Consequently, he had not understood that the period began to run on the date he reported for duty. He noted that if the two-year period had begun to run on the date of his travel orders, the transaction had occurred within that period. Although his supervisors supported his request, his commanding officer denied it without explanation.

In response to Mr. Grace's filing of this case with the Board, the Corps calls to our attention the proposition that –

[t]he FTR and the JTR vest broad discretion in agencies to decide whether to approve requests for additional periods of time in which transferred employees' real estate transactions may . . . generate reimbursable expenses. Because this discretion is considerable, we will not disturb an agency's decision unless it is arbitrary, capricious, or clearly erroneous.

*Michèle A. Fennell*, GSBCA 16015, 03-1 BCA ¶ 32,177; *see also Larry E. Olinger*, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877. The agency maintains that the justification the employee gave for extending his period of eligibility for reimbursement of the expenses of selling his old residence did not constitute “extenuating circumstances [which] prevented the employee from completing the sale . . . within the initial 2-year period.” Therefore, the Corps posits, its decision was not arbitrary, capricious, or clearly erroneous and should not be disturbed. The agency agrees that before the Board, Mr. Grace has presented circumstances which could justify an extension of the period of eligibility – a poor housing market in the area of the residence, which effectively forced him to delay settlement until his contract buyer's divorce became final, even though the contract had been signed well within the two-year period. Nevertheless, the Corps says, because these circumstances were not presented earlier, they should not be considered now.

We agree with the agency that regulations state clearly the date on which the two-year period of eligibility for reimbursement begins. The fact that the written materials the agency gave to the employee did not make this date apparent may be cause for rewriting the materials, but it is not the sort of justification which the JTR permits for extending the period, for it did not prevent the employee from completing the sale at any particular time. We do not agree, however, that the extenuating circumstances Mr. Grace presents now may not be considered. The objective of the Board in deciding federal employee travel and relocation claims is to do justice, within the confines of statute and regulation. The objective of agencies in considering these claims should be the same. The reason Mr. Grace now cites could well be deemed an extenuating circumstance which prevented him from completing the sale within the initial two-year period. To do justice, his commanding officer should determine, based on an investigation of the real estate market in the vicinity of Amory, Mississippi, during 2004 and the first half of 2005, whether Mr. Grace's assertion of the weakness of the market is correct. If the commanding officer concludes that the assertion is correct, and that the employee's sale of the residence was reasonably related to the permanent change of station, he may extend the period of the employee's eligibility for reimbursement of the expenses of the sale.

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STEPHEN M. DANIELS  
Board Judge