

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 2, 2006

GSBCA 16889-RELO

In the Matter of PATRICIA J. JOHNSON

Patricia J. Johnson, Grand Marais, MN, Claimant.

Carol Svensrud, Supervisory Financial Analyst, Albuquerque Service Center, Forest Service, Albuquerque, NM, appearing for Department of Agriculture.

HYATT, Board Judge.

This matter concerns a claim for real estate transaction expenses in connection with a transfer that took place in September 2001.

Background

Claimant, Patricia J. Johnson, a forester employed by the Department of Agriculture's Forest Service, transferred to the Superior National Forest in Minnesota, reporting for duty on October 21, 2001. Her travel orders authorized real estate transaction expenses. Ms. Johnson was unable to find suitable housing during the two-year period following her transfer, so in August 2003, she requested an extension of time in which to complete a purchase of a residence at her new duty station.

The agency granted a two-year extension of time under section 302-11.22 of the Federal Travel Regulation (FTR) in effect in 2003. Ms. Johnson purchased a home in Grand Marais in September 2005. Prior to making the purchase she checked with the agency to make sure the funds allocated to her transfer were still available. She was assured that the

funds were there and was given a list of closing costs that could be reimbursed. She closed on the house and requested reimbursement of the real estate transaction expenses incurred in connection with the purchase. The agency then disallowed her claim, explaining that under regulations in effect in October 2001, when Ms. Johnson reported for duty at Superior National Forest, only a one-year extension of the time to complete a residence transaction pursuant to a permanent change of station was permitted. The purchase of a home in September 2005 was thus outside of the maximum time frame permitted by the applicable regulation.

Discussion

Ms. Johnson is understandably frustrated by the agency's ruling that she cannot now be reimbursed for the allowable expenses incurred in connection with her purchase of a home. The agency is apologetic about the disservice it has done Ms. Johnson by erroneously authorizing a two-year extension of time, but maintains that it cannot reimburse expenses that are not authorized by law.

When an agency transfers an employee from one permanent duty station to another within the United States and the transfer is in the agency's interest, federal law requires the agency to pay the employee's real estate purchase transaction expenses. 5 U.S.C. § 5724a(d) (2000). The extent of the agency's obligation is set out in the FTR, which applies to civilian employees of the Federal Government. The FTR is published in the Code of Federal Regulations and the pertinent provisions are contained in 41 CFR pt. 302 (2001).

The FTR in effect when Ms. Johnson transferred addresses this situation in section 302-1.3(d), which states:

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.

41 CFR 302-1.3(d) (2001).

The pertinent regulatory provision in effect in October 2001, FTR 302-1.6, stated that the maximum time for beginning travel and transportation incident to a relocation could not exceed two years from the effective date of the employee's transfer except that the two-year period could be extended for one additional year when the time for completion of residence transactions was extended under FTR 302-6.1(e). Thus, under rules in effect when claimant's transfer took place, the agency could only authorize a maximum of a one-year extension to the deadline, allowing the employee three years to go to settlement on residence transactions. The change to the regulation, permitting a two-year extension of the time to purchase a residence, was not effective until February 2002, too late to be of benefit to Ms. Johnson.

Ms. Johnson recognizes that the two-year extension was an error, but asks if any exception might be made in her circumstances. She points out that she did her best to ensure that the funds would be available to reimburse her for closing expenses and states that had she been advised that the authorization had expired she might have structured her purchase differently. Unfortunately, we cannot provide any relief for Ms. Johnson. The Board has previously explained with respect to this rule that the FTR has the force and effect of law and is binding on agencies and tribunals. Consequently, "the three-year limit is invariable." *Nanette O. Locke*, GSBCA 15144-RELO, 00-1 BCA ¶ 30,706 (1999); *accord Kristen A. Campbell*, GSBCA 15442-RELO, 01-1 BCA ¶ 31,406. Although claimant missed the three-year deadline applicable to recovery of real estate transaction expenses because the agency mistakenly led her to believe she had an additional year to complete her purchase, neither the agency nor the Board has the authority to alter or waive this requirement. Claimant cannot recover the expenses associated with the purchase of her residence in Grand Marais.

CATHERINE B. HYATT
Board Judge