UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 11, 2015

CBCA 4637-RELO

In the Matter of DANIEL W. CATALANO

Daniel W. Catalano, Frederick, MD, Claimant.

Helen J.S. White, Assistant General Counsel, Office of the General Counsel, Defense Commissary Agency, Fort Lee, VA, appearing for Department of Defense.

SULLIVAN, Board Judge.

Claimant, Daniel W. Catalano, an employee of the Defense Commissary Agency (DeCA), was transferred from Fort Bragg, North Carolina, to Fort Detrick, Maryland, under permanent change of station (PCS) orders. DeCA denied Mr. Catalano's claim for reimbursement of real estate expenses resulting from his relocation to Maryland on the ground that the claim was not submitted in a timely manner. For the following reasons, we find that the agency erred in denying the claim on this basis.

Background

Mr. Catalano received his official travel orders on January 2, 2013. The orders included the following language: "Travel orders expire one year from the report date to the new duty station. If an extension is needed for an additional one year due to real estate, please contact your Human Resource Office for assistance prior to the expiration of orders." On January 15, 2013, Mr. Catalano reported for duty at his new duty station in Maryland.

After Mr. Catalano unsuccessfully attempted for more than a year to sell his home in North Carolina, he submitted a request on February 12, 2014, to have the deadline for him to incur real estate expenses extended for an additional year. On February 25, 2014, DeCA granted Mr. Catalano's request for an extension. The agency's written response to

Mr. Catalano's request stated: "[Y]our request to extend your Real Estate Expenses to January 15, 2015 is approved."

On October 16, 2014, Mr. Catalano sold his home in North Carolina, and on March 10, 2015, he submitted a request to the agency for reimbursement of his real estate expenses. The agency denied his claim on March 16, 2015, citing the time limitations for reimbursement of real estate expenses set out in Federal Travel Regulation (FTR) 302-11.21 and 302-11.23. Mr. Catalano filed his appeal of that denial with the Board on March 26, 2015.

Discussion

Employees who are transferred by an agency in the interest of the Government from one permanent duty station to another are entitled by statute, subject to regulations issued by the Administrator of General Services, to reimbursement from the agency for real estate expenses associated with the selling of the employee's residence at the old duty station. 5 U.S.C. §§ 5724a(d), 5738(a)(1) (2012). The FTR, issued by the Administrator of General Services, specifies when real estate transaction expenses are reimbursable. 41 CFR pt. 302-11.1 (2012).[1]

To be reimbursed for real estate expenses associated with the sale of a property at an employee's old duty station, the employee must complete the sale of the property not later than one year after the date that the employee reports to the new duty station:

> **How long do I have to submit my claim for reimbursement of expenses incurred in connection with my residence transactions?**
>
> Your claim for reimbursement should be submitted to your agency as soon as possible after the transaction occurred. However, the settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested must occur not later than 1 year after the day you report for duty at your new official station.

41 CFR 302-11.21. An agency may extend this time limit for one additional year under appropriate circumstances:

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[1] We cite to the versions of the FTR and Joint Travel Regulations (JTR) in effect on the day that the employee reported for duty at the new duty station. 41 CFR 302-2.3; *Emelda J. Hadley*, CBCA 4264-RELO, 15-1 BCA ¶ 35,930, at 175,611 n1.

> **May the 1-year time limitation be extended by my agency?**
>
> Yes, your agency may extend the 1-year limitation for up to one additional year for reasons beyond your control and acceptable to the agency.

Id. 302-11.22. An agency cannot extend the time limit for incurrence of these expenses beyond what is prescribed in the FTR. *Gary D. Turner*, CBCA 4178-RELO, 14-1 BCA ¶ 35,797, at 175,082 (citing *Kenneth T. Donahoe*, CBCA 3619-RELO, 14-1 BCA ¶ 35,746); *see also Asesh Raychaudhuri*, CBCA 2449-RELO, 11-2 BCA ¶ 34,821, at 171,344, *reconsideration denied*, 11-2 BCA ¶ 34,835. While employees are encouraged to submit claims for reimbursement of real estate expenses "as soon as possible," the FTR does not specify when such a claim must be submitted to the agency. Instead, the time limitations set forth in the FTR apply to the settlement date for the sale or purchase of the property.

The JTR, which implement the FTR for civilian employees of the Department of Defense, are likewise silent on when a claim must be submitted to the agency. The JTR provide the following in chapter 5, part P:

> C. Time Limit for Residence/Lease Termination Transactions
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> 1. Settlement for the sale, purchase, or lease termination transactions should be not later than 1 year after the employee's transfer effective date (see APP A).
>
> . . . .
>
> 3. The 1-year period begins on the employee's transfer effective date and ends on the first anniversary of that date. . . .
>
> 4. The 1-year period may be extended for up to an additional year by the funding activity's commanding officer/designee. See par. C5750-C10 for extension limits.
>
> 5. The employee should submit a written time extension request to the appropriate authority within the initial 1-year period.

> 6. Action on a request, submitted more than 30 calendar days after the initial 1-year expiration date, is at the option of the commanding officer of the activity bearing the cost.[2]
>
> 7. An extension may be granted only if extenuating circumstances prevented the employee from completing the sale, purchase and/or lease termination transactions within the initial 1-year period and that the delayed transactions are reasonably related to the PCS. . . .
>
> 8. Costs for transactions completed after the 2-year period may not be reimbursed. . . .
>
> 9. The 1-year extension is effective for an employee whose transfer effective date (APP A) is on or after 1 August 2011.
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> 10. ***There is no authority to waive the 2-year time limitation under any circumstances. The time limitation is imposed in FTR § 302-2.8 and 302-2.11 which have the force and effect of law.***

JTR C-5750.

In its response to Mr. Catalano's claim, the agency cites two decisions: *Gary D. Turner* and *Jay Kruise*, CBCA 985-RELO, 08-1 BCA ¶ 33,865. Those cases present a different question from the one at issue in Mr. Catalano's claim. In both cases, the claimant was denied reimbursement for failure to incur real estate expenses within the time imposed by the FTR and JTR. *Gary D. Turner*, 14-1 BCA at 175,082; *Jay Kruise*, 08-1 BCA at 167,614-15. Mr. Catalano's claim is more akin to the situation in *Elmer L. Grafford*, GSBCA 14176-RELO, 98-1 BCA ¶ 29,700, where the claimant sold his house prior to the regulatory deadline, but filed his claim for reimbursement more than three years later. In deciding that claim, the General Services Board of Contract Appeals, our predecessor board for handling relocation claims, held that the regulatory period applies to the settlement date for the real estate transaction and not the filing of the claim:

> The JTR contain a two-year limitation regarding real estate transaction expenses, but that limitation does not impair [claimant's] ability to make this

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[2] An employee may submit an extension request within thirty days after the original deadline. 41 CFR 302-11.23; JTR 5750-C.6. Mr. Catalano submitted a timely request for extension on February 12, 2014.

> claim. The rule is that the settlement date for the sale and purchase or lease termination transaction for which reimbursement is requested must not be later than 2 years after the date that the employee reported for duty at the new [permanent duty station].

Id. at 147,213 (quotation marks omitted); *see also Harry T. Turman*, B-251716 (Feb. 10, 1993). Generally, a claim against the Government must be submitted within six years of the date that the claim accrues. 31 U.S.C. § 3702(b)(1) (2012); *see also Elmer L. Grafford*, 98-1 BCA at 147,213.

Mr. Catalano does not seek an extension beyond the permitted two-year window for selling his property. Mr. Catalano completed the sale of his property on October 16, 2014, within the two-year window established by the regulations and granted by his agency. He filed his claim for reimbursement within six months of incurring the costs and less than two months after the settlement deadline passed. Mr. Catalano's claim is clearly within the six-year statutory time limit imposed by 31 U.S.C. § 3702(b)(1).

Decision

For the foregoing reasons, Mr. Catalano is entitled to reimbursement of appropriate real estate expenses incurred as a result of his PCS orders.

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MARIAN E. SULLIVAN
Board Judge