

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

October 3, 2001

GSBCA 15639-RELO

In the Matter of FRED J. MARTIN, JR.

Fred J. Martin, Jr., Maumelle, AR, Claimant.

Priscilla Garrett, Chief, Personnel Branch, Kelly Air Force Base, TX, appearing for Department of the Air Force.

NEILL, Board Judge.

Claimant, Mr. Fred Martin, a civilian employee of the Department of Defense (DoD), has appealed his agency's refusal to extend, beyond the normal two-year limit, his right to reimbursement for certain expenses incurred in connection with the purchase of a residence at his new permanent duty station (PDS). We find the agency's denial of his request to be based upon an incorrect reading of the applicable regulation. Nevertheless, because this is a matter left by regulation to the discretion of the employee's agency, we return the matter to the agency for further action not inconsistent with this decision.

Background

On June 23, 1999, Mr. Martin was issued orders transferring him from Kelly Air Force Base in Texas to a new duty station in Little Rock, Arkansas. Among the various provisions in his orders was one which authorized Mr. Martin to be reimbursed for certain real estate expenses in connection with the sale of his residence at his old PDS and with the purchase of a residence at his new PDS.

The regulations covering this reimbursement impose a time limit on a transferred employee's eligibility for this benefit. Settlement on the sale of the former residence and purchase of the new residence must normally occur within two years of the date on which the transferred employee reports for duty at his or her new PDS. Under certain circumstances, however, this period can be extended by one additional year.

As the two-year period established under law for completion of reimbursable real estate transactions drew to a close, Mr. Martin requested his agency to extend the period for one additional year. In requesting the extension, he explained that certain legal fees and expenses as well as tax payments to the Internal Revenue Service (IRS) had so depleted his

financial resources as to make it impossible for him to purchase a residence at his new PDS before the expiration of the two-year period. He was hopeful, however, that within the next six to twelve months his financial status would improve sufficiently for him to be able to purchase a home and thus utilize his relocation benefits.

The agency, relying on section C14000-B of the Joint Travel Regulations (JTR), denied the request. The official ruling on his request explained that, pursuant to that provision, any extension given must be based on a determination that extenuating circumstances prevented the employee from completing the purchase of a residence within the initial two-year period and that the transactions are reasonably related to the permanent change of station (PCS). The agency denial concluded: "Mr. Martin has not demonstrated that his own circumstances were related to his PCS and not preexisting, therefore his request is denied."

In his appeal to this Board, Mr. Martin has provided more detail regarding the legal fees and expenses which allegedly prevented him from purchasing a residence in the area of his new PDS within a two-year period. He explains that during that period he was required to defend himself against a felony charge. Although the charge was eventually dropped, he was nonetheless required to post a substantial bond. He estimates that the cost of this bond and his attorney's fees, together with a fine and court costs which he was ultimately required to pay, amounted to over \$15,000. The agency, after reviewing this additional information, continues to state that these and the circumstances originally cited by Mr. Martin do not justify extending the two-year period because none are related to his PCS move.

Discussion

As a civilian employee of DoD, Mr. Martin is subject to the JTR. These regulations, which are written for DoD civilian employees, implement and supplement the Federal Travel Regulation (FTR), which applies to all civilian employees of the Federal Government. The JTR provision covering extension of the two-year period for settlement on the sale and purchase of a transferred employee's residence reads in pertinent part as follows:

Upon an employee's written request, the 2-year period may be extended by the commanding officer (or designee) of the activity bearing the cost for up to an additional year. . . . An extension must be based on a determination that extenuating circumstances have prevented the employee from completing the sale and purchase . . . within the initial 2-year period and that the transactions are reasonably related to the PCS.

JTR C14000-B (May 1, 1999). This provision of the JTR is similar in nearly all respects to that found in the FTR. See 41 CFR 302-6.1(e)(2) (1999).

In examining the language of the JTR provision, we note first of all that extension of the two-year period by the commanding officer or designee is discretionary. It states that the two-year period *may* be extended. Secondly, a determination must be made by the commanding officer or his/her designee that extenuating circumstances have in fact

prevented the employee from completing the sale and purchase within the two-year period. Finally, the sale or purchase transaction must be related to the employee's PCS.

In evaluating Mr. Martin's request, the agency official has mistakenly read this final requirement as being inextricably linked to the second requirement. It is not. The agency tells us that it has rejected Mr. Martin's request because he has not demonstrated that the cited legal fees, the IRS payment, his personal problems and the resultant decrease in financial status are related to his PCS move. The JTR provision does not require him to make such a showing. As we have explained in the past, this provision does not require that the extenuating circumstances precluding sale or purchase be related to the PCS. "The events which must be 'reasonably related to the permanent change of station' are not the extenuating circumstances, but rather, the residence transactions." Stephanie P. Riddle, GSBCA 15027-RELO, 99-2 BCA ¶ 30,533, at 150,798. An example, on the other hand, of non-compliance with this third requirement that the residence transaction be related to the PCS move can be found in Robert L. Palmer, Jr., GSBCA 13670-RELO, 97-1 BCA ¶ 28,685 (1996). In that decision we concluded that the transferred employee's purchase of a residence near the new PDS was not precipitated by his PCS move but rather by his recent marriage.

As we stated earlier, the decision of whether the two-year period for sale and/or purchase of a transferred employee's residence should be extended is one entrusted by regulation to agency discretion. Because the regulation grants broad discretion in this sort of subjective determination, we will not disturb it unless we find that it is arbitrary, capricious or clearly erroneous. Larry E. Olinger, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877. To the extent that the agency official in this case ruled on Mr. Martin's request earlier, she did so based on a misperception of the relevant regulation. We, therefore, return the matter to her to resolve taking into consideration our judgment as to the meaning of the applicable regulation. Mr. Martin may, of course seek further review by us in the event he believes the official's new ruling is arbitrary, capricious or clearly erroneous.

EDWIN B. NEILL
Board Judge