

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

September 29, 2005

GSBCA 16697-TRAV

In the Matter of VICKY HAWKINSON

Vicky Hawkinson, Anchorage, AK, Claimant.

Ramone McCoy, Deputy State Director for Support Services, Bureau of Land Management, Anchorage, AK, appearing for Department of the Interior.

PARKER, Board Judge.

Claimant, Vicky Hawkinson, requested a period of overseas tour renewal agreement travel (OTRAT) to begin sixteen days in advance of her completion of a twenty-four-month service agreement with the Bureau of Land Management (BLM). BLM denied her request, and Ms. Hawkinson has asked the Board to review BLM's decision. We conclude that BLM's decision was correct.

Background

Ms. Hawkinson was originally hired for an overseas tour of duty in Alaska by the United States Fish and Wildlife Service, and moved to Alaska in 1978. Since 1978, she has been employed in Alaska by various federal agencies on a continual basis.

In July 2002, Ms. Hawkinson completed a tour of duty in Alaska with the Department of Health and Human Services. In June 2003, she entered into a twenty-four-month employment agreement with BLM and became entitled to a period of OTRAT. Ms. Hawkinson decided to take her OTRAT before reporting to BLM. She left on December 19,

2003, and began her employment with BLM upon her return on January 2, 2004. BLM then established Ms. Hawkinson's next OTRAT eligibility date as January 2, 2006, based on her twenty-four-month employment agreement.

On June 27, 2005, Ms. Hawkinson applied for OTRAT authorization and requested a period of travel beginning December 17, 2005, sixteen days in advance of her eligibility date. BLM denied her request, stating that she was not entitled to home leave until January 2, 2006, and that BLM does not permit early tour renewals.

Ms. Hawkinson maintains that the Alaska State Office BLM Manual Supplement (BLM Supplement), which regulates employee OTRAT, contains incomplete and repealed regulatory citations, and that the agency travel specialist is interpreting the regulations incorrectly. She also states that in several previous instances, federal agencies have granted her advance OTRAT. Ms. Hawkinson asserts that agencies are authorized to make exceptions to two-year tours of duty, and that she should be granted such an exception.

Discussion

Under 5 U.S.C. § 5728(c)(2) (2000) employees such as Ms. Hawkinson, who have been recruited for posts of duty in Alaska or Hawaii, are authorized overseas tour renewal agreement travel between consecutive tours of duty:¹

The expenses payable . . . are the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty in Alaska or Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, incurred after he has satisfactorily completed an agreed upon period of service in Alaska or Hawaii and in returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty in Alaska or Hawaii under a new written agreement made before departing from the post of duty.

¹ Alaska and Hawaii were previously classified as "overseas," and tours of duty to those States entitled employees to OTRAT. Alaska and Hawaii are no longer considered overseas for most purposes; however, employees who have been on continuous "overseas" duty in Alaska and Hawaii since before September 1982 retain their OTRAT benefits. 41 CFR 302-3.14 (2003).

This provision is implemented by the Federal Travel Regulation (FTR), which authorizes an agency to pay the round-trip transportation expenses for an employee and his or her immediate family from the employee's post of duty in Alaska or Hawaii to his or her place of residence in the United States and designated territories for the purpose of returning home to take leave "between tours of duty." 41 CFR 302-3.211. Section 302-3.212 provides the requirements for eligibility:

You are eligible to receive an allowance for overseas tour renewal travel if:

- (a) You are on an overseas assignment, and you have completed your tour of duty and satisfactorily completed your service agreement time period; and
- (b) You are on an overseas assignment and you have signed a new service agreement to remain at your overseas post or to transfer to another overseas post.

In *Lawrence J. Brenner*, GSBCA 15178-TRAV, 01-1 BCA ¶ 31,208, the Board adopted the reasoning of the General Accounting Office (now the Government Accountability Office) to hold that the statutory and regulatory requirements regarding the timing of OTRAT should be interpreted in such a way as to permit employees reasonable flexibility in taking OTRAT:

The General Accounting Office (GAO), which previously decided these claims, has recognized that the statutory provision for tour renewal agreement travel to the continental United States should be given a liberal construction to effect the beneficial purpose for its enactment. *Charles E. Potts*, 65 Comp. Gen. 213 (1986). Consistent with this principle, GAO has suggested that while the statute refers to travel upon the completion of one tour of duty and prior to commencing a subsequent tour, it is permissible to allow employees stationed overseas or in Alaska or Hawaii to take tour renewal travel for up to six months before and six months after completing a tour of duty. *Department of the Army*, B-199643 (Sept. 30, 1981). The Board also has stated that tour renewal travel should be taken "between tours of duty or within a reasonable time after entering into a renewal agreement." *George E. Lingle*, GSBCA 13946-TRAV, 97-2 BCA ¶ 29,292, *modified on reconsideration*, 98-1 BCA ¶ 29,439. This recognizes that given work commitments, school schedules, and other matters, it may not always be possible for an overseas employee, and his or her family, to take tour renewal agreement travel precisely at the expiration of the current tour. This

interpretation also permits reasonable flexibility in the scheduling of such travel. *Department of the Army; see also Charles E. Potts; Dick D. Hendricks*, B-205137 (May 18, 1982).

Id. at 154,076.

BLM's Alaska State Office has a written policy that implements applicable statutes, regulations, and case law. The BLM Supplement allows an employee the flexibility to delay renewal agreement travel, yet retain the same entitlement date for subsequent OTRAT. This is possible, however, only if the employee begins OTRAT within thirty days after his or her entitlement date, or a longer period approved by the agency:

Any travel which begins after thirty (30) calendar days of the employee's entitlement date without written approval for the delay, will result in a new entitlement date being established. The next entitlement date will be reset to two (2) years following the employee's return to his/her Alaska duty station from tour renewal travel.

BLM Supp. at H-1382-1.

This policy directly affects Ms. Hawkinson's claim. When she entered into an employment agreement with BLM in June 2003, Ms. Hawkinson became entitled to a period of OTRAT. 41 CFR 302-3.212. She delayed her travel until December 2003, a period of about six months. Under BLM's policy, since Ms. Hawkinson delayed her OTRAT more than thirty days beyond her entitlement date without first receiving written approval, the agency had to establish a new entitlement date two years following her return on January 2, 2004. Having established that date, the agency then continued to follow its policy when it denied Ms. Hawkinson's request for advance OTRAT. In this connection, the BLM Supplement states:

No advance tour renewal travel is allowed since the employee is not eligible to travel until he/she has completed 24 months of the agreed tour of duty.

Id.

BLM's policy, although perhaps more strict than other agencies for which Ms. Hawkinson has worked, is not contrary to statute and regulation because it does permit reasonable flexibility in scheduling OTRAT. Moreover, we cannot say that application of BLM's policy to Ms. Hawkinson's situation was unreasonable. Finally, the fact that other agencies may have permitted Ms. Hawkinson to travel in advance of her entitlement date

does not entitle her to travel in violation of BLM's policy. Accordingly, we affirm BLM's decision and deny the claim.

ROBERT W. PARKER
Board Judge