

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

October 10, 2002

GSBCA 15949-RELO

In the Matter of ARNOLD W. OSTROW

Arnold W. Ostrow, Key West, FL, Claimant.

Kevin McGowan, PCS Travel Coordinator, Philadelphia Naval Business Center, Norfolk Naval Shipyard Detachment, Philadelphia, PA, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

Arnold W. Ostrow, an employee of the Department of the Navy, was transferred from Pennsylvania to Florida in October 1996. Mr. Ostrow sold his former residence in Pennsylvania in October 1999, a bit less than three years after the date he first reported for duty in Florida. The Navy asks whether it may reimburse Mr. Ostrow for the expenses he incurred in selling that residence.

Under the version of the Federal Travel Regulation (FTR) in effect at the time Mr. Ostrow first reported for duty in Florida, expenses of the sale of a transferred employee's residence at his old duty station were reimbursable if the sale occurred "not later than 2 years after the date that the employee reported for duty at the new official station." 41 CFR 302-6.1(e)(1) (1996). If an employee requested in writing an extension of this period, the period could be extended "by the head of the agency or his/her designee for an additional period of time not to exceed 1 year." Id. 302-6.1(e)(2)(i). The regulation prescribed:

The employee's written request should be submitted to the appropriate agency official(s) as soon as the employee becomes aware of the need for an extension but before expiration of the 2-year limitation; however, in no case shall the request be submitted later than 30 calendar days after the expiration date unless this 30-day period is specifically extended by the agency.

Approval of this additional period of time shall be based on a determination that extenuating circumstances, acceptable to the agency concerned, have prevented the employee from completing the sale . . . transaction[] in the initial

timeframe and that the residence transaction[] [is] reasonably related to the transfer of official station.

Id. 302-6.1(e)(2)(ii), (iii).¹

All of these provisions were restated in the Joint Travel Regulations (JTR), which implement the FTR for application to Department of Defense civilian employees. JTR C14000-B (Oct. 1, 1996). The JTR provided further that the commanding officer of the activity which bears the cost of reimbursing the employee for the expenses of selling the old residence is delegated the authority to exercise agency prerogatives with regard to these rules. The commanding officer decides whether an employee's request may be submitted more than thirty days after the expiration of the two-year period. He or she also determines whether extenuating circumstances which prevented the employee from completing the sale within that period are acceptable, and whether the residence transaction is reasonably related to the transfer. Id.²

The agency's inquiry was sent to us by the permanent change of station travel coordinator at the activity which apparently would bear the cost of reimbursing Mr. Ostrow for the expenses he incurred in selling his former home in Pennsylvania. This individual believes that extenuating circumstances prevented Mr. Ostrow from selling the house within two years of the date on which he first reported for duty in Florida. Mr. Ostrow cites additional circumstances in his comments on the agency's filing.

Under the rules prescribed by the FTR and the JTR, the Navy has the discretion to extend, from two years to three years after the date Mr. Ostrow first reported to his duty station in Florida, the period of eligibility for reimbursement of the expenses this employee incurred in selling his home in Pennsylvania. The agency need not do so, however. Whether it extends the period or not is the responsibility of the commanding officer of the activity which would bear the cost of this reimbursement. As we have previously explained, "The Board will not usurp or interfere with the exercise of that [officer's] discretion unless it is demonstrated that the exercise of that authority or the refusal to exercise it is arbitrary or lacks a rational basis." Clifford L. Leeson, GSBCA 14354-RELO, 98-1 BCA ¶ 29,701.

For the period to be extended, the commanding officer must take two distinct actions. First, he must accept Mr. Ostrow's request, notwithstanding the late date at which it was submitted. Second, he must determine that extenuating circumstances which prevented the

¹These rules have been rewritten, and the current version will be codified at 41 CFR 302-11.21 to -11.23 and -11.420 to -11.421 (2002). The principal substantive difference between the regulations which apply to Mr. Ostrow and the current rules is that for employees who first report to a new permanent duty station on or after February 19, 2002, the period of eligibility for reimbursement of real estate transaction expenses may be extended for two additional years, rather than one. 66 Fed. Reg. 58,194, 58,233-34, 58,237 (Nov. 20, 2001).

²The current version of the JTR has been revised to incorporate the substantive change to the FTR described in footnote 1. JTR C14000-B (July 1, 2002).

employee from completing the sale within the two-year period are acceptable, and that the sale was reasonably related to the employee's transfer to Florida. If the commanding officer does not take both of these actions, the period of eligibility may not be extended.

The Navy has not asked our views on whether the circumstances cited by the permanent change of station travel coordinator and Mr. Ostrow are extenuating, and we offer no comment on that matter.

STEPHEN M. DANIELS
Board Judge