

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

December 16, 2005

GSBCA 16728-RELO

In the Matter of CHAUNCEY E. FORD

Chauncey E. Ford, Gainesville, VA, Claimant.

Lani Pounders, Relocation Services, Federal Aviation Administration, Oklahoma City, OK, appearing for Department of Transportation.

NEILL, Board Judge.

Claimant, Chauncey E. Ford, is an employee of the Federal Aviation Administration (FAA). He asks that we review his agency's denial of a claim he submitted for reimbursement of real estate expenses said to have been incurred in connection with a permanent change of station (PCS) move. The agency has denied Mr. Ford's claim on the ground that it is untimely. On review of the regulation on which the agency relies in denying Mr. Ford's claim, we conclude that the regulation cited does not support the agency's conclusion. We, therefore, find that the claim is timely and should be paid if otherwise acceptable.

Background

On September 12, 2002, the FAA issued a PCS travel authorization to Mr. Ford. The authorization had a reporting date of December 1, 2002, and stated that the travel was to begin on or about that date. The travel authorization also provided an allowance for residence transaction expenses as well as an allowance for the transportation and storage of claimant's household goods. Block twenty of the travel authorization states:

Transportation of Your Household Goods and Residence Transactions Should Be Completed as Soon as Practicable and Not Later than 08/01/04 (18 months from reporting date).

Mr. Ford's travel authorization was subsequently amended to show a reporting date of February 1, 2003. The amended travel authorization was also amended to show that travel was to begin on

or about the new reporting date. Block twenty of the amended authorization was also changed to state that transportation of claimant's household goods and residence transactions should be completed as soon as practicable and not later than February 1, 2005 (twenty-four months from the new reporting date).

On May 19, 2004, Mr. Ford signed a contract for the construction of a new home in the vicinity of his new duty station. Although closing on the new home was to occur during the week of January 24, 2005, it did not take place until February 24, 2005. Mr. Ford subsequently submitted a request for reimbursement of \$7825 in residence expenses incurred in conjunction with the purchase of his new home. The claim was rejected on the ground that Mr. Ford failed to complete his residence transactions within twenty-four months of his reporting date. Mr. Ford disagrees with this determination and asks that we review the agency's decision.

Discussion

As an employee of FAA, Mr. Ford is subject to the Federal Aviation Administration Travel Policy (FAATP) and not the Federal Travel Regulation (FTR).¹ The provision of the FAATP on which the agency relies in this case reads:

May FAA allow me an extension on the 18 month deadline to begin travel and transportation?

Yes, FAA may grant you one extension of up to 6 months (for a total of 24 months), but only when:

a) You are selling a residence or terminating a lease at the old official station, or purchasing a residence at the new official station;

b) There are extenuating circumstances, acceptable to the approving official, that have prevented you from completing the sale or purchase, or terminating the lease; and

c) You request the extension in writing prior to the expiration of the initial 18 month period. No requests

¹ Section 347 of the Department of Transportation and Related Agencies Appropriations Act of 1996 grants FAA the authority to develop a personnel system with new personnel policies, including travel policies, and exempts it from certain provisions of Title 5 of the United States Code and implementing Government-wide regulations, including the FTR. Pub. L. No. 104-50, § 347, 109 Stat. 436, 460 (1995); FAATP 300-1.2 (Jan. 1, 1999).

subsequent to the expiration of the initial period will be considered.

FAATP 302-3.43 (Oct. 15, 1998).

This is not the first time that we have been called upon to comment on the agency's reliance on this provision in its travel policy to deny transferred employees reimbursement of the costs of residence transactions. As we have pointed out in the past, the agency misreads and misapplies the regulation so far as reimbursement of expenses for residence transactions is concerned. We say this for two reasons. First, on its face, FAATP 302-3.43 applies only to travel and transportation. It says nothing regarding the transferred employee's residence transactions. A transferred employee's expenses for travel and transportation, however, are distinct from those incurred in connection with residence transactions. Janice F. Stuart, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960, reconsideration denied, 05-2 BCA ¶ 33,024.

Second, and more fundamentally, even if FAATP 302-3.43 were to be interpreted as applicable to residence transactions as well as to travel and transportation, there is still a basic difficulty owing to the absence of any provision regarding when the relocation benefit in question terminates. This provision specifies the time period during which a transferred employee must begin travel and transportation and the circumstances which would validly extend this time period. Although paragraph (b) of the provision refers to delays in the completion of residence transactions, this is still only with reference to extending the time for when the employee's travel and transportation are to begin. This regulation simply does not specify a deadline or termination time for making a claim for the benefit in question. Jean Francois Mpouli, GSBCA 16695-RELO, 05-2 BCA ¶ 33,061. In the absence of such a provision, the agency can scarcely rely on FAATP 302-3.43 to deny a transferred employee's claim for reimbursement of the cost of a residence expense on the ground that the time for making such a claim has expired.

We recognize, of course, that block twenty of claimant's original travel authorization established an eighteen-month period -- and in the amended authorization a twenty-four month period -- for completion of transportation of household goods and residence transactions. In similar cases, however, we have noted that FAATP 302-3.43 does not establish a deadline for the completion of residence transactions. Mpouli; Alan D. Hendry, GSBCA 15585-RELO, 01-2 BCA ¶ 31,535. Rather, it refers to when travel and transportation travel are to begin. To the extent that the language in block twenty relates to completing the transportation of household goods and residence transactions, therefore, it is, at the most, hortatory, indicating only what the agency contends should be done. The agency's insistence that this is a mandatory

requirement based upon the language of FAATP 302-3.43 is without foundation.

Decision

The agency's reason for concluding Mr. Ford's claim is untimely is without basis. Consequently, the claim, if otherwise acceptable, should be paid.

EDWIN B. NEILL
Board Judge