

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

April 11, 2002

GSBCA 15748-RELO

In the Matter of PATRICK R. GILLEN

Patrick R. Gillen, Suffolk, U.K., Claimant.

Paul Wolfe, Personnel Director, Education Activity, Department of Defense, Arlington, VA, appearing for Department of Defense.

DeGRAFF, Board Judge.

Patrick R. Gillen was employed as an educator by the Department of Defense (DoD) in Lakenheath, United Kingdom, for more than thirty years. His wife was also employed by DoD in Lakenheath. In July 1999, a physician in the United States stated that Mr. and Mrs. Gillen were his patients, and that he believed they both qualified for medical retirement. In August 1999, Mr. Gillen completed his application for retirement, to be effective June 24, 1999. Although Mr. Gillen did not report for work after June 1999, he stated that he did not want to retire without first obtaining certain information from the Office of Personnel Management (OPM) regarding the retirement benefits he would receive. OPM and DoD told Mr. Gillen that they could not provide the information he requested until he provided a definite retirement date. Mrs. Gillen retired from work effective January 7, 2000.

On January 9, 2000, in a letter to a member of the United States Senate, Mr. Gillen made it clear that he wanted his retirement to be effective June 24, 1999. As a result, on January 19, 2000, DoD provided Mr. Gillen with a certificate of retirement, and OPM made a determination regarding Mr. Gillen's benefits. On June 28, 2000, DoD prepared separation travel orders that authorized Mr. Gillen to ship his household goods to the United States and to travel to the United States with his wife at Government expense, provided he began his travel and transportation within two years from the date of his retirement, that is to say by June 23, 2001.

In April 2001, Mr. Gillen asked DoD for an indefinite extension of time to return to the United States at Government expense. He explained that he and his wife had serious medical problems that were being addressed in the United Kingdom, and that they did not have the "emotional or physical strength and stamina" to move back to the United States. DoD told Mr. Gillen on April 23, 2001, that applicable regulations imposed a maximum time limit of two years for beginning separation travel and transportation of household goods. In

addition, DoD explained that it lacked the authority to modify or waive the two-year deadline. In May 2001, Mr. Gillen wrote to a second member of the United States Senate, "Please help us as we need to stay in the United Kingdom because of the medical care that we are receiving"

So far as we can tell from our record, Mr. Gillen's most recent trip to the United States was from mid-December 1999, through early January 2000, and Mrs. Gillen's most recent trip was sometime after March 1999. In March 2001, Mrs. Gillen's physician stated that she would not want to subject her to a change of medical staff or hospital. In September 2001, Mr. Gillen explained that he could not travel due to his medical condition.

On January 18, 2002, Mr. Gillen asked us to review DoD's decision not to grant an extension of time to ship his household goods and to begin his return travel to the United States. Included in Mr. Gillen's submission is a statement that he would like the deadline to be extended until January 19, 2003, which is three years after the issue regarding his retirement annuity was resolved. DoD points out that there is no authority to grant Mr. Gillen's request, and asks the Board to recommend that the General Services Administration's Deputy Associate Administrator, Office of Transportation and Personal Property (MT), grant administrative relief to Mr. Gillen.

Applicable regulations do not permit DoD to pay Mr. Gillen's travel and transportation expenses. Agencies may pay travel and transportation expenses of employees who return from posts of duty overseas, pursuant to applicable regulations. 5 U.S.C. § 5722, 5724(d) (2000). The regulations, which apply to all federal civilian employees, provide that all travel and transportation shall be accomplished within six months of the date of separation or other reasonable period of time as determined by the employing agency, but in no case later than two years from the effective date of the employee's separation from Government service. 41 CFR 302-1.106 (2000). The imposition of a time limitation ensures that an employee's travel is clearly incidental to the separation and that the travel will begin in a reasonable time. If an employee does not return to the United States as the result of the termination of an assignment and within a reasonable time, the employee's eventual return should not be authorized at public expense. 28 Comp. Gen. 285 (1948). DoD correctly informed Mr. Gillen that an agency may not waive the two-year maximum time period. John W. Castellani, GSBCA 15428-TRAV, 01-2 BCA ¶ 31,515 (citing cases).

In a test program begun on April 28, 2000, the Administrator of General Services authorized the Board to refer claims to MT if administrative relief should be granted for legal or equitable considerations, but such relief is prohibited by statutory or regulatory restrictions. Such claims are commonly referred to as "meritorious claims." The purpose of the test program is to allow MT to achieve the same results as it would if the Meritorious Claims Act, 31 U.S.C. § 3702(d) (Supp. V 1999), were utilized, but in a more efficient manner. The standard we use when we consider whether to recommend a claim for disposition under the pilot program is as follows:

We will not apply a hard and fast rule when we determine whether equitable considerations compel us to conclude that a claim is meritorious. In reaching our decisions, we will consider and balance several factors. At the outset, we recognize that deeming a claim "meritorious" is highly extraordinary, since

Government employees are charged with knowledge of all applicable laws and regulations and are expected to comply with them. We will look to see whether the claim presents equitable considerations of an unusual nature which are unlikely to constitute a recurring problem. We will consider whether an agency directed an employee to incur the claimed expenses. We will also consider whether an agency's actions caused an employee to incur the claimed expenses. We may also consider other factors, as warranted by the circumstances presented by individual claims.

Roy Katayama, GSBCA 15605-RELO, 01-2 BCA ¶ 31,542.

Using this standard to evaluate the facts presented by Mr. Gillen, we have decided not to refer this claim to MT for relief. No legal considerations suggest that this claim is meritorious. As for equitable considerations, we explained recently that we have been convinced that the equities weigh in favor of employees who incur costs due to agencies' actions, but not in favor of employees who incur costs because of personal decisions and who benefit from the expenditures. See Charles P. Cooluris, GSBCA 15693-RELO (Feb. 11, 2002) (citing cases). Here, DoD did not delay Mr. Gillen's departure from the United Kingdom, and played no role in his decision to continue his and his wife's medical treatment in the United Kingdom. Further, if Mr. Gillen's time to begin his travel and transportation were extended, the costs incurred to return him, his wife, and his household goods to the United States would be for his benefit. In addition, the equitable considerations involved here are not unusual, in that other federal employees confronted with personal problems have been held to the requirement that travel and transportation must be completed within the time required by either the applicable regulations or a travel authorization. See, e.g., Sherrell M. Garth, GSBCA 15729-RELO (Feb. 8, 2002); Eugene Leong, GSBCA 13666-RELO (Mar. 31, 1997); Teresita G. Bowman, B-212278 (Sept. 2, 1983); 62 Comp. Gen. 200 (1983); Dale R. Moore, B-184676 (Nov. 17, 1975). We are certain that all such employees considered their claims to be genuinely meritorious. However, in part because such claims are not unusual, they are not so highly extraordinary as to warrant a recommendation to MT that administrative relief contrary to explicit regulatory requirements should be granted.

MARTHA H. DeGRAFF
Board Judge