

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

January 22, 2003

GSBCA 16015-RELO

In the Matter of MICHÉLE A. FENNELL

Michéle A. Fennell, Warner Robins, GA, Claimant.

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

DANIELS, Board Judge (Chairman).

Michéle A. Fennell, an employee of the Department of the Air Force, seeks reimbursement of the expenses of purchasing a residence at her new duty station. Ms. Fennell did not complete this purchase within two years after the date on which she reported for duty at the new station. She requested, but was denied, an extension of time in which to complete the purchase and receive reimbursement. We conclude that the agency's rejection of this request was neither arbitrary, capricious, nor clearly erroneous. We therefore sustain the agency's determination.

Background

Ms. Fennell was ordered in the fall of 2000 to transfer from a facility in Texas to one in Georgia. She reported for duty at the Georgia facility on December 1, 2000.

Ms. Fennell had never owned a home before, and she proceeded cautiously in her search for a permanent residence. For several months after arriving in Georgia, she attended open houses. By the fall of 2001, she decided to look for land on which to have a new residence constructed, since she had not found any existing homes whose design pleased her. In October, she secured, through the services of a mortgage broker, preapproval for a construction loan. In December, she contracted to buy a building lot and selected a builder.

During the first half of 2002, Ms. Fennell encountered problems with these transactions. In February, based on advice from an appraiser, she concluded that the builder's price was excessive and ended her relationship with him. In April, she selected another

builder. In May, however, her contract for the purchase of the building lot was terminated, apparently because the approval of the expected construction loan was reversed.

In August 2002, Ms. Fennell entered into agreements to purchase a different building lot and to have a builder construct a residence there. The agreement with the builder provided for construction to be complete by November 15.

Construction was delayed, however, due, Ms. Fennell says without challenge from the Air Force, "to abnormal rainfall, tornado watches and pending issues of the builders' [sic] last construction." On October 1, she and the builder amended their contract to provide for completion of construction by January 2, 2003. On October 2, she asked the Air Force to extend by two months the period within which settlement expenses might be reimbursed. Her request asserted that the completion date had been delayed "[d]ue to circumstances beyond my control."

On November 14, the agency rejected the request. The memorandum of denial said simply:

According to the Joint Travel Regulations, Volume 2, Chapter 14, "An extension may be granted only if a determination is made that extenuating circumstances prevented the employee from completing the sale, purchase and/or lease termination transaction within the initial 2-year period and that the delayed transactions are reasonably related to the PCS." The reasons you have stated in your request do not support an extension under these guidelines.¹

Discussion

Congress has provided that:

Under regulations prescribed [by the Administrator of General Services], an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station and purchase of a residence at the new official station that are required to be paid by the employee, when the old and new official stations are located within the United States.

5 U.S.C. § 5724a(d)(1) (2000).

¹The quotation is essentially, but not exactly, correct. Paragraph C14000-B of the Joint Travel Regulations, as in effect when Ms. Fennell reported to her new duty station, actually read in part as follows: "Upon an employee's written request, the 2-year period may be extended by the commanding officer (or designee) of the activity bearing the cost for up to an additional year. . . . An extension must be based on a determination that extenuating circumstances have prevented the employee from completing the sale and purchase or lease termination transactions within the initial 2-year period and that the transactions are reasonably related to the PCS [permanent change of station]."

In implementing this law, the Administrator of General Services has provided in the Federal Travel Regulation (FTR) that real estate transaction expenses of transferred employees may be reimbursed by the Government only if those expenses are incurred within a limited time period. The period is generally "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) (2000). Upon an employee's written request, however, the period "may 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).² "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 and purchase or lease termination transactions in the initial timeframe and that the residence transactions are reasonably related to the transfer of official station." Id. 302-6.1(e)(2)(iii).

The Department of Defense's Joint Travel Regulations (JTR), which implement and supplement the FTR with application to civilian employees of that department, essentially restate the provisions described in the previous paragraph. JTR C14000-B (Dec. 1, 2000).

The FTR and the JTR vest broad discretion in agencies to decide whether to approve requests for additional periods of time in which transferred employees' real estate transactions may be generate reimbursable expenses. Because this discretion is considerable, we will not disturb an agency's decision unless it is arbitrary, capricious, or clearly erroneous. Nhat D. Nguyen, GSBCA 15859-RELO, 02-2 BCA ¶ 31,986; Stephanie P. Riddle, GSBCA 15027-RELO, 99-2 BCA ¶ 30,533; Shashikant D. Naik, GSBCA 14581-RELO, 99-1 BCA ¶ 30,240; Larry E. Olinger, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877.

In trying to determine whether Ms. Fennell needed more than two years to purchase a residence in Georgia because "extenuating circumstances . . . prevented [her] from completing the . . . transaction[]" within the first two years after her transfer, there are two ways to view her predicament. One is the perspective taken by Ms. Fennell herself: as a first-time home-buyer, she was uncertain how to proceed, made several missteps, and was unable to reach settlement on her new home because bad weather and bad planning prevented her builder from finishing construction within the time planned. Compassion for an inexperienced individual and a focus on the builder's problems would lead to a determination that an extension of time was appropriate. The other posture is the one taken by the Air Force in responding to her filing of this case: Ms. Fennell's long delay in making arrangements for the construction of her house did not leave adequate time for completion of construction within the two-year period, given the minor problems which routinely affect the timeliness of home-building. A focus on the series of events prior to the time Ms. Fennell entered into her agreement with the builder, and a perception that the difficulties encountered during this period were attributable to actions which were for the most part within the employee's control, would lead to a determination that an extension of time was not merited.

²For employees who reported to the new duty station on or after February 19, 2002, an agency may extend the two-year limitation for up to two additional years. 41 CFR 302-11.22 (2002); 66 Fed. Reg. 58,194 (Nov. 20, 2001).

While we might well have seen the situation from the employee's perspective, had the determination been one for us to make in the first instance, we cannot say that the agency's view is arbitrary, capricious, or clearly erroneous. This case is similar to three of the cases cited above, Nguyen, Naik, and Olinger, in which we allowed to stand agency denials of a time extension. In those cases, the employees were unable to complete residence transactions within two years after reporting to their new duty stations because the employees encountered problems in selling old residences, had family concerns, or both. In only one of the cases cited above – Riddle – did we reverse the agency determination, and even there, where the employee's delay in purchasing a home was in large part caused by agency actions which benefited the Government, the reversal was grounded in part on the agency official's misunderstanding of the determinations to be made.

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge