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

January 29, 2003

GSBCA 16027-RELO

In the Matter of GEORGE R. SAULSBERY

George R. Saulsbery, APO Area Europe, Claimant.

Charles T. Ketchel, Jr., Military Law Division, Office of the Staff Judge Advocate, United States Air Forces in Europe, Ramstein Air Base, Germany, appearing for Department of the Air Force.

BORWICK, Board Judge.

Claimant, a separated federal employee who used to work for the Department of the Air Force, asks this Board to decide that he is entitled to an extension of his return travel rights to the United States beyond the two-year maximum period from his separation date that was granted by the agency.

The agency moves to dismiss for lack of jurisdiction. The agency argues that claimant has not filed a claim for incurred expenses as required by the applicable statute. The agency also argues that claimant may not seek an advisory opinion on the correctness of the agency's action in denying return travel rights beyond the two-year period. For the reasons stated below, we deny the agency's motion to dismiss. Claimant has a concrete, non-hypothetical intention to incur relocation expenses. We find claimant's circumstances meet jurisdictional requirements of statute and our case law. We deny the claim, however, as the Joint Travel Regulations (JTR) make the two-year period the maximum period for exercise of return travel rights. The two-year period may not be enlarged even for urgent personal circumstances.

The facts are as follows: Claimant terminated his federal employment with the agency on January 31, 2001. Claimant resided in the United Kingdom with his family. Because of a family emergency, claimant requested from the agency, and received, permission to use his return travel entitlements up to two-years from his date of separation, i.e. until January 31, 2003. Because of another family emergency, claimant, on November 14, 2002, requested a further extension to use his entitlements until January 31, 2004. On December 11, claimant's request for an additional extension was denied by the commander of the installation where claimant had been employed because regulation did not permit another extension. The

commander advised claimant that he could petition this Board for a decision on whether claimant could be reimbursed if he moved after the two-year limitation.

The agency now moves for dismissal of this matter, arguing that the Board lacks jurisdiction because claimant does not have a "claim" within the meaning of the authorizing statute, 31 U.S.C. § 3702 (2000). The agency notes that claimant has not as yet incurred expenses arising from a move from the United Kingdom. The agency also argues that only an agency head or disbursing or paying official may request an advisory opinion under the governing statute, 31 U.S.C. § 3529, and that since claimant has not submitted a voucher claiming expenses, no disbursing or paying official has requested such an opinion.

Statute provides:

> The Administrator of General Services shall settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.

31 U.S.C. § 3702(a)(3). We believe that the agency's reading of the statute is restrictive. We have decided requests for an extension of time for relocation entitlements when a claimant has shown a definite and concrete intention to incur specific expenses, but has been denied the opportunity to be reimbursed for the expense by the agency because the agency has refused an extension of time for exercise of those entitlements. See, e.g., Michele A. Fennell, GSBCA 16015-RELO (Jan. 22, 2003); Stephanie P. Riddle, GSBCA 15027-RELO, 99-2 BCA ¶ 30,533. We, however, do not have jurisdiction over purely hypothetical cases. John R. Durant, GSBCA 15726-TRAV, 02-1 BCA ¶ 31,827. Based on the record before us, we conclude that claimant has a definite and concrete intent to incur relocation expenses after January 31, 2003, but the agency's refusal to extend the time has frustrated any possibility of reimbursement. The agency's motion to dismiss is denied.[1]

We turn to the merits of the issue presented. The JTR state that an Outside of the Continental United States (OCONUS) activity may authorize a reasonable delay of ninety days or less for separating employee to exercise their return travel rights and that the OCONUS activity may grant separating employees "up to" two years from the date of separation for exercise of those return rights. JTR C4202-B. That two-year period is a maximum, which may not be enlarged, even for exigent personal circumstances. Patrick R. Gillen, GSBCA 15748-RELO, 02-2 BCA ¶ 31,869; Sherrell M. Garth, GSBCA 15729-RELO, 02-1 BCA ¶ 31,778. Here, the agency generously authorized claimant the full allowable two-year period of delay to use his return rights. The agency is not allowed to authorize further delay.

The claim is denied.

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[1] In light of our disposition of the agency's motion, we do not consider the agency's alternative argument that claimant may not request a decision under 31 U.S.C. § 3529.

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ANTHONY S. BORWICK
Board Judge