

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

February 26, 2004

GSBCA 16347-RELO, 16348-RELO

In the Matters of LESLIE A. JONES and SCOTT D. FENNER

Leslie A. Jones, Gretna, LA, Claimant in GSBCA 16347-RELO.

Scott D. Fenner, Covington, LA, Claimant in GSBCA 16348-RELO.

Edgardo Aviles, Chief, Travel Section, National Finance Center, United States Customs and Border Protection, Indianapolis, IN, appearing for Department of Homeland Security.

PARKER, Board Judge.

The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has requested an advance decision as to whether two of its employees, Scott D. Fenner and Leslie A. Jones, may be offered relocation allowances in connection with their change of station from Slidell, Louisiana, to Gulfport, Mississippi. As discussed below, we find that Messrs. Fenner and Jones are not entitled to the allowances.

Background

In February 2001, the agency closed its Slidell office and directed its employees, among them Mr. Fenner and Mr. Jones, to report for duty at the agency's Gulfport office. The Gulfport office is slightly more than fifty miles from the Slidell office.

Because working at the new duty station increased Mr. Jones's commute to eighty-five miles each way, he requested permanent change of station (PCS) allowances. His request was denied on the basis that the agency lacked the funds to pay the allowances. Mr. Fenner's commute was similarly increased and, like Mr. Jones, his request for PCS allowances was denied. Both employees elected to remain in their current residences.

In early 2003, the Gulfport office determined that the employees needed to move closer to their office (within a thirty-minute commute) in order to meet new, national security-related response times. At that time, the office also got around to completing the

employees' official Notifications of Personnel Action to document the official changes of duty station. The Gulfport office would now like to offer Mr. Jones and Mr. Fenner relocation allowances to assist them with their impending moves, but CBP is not sure whether this is permissible because more than two years have passed since the employees first reported to their new duty station. CBP has asked for our opinion on the matter.

Discussion

In February 2001, when a Federal employee transferred in the interest of the Government from one duty station to another for permanent duty, and the new duty station was at least ten miles distant from the old duty station, the employee was generally eligible for relocation expense allowances. 41 CFR 302-1.3(b) (2000). This means that Mr. Jones and Mr. Fenner, who transferred to a new duty station more than fifty miles away, should have been authorized relocation allowances in February 2001, when they first reported for duty in Gulfport.¹ As the agency now recognizes, its reason for denying the requested allowances -- lack of funds -- was improper because "[b]udget constraints cannot form the basis for denying an employee relocation expenses if his transfer has been found to be in the interest of the Government." David C. Goodyear, 56 Comp. Gen. 709 (1977).

The problem is that more than two years have passed since Mr. Jones and Mr. Fenner first reported for duty in Gulfport. At issue here is the meaning of the following regulation:

All travel, including that for the immediate family, and transportation, including that for household goods allowed under this chapter, shall be accomplished as soon as possible. The maximum time for beginning allowable travel and transportation shall not exceed 2 years from the effective date of the employee's transfer or appointment.

. . . .

(c) The 2-year period shall be extended for an additional period of time not to exceed 1 year when the 2-year time limitation for completion of residence transactions is extended under § 302-6.1(e).

41 CFR 302-1.6. Section 302-6.1(e) describes a similar two-year period for completing residence transactions; the period may be extended for up to one additional year.²

¹An employee's transfer date is the date on which he or she reports for duty at his or her new duty station. 41 CFR 302-1.4(l). Thus, the fact that documentation of Mr. Jones's and Mr. Fenner's transfer did not occur until 2003 did not affect their dates of transfer for relocation purposes.

²For transfers occurring on or after February 19, 2002, the period may be extended for up to two additional years. 66 Fed. Reg. 58,194, 58,233 (Nov. 20, 2001); 41 CFR 302-11.22 (2002).

The agency believes that the above regulations prohibit it from now offering relocation benefits to Mr. Jones and Mr. Fenner. We agree. The regulations, which have the force and effect of law, are clear: a transferred employee must begin his travel and transportation, and complete his residence transactions, within two years after the effective date of his transfer. The effective date of an employee's transfer is the date he reports for duty at the new duty station. Although the two-year period may be extended for an additional year, doing so would not help Mr. Jones and Mr. Fenner because they reported for duty in Gulfport more than three years ago.

Although the Board is unable to provide relief under applicable statutes and regulations, application of the two-year limitation in this case results in a less than equitable result because the employees were improperly denied relocation allowances in February 2001. Accordingly, we will forward the matter to the appropriate office within the General Services Administration for possible referral to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (2000).

ROBERT W. PARKER
Board Judge