

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 30, 2001

GSBCA 15025-RELO

In the Matter of JAMES T. ABBOTT

James T. Abbott, Los Angeles, CA, Claimant.

Bruce Krasker, Defense Contract Management District East, Boston, MA, appearing for Defense Logistics Agency.

WILLIAMS, Board Judge.

Claimant, James T. Abbott, seeks reconsideration of our decision denying relocation expenses in conjunction with his permanent change of station (PCS).

At the outset, the agency contends that claimant's request for reconsideration is untimely since the decision was dated May 11, 2000, and claimant did not file his request for reconsideration until September 6, 2000.

The Board sent the decision on May 12, 2000, to claimant via certified mail. Although the decision was postmarked on May 12, 2000, the envelope containing the decision was returned to the Board unopened on August 1, 2000, with the marking "Return to Sender - Unclaimed." The unclaimed envelope was marked with the annotation "N/L 5/15/00." According to the United States Postal Service, this annotation means "Notice Left." The notice is a Standard Form 3849, which notifies the addressee that a delivery of certified mail had been attempted and advises him how to arrange for redelivery or pick-up within fifteen days. The Board remailed the decision to claimant via certified mail on August 2, 2000. According to the receipt, claimant did not receive this certified mail until August 26, 2000.

Rule 407 provides that a motion for reconsideration is timely only if it is received by the Board within thirty calendar days after the decision was issued. 48 CFR 6104.7 (1999).¹ Claimant admittedly did not file his request for reconsideration within thirty days of issuance

¹Claimant was provided a copy of the Board's rules in the Board's Notice of Docketing on May 17, 1999.

of the decision, and asks us to deviate from our rules and permit him to seek reconsideration within thirty days of his receipt of the decision. Claimant's failure to collect certified mail does not entitle him to an extension of the Board's filing deadlines. See, e.g., Automation & Telecommunications Solutions, Inc., AGBCA 97-190-1, 97-2 BCA ¶ 29,276 ("The letter was sent by certified mail but was returned unclaimed. It is Appellant's obligation to maintain a current address and to pick up mail delivered there."); A-1 Fuelwood Co., AGBCA 86-137-1, 86-2 BCA ¶ 18,765 (motion for reconsideration of dismissal for failure to prosecute denied where "[a]ppellant's only excuse is a problem of picking up mail during Post Office hours. Certified mail is routinely used by the Board to verify receipt Failure to collect certified mail does not constitute an excuse [for failing to prosecute an appeal]."). Because claimant's request for reconsideration was not submitted within thirty days of issuance of our decision, the request is untimely. E.g., Janice M. Gentile, GSBGA 14457-RELO, 00-1 BCA ¶ 30,644.

Even if we were to deem the request timely, there is no basis for reconsideration. As grounds for reconsideration, claimant contends that the Board erred in concluding that the agency made a determination that the claimant's move was not incident to transfer. Specifically, claimant argues that the agency articulated its arguments for the first time in its brief before this Board and not initially in determining claimant's eligibility. This Board seriously considers every argument made by a claimant or agency regardless of whether such argument was made during the agency's prior consideration of the claim. We will not bar a valid, relevant argument simply because it was not raised earlier.

Claimant also contends that the Board's decision in his case is inconsistent with John V. Duncan, GSBGA 15230-RELO, 00-2 BCA ¶ 30,950, where the Board stated in dicta:

By not responding to simple requests for months on end, then abruptly and without cogent explanation denying those requests, and by making the denials without regard to applicable regulations, [the agency] failed to perform its basic duties to Dr. Duncan.

The problem in Duncan was that the agency delayed responding to the claimant's request for an extension of time in which to decide whether to participate in the relocation services program, and then denied the request on the ground that the time for the claimant's election had passed. The claimant later took action on his own which made participation in the program impossible. Mr. Abbott's situation is different from Dr. Duncan's. Mr. Abbott never received authorization for any PCS cost, since he was not issued travel orders, and he himself recognized -- indeed, he advised other employees as part of his duties -- that costs could not be recovered in the absence of orders. Duncan is not relevant to this case.

Claimant also argues that the Board failed to consider and give proper weight to appropriate factors in evidence and failed to consider that Congress had allocated funding for PCS expenses in this case. Each of these arguments was considered by the Board and raised by appellant in conjunction with his original response to the agency's memorandum of law and the voluminous exhibits filed with his claim.

Under the Board's Rules of Procedure, "Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration." Rule 407. The claimant's request does nothing more than reiterate the able arguments he

made earlier. Thus, the request must be denied. Synita Revels, GSBCA 14935-RELO, 00-1 BCA ¶ 30,896. The Board concluded that the agency had wide discretion in determining whether to reimburse short-term relocation expenses and the agency did not abuse its discretion here. Although the Board recognized that the agency could have exercised its discretion differently, it may not overturn the agency's determination unless that determination was clearly erroneous, arbitrary, or an abuse of discretion. Claimant has not articulated any valid basis for reconsideration.

Decision

The request for reconsideration is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge