

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 24, 2006

GSBCA 16859-RELO

In the Matter of ERNESTINE POUNCY

Ernestine Pouncy, Warner Robins, GA, Claimant.

JoAnne Rountree, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

Claimant, Ernestine Pouncy, has requested the Board's review of the agency's determination that she did not timely exercise her return rights. Her return rights, from Alaska to Georgia, were based on her deceased husband's employment with the Department of Veterans Affairs (VA).

Background

Mrs. Pouncy's claim for return travel rights is based upon her husband's permanent change of station in 1994, from Warner Robins, Georgia to become Director of Human Resources for the VA's Healthcare System and Regional Office in Anchorage, Alaska. Mr. Pouncy passed away on October 23, 2002, while still employed with the VA in Alaska. In response to the Board's inquiry to the parties, Mrs. Pouncy confirmed that she met with VA officials shortly after her husband passed away and was told that she was entitled to be reimbursed by the VA for the cost of her return travel as well as for the expenses of shipping her household goods to Georgia. In her claim, therefore, she seeks reimbursement only for the customary transportation of immediate family and household goods; she recognizes that

the VA had no obligation to reimburse her for real estate or other expenses incurred in connection with her return to Georgia.

Mrs. Pouncy was informed by the VA that she had a two-year period of time in which to complete her relocation back to Warner Robins. Because of medical problems involving an extended period of recuperation, Mrs. Pouncy requested a one-year extension of time in which to accomplish her move. By letter dated August 24, 2004, Mrs. Pouncy was granted a one-year extension of time, until October 23, 2005, in which to complete her relocation. The authorizing official based this extension upon a provision in the Federal Travel Regulation (FTR), permitting an extension of up to two additional years to complete real estate transactions incident to a permanent change of station.

Mrs. Pouncy was unable to return to Georgia by October 23, 2005, however, and requested one more extension, for a four-month period. She sold her house in Alaska and completed the move to Georgia in January 2006.

In responding to Mrs. Pouncy's request for an additional four-month extension of time to complete the necessary transactions in Alaska, the agency stated that it lacked the authority to grant the additional extension. Mrs. Pouncy has asked the Board to review this decision.

Discussion

In granting Mrs. Pouncy's requests for extensions of time in which to begin her separation travel, the agency relied on several then-current provisions of the FTR, including 302-2.11, 302-11.22 and 302-11.23. 41 CFR 302-2.11, 302-11.22, 302-11.23 (2002). Under these provisions, all aspects of a relocation must ordinarily be completed within two years from the effective date of transfer. FTR 302-2.8. The two-year limitation may be extended, for up to an additional two years, but only if there has been an extension of time granted under FTR 302-11.22. FTR 302-2.11. FTR 302 subpart 11 pertains to entitlement to real estate transaction expenses. Under 302-11.22, the agency may extend the two-year limitation for completing residence transactions for up to an additional two years. Apparently the agency was referring to these provisions when initially advising Mrs. Pouncy about her rights to an extension under pertinent regulations.

In this case, however, these are not the pertinent regulations. Under the FTR, when an employee dies while stationed at a permanent duty station located outside the continental United States (OCONUS), the immediate family is entitled to return to the continental United

States (CONUS) at Government expense.¹ These return rights generally encompass transportation to the home of record and shipment of household goods. The time frame within which these rights must be exercised varies, however, depending on which version of the FTR is applicable. In general, and certainly in this case, the agency must apply the FTR that was in effect on the date that the employee was transferred.

Mr. Pouncy transferred to Alaska in 1994. The FTR in effect at that time provided as follows:

Because of successive changes to the statutes and regulatory provisions governing relocation allowances and the extended period of time that employees retain eligibility for certain allowances . . . the reimbursement maximums or limitations applicable to certain allowances will not be the same for all employees even though claims may be filed within the same time-frame. The regulatory provisions in effect on the employee's . . . effective date of transfer . . . shall be used for payment or reimbursement purposes.

FTR 302-1.3(d) (1994); *see Patricia J. Johnson*, GSBCA 16889-RELO (Oct. 2, 2006).²

There are two parts of the FTR that deal with return travel rights for employees and their families located at posts of duty OCONUS. Part 303 of the FTR covers the payment of expenses connected to the death of certain employees. The pertinent provision in Part 303 provided:

The cost of return transportation of the immediate family and the baggage and household goods of the decedent and his/her immediate family shall be allowed when an employee dies while he/she is performing official duties outside CONUS, or while he/she is in transit to or from that place.

.....

¹ The term "CONUS," as used in the FTR, refers to the forty-eight contiguous states and the District of Columbia. Alaska is, perforce, OCONUS.

² The FTR has contained a rule to this effect continuously since at least 1989, when the provision set forth in the 1994 version of the FTR was first published.

Travel of the immediate family and shipment of household goods must be undertaken within 1 year from the date of death of the employee, except that an extension of the time for shipment of household goods may be granted by the head of the agency or his/her designated representative if requested prior to the expiration of the 1-year limit.

FTR 303-2.6(a)(1), (a)(2). Under this provision of the FTR, then, the agency had some authority to extend the time for shipping household goods back to CONUS, but could not extend the time for undertaking personal travel to return permanently to CONUS.

In this case, Mrs. Pouncy traveled too long after her husband's death to be entitled to reimbursement of her expenses by the VA. As a result of the agency's error in identifying the pertinent regulations, Mrs. Pouncy did not request an extension of the time for shipment of her household goods before the expiration of the one-year limit as required under the FTR. Thus her entitlement to these expenses under part 303 of the FTR expired one year after her husband's death. Even if we were to apply the time limitation applicable to relocating employees, however, Mrs. Pouncy had only a maximum of two years to accomplish her move in order to be reimbursed by the VA.

Both the Board and the Comptroller General, who decided these claims prior to July 1996, have explained that the rationale for the imposition of a time limit on completing travel at Government expense is to ensure both that the travel is clearly incident to the circumstances giving rise to the entitlement and that such travel is undertaken in a reasonable time frame. *Patrick R. Gillen*, GSBCA 15748-RELO, 02-2 BCA ¶ 31869 (citing 28 Comp. Gen. 285 (1948)). These time frames cannot be extended beyond the maximum time permitted by regulation regardless of the reasons provided by employees and family members exercising return rights. *See, e.g., Richard J. Waldo*, GSBCA 16235-RELO, 04-1 BCA ¶ 32,465 (2003); *George R. Saulsbery*, GSBCA 16027-RELO, 03-1 BCA ¶ 32,179; *Gillen*.

The VA has been very sympathetic with respect to Mrs. Pouncy's circumstances. However, the agency was correct when it informed Mrs. Pouncy that it could not extend the time for travel at its expense beyond October of 2005. Indeed, under applicable regulations, it had already promised an extension that exceeded its authority. Although it is unfortunate that the agency did not realize that its advice should have been predicated on the FTR provisions that existed in 1994, rather than on later versions of the FTR, it appears unlikely that Mrs. Pouncy would have been able to accomplish her move within the even briefer maximum time frames permitted. In any event, erroneous advice given by the agency cannot serve to enlarge an entitlement that is restricted by statute and regulation. *Jeffrey A. Whittall*,

GSBCA 16785-RELO, 06-1 BCA ¶ 33,259; *Domenicangelo D'Angella*, GSBCA 16704-RELO, 06-1 BCA ¶ 33,152 (2005).

Decision

The claim is denied.

CATHERINE B. HYATT
Board Judge