

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

April 7, 2004

GSBCA 16372-RELO

In the Matter of KENNETH A. JONES

Kenneth A. Jones, Silver Spring, MD, Claimant.

Judy Hughes, Travel Policy, Defense Finance and Accounting Service, Columbus Center, Columbus, OH, appearing for Department of the Army.

PARKER, Board Judge.

Background

Kenneth A. Jones, a civilian employee of the Department of the Army, was transferred from Fort Monmouth, New Jersey, to Adelphi, Maryland. Mr. Jones reported for duty in Adelphi on May 12, 1997, and completed the purchase of a new residence there on July 28, 1997.

Mr. Jones did not file a claim for reimbursement of his real estate-related costs until January 9, 2004 -- more than six years after completing the purchase of his new residence. The agency denied Mr. Jones' request for reimbursement on the basis that the claim was barred by the statute of limitations for filing such claims. Mr. Jones has asked the Board to review the agency's denial of his claim, pointing out that he went through a difficult divorce during the relevant period and had been advised by an agency employee that there was no time limit for submitting his claim.

Discussion

Although the agency did Mr. Jones a disservice by erroneously advising him that there was no time limit for submitting his claim, the agency is correct that the claim is now time-barred and may not be paid. By statute, the claims involving travel or relocation expenses which the Board has been authorized by the Administrator of General Services to settle must be received by the Administrator or by the agency which conducts the activity from which the claim arises within six years after the claim accrues. 31 U.S.C. § 3702(b)(1) (2000). This means that Mr. Jones had to submit his claim for real estate expenses by

July 27, 2003, within six years of the time he settled on his home in Adelphi. Because this six-year limitation period is statutory, and Mr. Jones failed to demonstrate that his claim was submitted within that statutory time frame, the Board cannot direct the agency to pay the claim. Frank Hickey, GSBCA 15349-RELO, 01-2 BCA ¶ 31,503; Janice P. Collington, GSBCA 14078-RELO, 97-2 BCA ¶ 29,025.

This is not a case where equitable tolling of the limitations period would be appropriate. See Frank H. Khattat, GSBCA 13711-TRAV, 97-2 BCA ¶ 29,069 (Board refused to toll six-year statute of limitations where claimant was ill but had adequate time to prepare his claim before he was forced to retire). Equitable tolling is generally reserved for the claimant who, without fault, allows the limitations period to run. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990) ("We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights."); Kelley v. NLRB, 79 F.3d 1238, 1248 (1st Cir. 1996) (Equitable tolling is "appropriate only when the circumstances that cause a plaintiff to miss a filing deadline are out of his hands.") (citations omitted). Mr. Jones is not such a claimant. Although he may have gone through a difficult divorce and was erroneously advised that there was no time limit for filing his claim, circumstances were never "out of his hands." Six years is a long time. Even considering all of the relevant circumstances, Mr. Jones still had adequate time to file his claim.

Decision

The claim is denied.

ROBERT W. PARKER
Board Judge