

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 9, 2001

GSBCA 15466-RELO

In the Matter of BRENT A. MYERS

Brent A. Myers, Tooele, UT, Claimant.

Rickie P. Cannon, Acting Chief, Policy and Program Development Division, Manpower and Reserve Affairs, Office of Assistant Secretary of the Army, Department of the Army, Alexandria, VA, appearing for Department of the Army.

DeGRAFF, Board Judge.

On April 23, 2001, we granted the Army's request for an extension of time until April 30, to file a request for reconsideration of our March 23, 2001 decision resolving this claim. On April 30, after the close of the Board's working hours, we received a request from the Army to clarify our decision. Because the request was received after working hours, it is considered to have been filed on May 1, 2001. See Rule 402(a)(3) (48 CFR 6104.2(a)(3) (2000)) (Board's working hours end at 4:30 p.m.).

To the extent that the Army's May 1, 2001 filing is meant to be a request for reconsideration, we deny it as untimely. The filing raises two issues, however, that merit comment.

First, the Army states, "In the past decisions from this Board were either published or unpublished. The Department of the Army requests clarification of whether or not this case is specific or should be applied across the board." We think that the Army is perhaps confusing us with the General Accounting Office (GAO), which resolved travel and relocation claims until that authority was transferred to us in mid-1996. Although GAO did not publish all of its decisions, all of our travel and relocation decisions are published. They can be found in the Board of Contract Appeals reporter published by Commerce Clearing House, and on our web site (www.gsbca.gsa.gov). Further, all of our travel and relocation decisions are precedential, which means that they are meant to be used as an example or a standard in resolving subsequent similar claims.

Next, the Army tells us that the "Internal Revenue Service has established 12 months as the determining factor of establishing a residency requirement." Based upon the Internal

Revenue Service's "definition of residency, the Department of the Army has established its policy that any move of 12 months or more, is considered a permanent change of station." The Army asks how this affects the Joint Travel Regulations (JTR). Internal Revenue Service rules govern taxation, but do not govern a federal civilian employee's entitlement to relocation benefits. The rules governing such entitlements are set out in title 5 of the United States Code, as implemented by the Federal Travel Regulation (FTR), which is supplemented by the JTR. It appears that the manner in which the Army is applying the purported Internal Revenue Service rule conflicts with the statute and the regulations that apply to relocation benefits. According to title 5 of the United States Code, the FTR, and the JTR, Mr. Myers is entitled to relocation benefits. The Army would be well advised to follow the FTR and the JTR when assessing the eligibility of either Mr. Myers or any other employee for relocation benefits, and not to use an Internal Revenue Service rule for a purpose for which it was not intended.

MARTHA H. DeGRAFF
Board Judge