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

August 30, 2004

GSBCA 16443-RELO

In the Matter of JEFFREY A. STONE

Jeffrey A. Stone, Boulder City, NV, Claimant.

Scott Shevlin, Manager, Accounts Receivable, Bankcard, Job Corps, and Travel, Finance and Accounting Division, Bureau of Reclamation, Department of the Interior, Denver, CO, appearing for Department of the Interior.

DeGRAFF, Board Judge.

We return this claim to the agency so it can consider the relevant regulations and pertinent facts and decide whether the employee purchased a house at his new duty station soon enough after his transfer in order to qualify for reimbursement of his real estate purchase transaction expenses.

Background

Jeffrey A. Stone was employed by a federal agency in Washington, D.C., when the Department of the Interior hired him to work in Nevada. Interior agreed to pay Mr. Stone's relocation expenses and issued a travel authorization showing it would reimburse many of the expenses he expected to incur in connection with his move. Interior did not complete the authorization to show it would reimburse Mr. Stone for real estate transaction expenses. Mr. Stone reported for duty at his new duty station in late August 2001. He did not believe Interior would reimburse his closing costs if he purchased a house in Nevada, so he began saving money to pay these costs. In November 2003, having accumulated sufficient savings to pay his closing costs, Mr. Stone purchased a house.

In mid-2004, a fellow employee told Mr. Stone he might have been eligible to be reimbursed for his closing costs. Mr. Stone asked Interior whether this was true, and told Interior he had been unaware of the possibility of being reimbursed until his co-worker happened to mention it. Interior told Mr. Stone it could not reimburse his closing costs because he purchased his house more than two years after he reported for duty in Nevada and because he had not asked for the two-year period to be extended before the period expired. Mr. Stone asked us to review Interior's decision. In the response it submitted to us, Interior says it provided Mr. Stone with a relocation guide when he moved. The guide, dated March 2000, says employees "may" be reimbursed for real estate expenses. The guide goes on to say an employee had to purchase a house at the new duty station within two years after reporting there in order to be reimbursed. The guide also says Interior could extend the two-year period by one year, provided the employee asked for the extension within the two-year period.

Discussion

A federal statute requires an agency which transfers an employee from one official duty station to another in the interest of the Government to reimburse the employee for expenses paid in connection with the purchase of a residence at the new official station. 5 U.S.C. § 5724a(d)(1) (2000). The conditions an employee must fulfill in order to be reimbursed are set out in the Federal Travel Regulation (FTR). When Mr. Stone reported for duty in Nevada, the FTR required a transferred employee who wanted to be reimbursed for real estate purchase transaction expenses to purchase a house at the new duty station within two years after reporting for duty there. The agency could extend this two-year period for one additional year. 41 CFR 302-6.1(e) (2001).

Mr. Stone did not purchase his house within two years after reporting for duty in Nevada. Interior did not extend the two-year period because Mr. Stone did not ask for an extension of time within this period to complete his real estate purchase. But, Mr. Stone was not required to ask for an extension within the two-year period. Although the agency's relocation guide said an employee had to ask for an extension within the two-year period, this advice was an incomplete summary of the controlling regulations. The FTR in effect when Mr. Stone reported for duty said the employee had to ask for an extension within the two-year period, or within thirty days after the expiration of the two-year period, or within whatever longer time the agency allowed the employee to request the extension. 41 CFR 302-6.1(e)(ii). Thus, according to the FTR, Interior can grant Mr. Stone an extension of time to purchase a house regardless of whether he requested the extension within the two-year period after he reported for duty in Nevada. Interior cannot rely upon its relocation guide as the basis for rejecting a request for an extension of the two-year period.

According to the FTR, Interior can grant Mr. Stone an extension if extenuating circumstances acceptable to the agency prevented him from completing the purchase of his house within the two-year period, and if the purchase was reasonably related to his transfer. 41 CFR 302-6.1(e)(iii). The purchase appears to be related to Mr. Stone's transfer, because he moved from Washington, D.C. to Nevada, and the house he purchased is at his new duty station in Nevada. Regarding the circumstances which prevented him from completing his purchase within the two-year period, Mr. Stone says he needed time to accumulate enough money to pay his closing costs because he did not realize Interior would reimburse him for these costs. Interior seems to conclude Mr. Stone's circumstances were neither extenuating nor acceptable because its relocation guide should have caused Mr. Stone to realize he was eligible for reimbursement only if he purchased a house within two years after he reported for duty in Nevada or asked for an extension of time within the two-year period. The relocation guide, however, does not say all employees are eligible to be reimbursed for real estate transaction expenses if they purchase a house within a certain time. It says employees "may" be reimbursed, which sounds as if the agency has a choice in deciding whether an employee is eligible for reimbursement. Even though the statute required Interior to reimburse Mr. Stone's real estate transaction expenses, his travel authorization did not provide for reimbursement of such expenses, which made it seem as if Interior had chosen not to make Mr. Stone eligible to be reimbursed. Because the discretionary language contained in the relocation guide is consistent with the erroneous travel authorization, there is no reason the relocation guide would have put Mr. Stone on notice of his eligibility for reimbursement provided he purchased a house within a certain time. To the extent Interior decided Mr. Stone's circumstances were neither extenuating nor acceptable because the relocation guide should have alerted him to the need to purchase a house within a certain time, Interior's decision is not supportable because it lacks a rational basis.

Insofar as Interior considered and ruled upon Mr. Stone's request for reimbursement, it did so based on a misperception of the relevant regulation and the facts. Interior needs to decide whether it will allow Mr. Stone to ask for an extension of the two-year time period, keeping in mind the FTR did not require Mr. Stone to ask for the extension within the two-year period. If Interior allows Mr. Stone to ask for an extension of the two-year period, it then needs to decide whether extenuating circumstances acceptable to the agency prevented Mr. Stone from purchasing his house in Nevada within two years after he reported for duty there. In making this determination, Interior cannot rely upon its relocation guide as having put Mr. Stone on notice of either his eligibility for reimbursement or the time limits that applied to him. Therefore, we return the matter to Interior for a decision. Mr. Stone may ask for our review if he believes Interior's decision is arbitrary, capricious, or clearly erroneous. Stephanie P. Riddle, GSBCA 15027, 99-2 BCA ¶ 30,533.

MARTHA H. DeGRAFF
Board Judge