

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 7, 2005

GSBCA 16680-RELO

In the Matter of JENNIFER CHAPMAN

Jennifer Chapman, San Rafael, CA, Claimant.

C. Bruce Sheaffer, Comptroller, National Park Service, Department of the Interior, Washington, DC, appearing for Department of the Interior.

DeGRAFF, Board Judge.

According to the Federal Travel Regulation, an agency can extend the time limit for completing the purchase of a home at a new duty station if it determines extenuating circumstances acceptable to the agency prevented the employee from completing the purchase and the purchase was reasonably related to the transfer. We affirm such determinations unless they are arbitrary, capricious, or clearly erroneous.

Background

In July 2001, the Department of the Interior transferred Jennifer Chapman from one permanent duty station to another. Interior issued a travel authorization to Ms. Chapman which authorized her to incur reimbursable relocation expenses in connection with her transfer. The authorization did not mention real estate transaction expenses. Ms. Chapman reported for duty at her new duty station on August 23, 2001. She located a house she wished to purchase and closed the transaction on May 27, 2004.

When Ms. Chapman submitted a claim to Interior for reimbursement of her real estate purchase transaction expenses, Interior denied the claim because she had not completed her

purchase within two years after reporting to her new duty station and had not been given an extension of the two-year period. Ms. Chapman asked for an internal review of this decision. She explained she needed more than two years to complete her purchase because housing was very expensive at her new duty station and it was difficult to find something in her price range in two nearby counties. She mentioned she had not received information from Interior about relocation procedures until she had been at her new duty station for some time, and also said she mistakenly believed she had three years to complete her real estate purchase. In addition, she mentioned that for a while during her first year at her new duty station, she was concerned about whether her position was truly permanent.

In a memorandum dated March 1, 2005, an Interior official who was stationed near Ms. Chapman's new duty station concluded her circumstances did not warrant an extension of time to complete her real estate purchase because the additional time she needed was due to her decisions regarding where she wanted to live and the amount she was willing and able to pay. Ms. Chapman asked for another internal review of the March 1 denial. She briefly mentioned the expensive housing market at her new duty station, the lack of timely information regarding relocation rules, and her confusion regarding the amount of time she had to complete her real estate purchase. She said she did not realize until after she purchased her house that she had only two years to complete her real estate transaction and that she could have requested an extension of the two-year period. The main thrust of her request for review, however, was her contention that she needed an extension because her house hunting effort was delayed due to her doubts about the stability of her job. Ms. Chapman said her concerns about the permanence of her position were due to the manner in which her position was funded during a time of accelerated outsourcing of federal employee positions to contractors. She said although she did not completely understand the budget process related to the funding of her position, the information she had available caused her to be hesitant about making a financial commitment to purchase a house. She also said because she was repeatedly assured by Interior that her position would continue to be funded and she would not be relocated, she proceeded to purchase a house. In other correspondence, Ms. Chapman told Interior her apprehension about the stability of her position led to a pause in her house hunting efforts.

In a letter dated May 13, 2005, Interior told Ms. Chapman she had been required to complete her purchase within two years after she reported at her new duty station. Interior said if she wanted an extension of the two-year period, she should have asked for it before the two-year period expired or within thirty days after the period expired. Interior decided to deny Ms. Chapman's claim for reimbursement of her purchase expenses because there was no evidence to show she made a timely request for an extension or to show an extension had been granted. Ms. Chapman responded to Interior and reiterated that she had not been provided with timely information regarding the number of years she had to complete her real

estate transaction and did not know about applying for an extension until after she made her purchase. She also repeated her concerns about the stability of her job.

Ms. Chapman asked us to review Interior's decision to deny her claim for reimbursement and to refuse to extend the two-year period for completing her real estate purchase transaction. Her submission to us is consistent with her submissions to Interior mentioned above. In it, she also says housing prices in two counties near her duty station rose steadily through 2004, when she purchased her house, and she also says her views about the stability of her position caused her to hesitate almost immediately after she began hunting for a house.

In its submission to us, Interior says it denied Ms. Chapman's request for an extension of the two-year period because she did not ask for an extension in a timely manner. Interior also says it disagrees with Ms. Chapman's view regarding the permanence of her position and says she has never been told her position will be relocated or outsourced. Interior also says real estate market conditions are not a factor that would warrant granting an extension of time to purchase a residence.

Discussion

When an employee transfers in the Government's interest between official duty stations in the United States, the Government will pay the expenses of the purchase of a residence at the new official station that are required to be paid by the employee. 5 U.S.C. § 5724a(d)(1) (2000). This statutory provision is implemented in the Federal Travel Regulation and Interior's internal regulations, which imposed a limitation upon the amount of time Ms. Chapman could take to settle the purchase of a house at her new duty station.

According to the Federal Travel Regulation, the settlement date for Ms. Chapman's purchase transaction had to be not later than two years after she reported to her new duty station. The agency had the authority to extend this time by one year upon Ms. Chapman's written request, provided she asked for an extension within the two-year period or within thirty days after the two-year period expired unless Interior extended the thirty-day period. Approval of the one-year extension was to be based upon a determination that extenuating circumstances acceptable to Interior prevented Ms. Chapman from completing the purchase within the initial two-year period and that the purchase was reasonably related to her transfer. 41 CFR 302-6.1(e) (2001).¹ Interior's internal regulation was substantially the same as the

¹ The regulation which applies to Ms. Chapman was the one in effect when she reported to her new duty station. 41 CFR 302-1.3(d) (2001).

Federal Travel Regulation, except Interior's regulation said a request for an extension of the two-year period had to be made before the two-year period expired or as soon as the employee "becomes aware of the need for such an extension." Director's Order 31B, 8.2.E.

Because Ms. Chapman did not complete her purchase within two years after she transferred, Interior can reimburse her real estate purchase transaction expenses only if there are extenuating circumstances acceptable to Interior which prevented her from completing her purchase within the two-year period.² As we explained in *Larry E. Olinger*, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877, although many transferred employees encounter difficulty in finding new residences, the regulations allow for the normal range of difficulties by giving employees two years to complete purchase transactions. When an employee asks an agency to extend the two-year period, the regulations give agency officials broad discretion to decide whether extenuating circumstances acceptable to the agency exist, and we will not overturn a decision unless it is arbitrary, capricious, or clearly erroneous. *Michèle A. Fennell*, GSBCA 16015-RELO, 03-1 BCA ¶ 32,177 (citing cases).

Interior says it denied Ms. Chapman's request for an extension of the two-year period because she did not ask for an extension in a timely manner. Interior's regulation said a request for an extension had to be made before the two-year period expired or as soon as the employee became aware of the need for such an extension. Ms. Chapman's request for an extension was timely according to Interior's regulation because she says, without contradiction by Interior, she requested the extension as soon as she became aware of the need to do so. If Interior had never considered the merits and had decided to deny Ms. Chapman's request for an extension of the two-year period because she did not ask for an extension in a timely manner, its decision would have been clearly erroneous because the decision would have been contrary to Interior's regulation. Interior, however, did not rest its decision upon the timeliness of Ms. Chapman's request. Instead, it considered the merits of her request.

After considering the merits of Ms. Chapman's request for an extension, Interior concluded neither her concerns about the stability of her position nor market factors constituted extenuating circumstances acceptable to the agency which prevented Ms. Chapman from completing her purchase within the initial two-year period after her transfer. Interior's conclusion was reasonable. It seems unlikely that high market prices prevented Ms. Chapman from purchasing a house within two years after her transfer, because she found a house in her price range more than two years after her transfer, despite several

² The purchase appears to have been reasonably related to her transfer, and Interior did not determine otherwise, so this is not an issue we need to address.

years of rising market prices. As for Ms. Chapman's concerns about the stability of her position, her concerns were caused in part by her lack of a complete understanding of the budget process and her reluctance to accept the agency's repeated assurances that her position was permanent. Although Ms. Chapman's concerns undoubtedly seemed quite genuine to her, we cannot say Interior was wrong to decide such concerns did not amount to extenuating circumstances which prevented Ms. Chapman from completing her purchase within two years after her transfer. Interior's decision to deny Ms. Chapman's request for an extension of the two-year period for completing her purchase was, considering the merits of the request, within the range of the proper exercise of its discretion, and was not arbitrary, capricious, or clearly erroneous.

Finally, we turn to Ms. Chapman's contention that Interior did not supply her with timely information regarding the two-year period within which she had to purchase a house at her new duty station.³ Ms. Chapman has not established Interior's decision to deny her request for an extension of the two-year period was arbitrary, capricious, or clearly erroneous, even if Interior did not supply her with timely information regarding the two-year period. Ms. Chapman never says when she received information from Interior about relocation procedures, and there is no evidence to show she was left with a narrow window of time within which to complete her purchase after she received such information. Although it is possible an agency's failure to provide an employee with timely information about the two-year period for completing real estate transactions could amount to an extenuating circumstance which could prevent the employee from completing a purchase within the two-year period, we are not persuaded we have such a circumstance here.

Interior correctly decided to deny the claim.

MARTHA H. DeGRAFF
Board Judge

³ Ms. Chapman also says Interior did not provide timely information regarding the need to request an extension of the two-year period within a certain time. The timeliness of the information Interior gave to Ms. Chapman regarding the timing of her request for an extension is irrelevant because, as explained above, Interior considered the merits of Ms. Chapman's request for an extension regardless of when she made her request.