

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 17, 2002

GSBCA 15859-RELO

In the Matter of NHAT D. NGUYEN

Nhat D. Nguyen, Warner Robins, GA, Claimant.

Michael R. Shutter, Chief, Civil Law Division, Office of the Staff Judge Advocate, Headquarters, Warner Robins Air Logistics Center, Department of the Air Force, Robins Air Force Base, GA, appearing for Department of the Air Force.

GOODMAN, Board Judge.

Claimant, Nhat D. Nguyen, is a civilian employee of the Department of the Air Force. He has asked this Board to review the agency's denial of his request for an extension of the time to settle on the purchase of a residence at his new duty station after a permanent change of station (PCS) move.

Factual Background

Claimant received orders for a PCS move to a new duty station, Robins Air Force Base in Georgia, and entered on duty on May 8, 2000. He states that before accepting the new position, he was concerned that he would not have enough time to sell his house at his old duty station and buy a house at his new duty station within the two-year period allowed by the travel regulations because there was a depressed real estate market at his old duty station and many houses were for sale. He was told that he could request a one-year extension if he had a problem selling his home. It took him eleven months, until March 2001, to sell his house.

After his home was sold, claimant submitted his request for reimbursement of closing costs, and received reimbursement four months later, in July 2001. He began looking for a home to purchase in McDonough, Georgia, a community north of his duty station. He states that he sought to purchase a home in this area as it would allow him to commute to work and also allow his son to commute to Atlanta for school. After three months, he submitted an offer on a home, which was not accepted. He then decided to build a home and purchased a lot in January 2002. He submitted a request for a one-year extension of the two year period allowed for reimbursement of closing costs for the purchase of his new home.

The agency denied his request. The agency, in its response to the request for review to this Board, states:

[T]he claimant has chosen an area at least 75 miles to the north of [his duty station] as his new home location. Robins AFB is located directly next to Warner Robins, a growing city of approximately 60,000, in a county that is growing even more rapidly. Macon, a city of over 150,000, is located approximately 15 miles to the north. The claimant's decision to search for a residence just south of Atlanta is clearly a personal choice made for his family's convenience. . . . [S]uch personal choices do not constitute extenuating circumstances justifying an extension.

Claimant responded to the agency's allegations, noting that it had taken him eleven months to sell his home at his old duty station and four additional months for the agency to reimburse his settlement costs. He also states that he had looked for a home in Warner Robins and Byron, Georgia, for six months before he sold his home at his old duty station. He also sought homes in other localities. Finally, he concentrated his search in McDonough because of availability and prices. He states further:

Because I choose to live at . . . [a] location . . . which is a long commuting distance to Robins AFB, and it is a personal choice, it does not mean I chose it just for my son to easily commute to school in Atlanta. It is just a coincident situation.

Discussion

Regulation provides that the agency's obligation extends only to those purchases for which settlement occurs not later than two years after the date that the employee reports for duty at the new duty station. The two-year period may be extended in individual cases for as much as an additional year.¹ An extension must be based on a determination that extenuating circumstances, acceptable to the agency concerned, have prevented the employee from completing the sale and purchase transactions within the two-year period. JTR C14000-B (Apr. 1, 2000).

As we recognized in Larry E. Olinger, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877, "Regulation vests discretion in the agency to make certain determinations as to each request for an extension of the two-year period in which settlement must occur in order for the transferred employee to be reimbursed for expenses incurred in the purchase of a home at the new duty station." The Board in Olinger went on to articulate a three-part test for an agency to apply in considering such an extension:

First, the agency must decide whether extenuating circumstances prevented the employee from completing the purchase within two years of the date on which he reported for duty at the station. Second, if the agency finds extenuating circumstances, it must decide whether they are acceptable. Third, the agency

¹ The period may be extended for an additional two years for transferring employees who reported to a new duty station on or after February 19, 2002. 66 Fed. Reg. 58,194, 58,197, 58,233, 58,237 (Nov. 20, 2001) (to be codified at 41 CFR 302 - 2.3, -11.22, -11.420); see James A. Wright, GSBCA 15866-RELO (June 28, 2002).

must decide whether the transaction is reasonably related to the transfer to the new station. All of these determinations are subjective, and because the law grants broad discretion to the agency, we will not disturb any of them unless we find that a determination is arbitrary, capricious, or clearly erroneous.

98-2 BCA at 147,931.

While the claimant asserts that a slow real estate market prevented him from selling his home at his old duty station sooner than he did, the agency did not find this to be an extenuating circumstance. In previous instances, the allegations of a slow real estate market have not been held to be extenuating circumstances. See, e.g., Shashikant D. Naik, GSBCA 14581-RELO, 99-1 BCA ¶ 30,240.

As the Board emphasized in Olinger, these determinations by agencies are subjective. Because the agency has broad discretion, the Board will only disturb the agency's determination if it is arbitrary, capricious, or clearly erroneous. Here, the agency's determination cannot be so characterized.

Decision

This claim is denied.

ALLAN H. GOODMAN
Board Judge