UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 16, 2017

CBCA 5822-RELO

In the Matter of KAREN M. STANLEY-WOLFE

Karen M. Stanley-Wolfe, Moreno Valley, CA, Claimant.

Chris Barned, Relocation Specialist/Certifying Officer, National Operations Center, Bureau of Land Management, Department of the Interior, Denver, CO, appearing for Department of the Interior.

LESTER, Board Judge.

On November 13, 2017, the Board received a timely request from claimant, Karen M. Stanley-Wolfe, for reconsideration of our decision dated October 13, 2017.

In our prior decision, *Karen M. Stanley-Wolfe*, CBCA 5822-RELO, 17-1 BCA ¶ 36,868, we granted Ms. Stanley-Wolfe's claim in part, allowing reimbursement of expenses that she had to pay to terminate her apartment lease at her original duty station after the Department of the Interior's Bureau of Land Management (BLM) relocated her to a new duty station. As we recognized, Ms. Stanley-Wolfe had to report to her new duty station on January 8, 2017, but BLM, which had assumed responsibility for transferring Ms. Stanley-Wolfe's household goods (HHG) to the new duty station, was unable to move her HHG out of that apartment until March 28, 2017. In such circumstances, we found that Ms. Stanley-Wolfe was entitled to reimbursement for lease expenses at her old duty station lease through the end of March 2017. *Id.* at 179,641-42. Nevertheless, we denied Ms. Stanley-Wolfe's request for reimbursement of rent at the old duty station for the month of April 2017, finding that Ms. Stanley-Wolfe did not provide sufficiently prompt notice to her landlord after learning of the HHG move date, did not expeditiously vacate her apartment at the end of

March 2017, and could not establish that these delays did not prejudice the leasing company's ability to find a replacement tenant for the month of April 2017. *Id.* at 179,642-43.

Ms. Stanley-Wolfe asks us to reconsider our denial of her request for lease expense reimbursement for the month of April 2017. First, she disagrees with our finding that she acted too slowly in telling her landlord when she would vacate her apartment. In our decision, we found that, by February 17, 2017, Ms. Stanley-Wolfe knew that her HHG would be removed from the apartment on March 28, but she waited two-and-a-half weeks – until March 7 – before telling her landlord about the March 28 date. The Federal Travel Regulation (FTR) provides that, to obtain lease break expense reimbursement, the employee must show that he or she "ha[s] not contributed to the expenses by failing to give appropriate lease termination notice promptly after [the employee has] definite knowledge of [the] transfer." 41 CFR 302-11.7(c) (2016). We found that Ms. Stanley-Wolfe could not establish that her two-and-a-half-week delay in providing notice had not prejudiced the landlord's ability to find a new tenant for April 2017.

Ms. Stanley-Wolfe argues that she actually notified the landlord of her intent to vacate the apartment in January 2017, giving the leasing company ample time to find a new tenant. Ms. Stanley-Wolfe's January 2017 notice, however, did not identify a definite move-out date, but indicated only that, once BLM removed the HHG, she would vacate the apartment and that she would let the leasing company know when the HHG would be removed, information that she did not convey until March 7. Before learning of the specific date that the apartment would be empty and available for occupancy, it would be difficult for the landlord to find a new tenant for that particular apartment. As we previously held, the FTR provision requiring "prompt" notice of the employee's intention to terminate early means notice that is "ready and quick . . . as occasion demands; immediately or instantly at hand." *Karen M. Stanley-Wolfe*, 17-1 BCA at 179,642 (quoting *Webster's New Twentieth Century Dictionary Unabridged* 1441 (2d ed. 1975)). Ms. Stanley-Wolfe's delay in identifying the specific date that the apartment would be available does not meet that requirement. Ms. Stanley-Wolfe's allegation that, in visits to the apartment between January and April 2017, she found the business cards of various real estate agents, which she believes indicates that numerous potential renters looked at the apartment, does not lessen the effect of the delayed HHG removal notice.

As a second basis of disagreement with our October 13 decision, Ms. Stanley-Wolfe challenges our finding that she retained control of the apartment throughout April 2017. Support for that finding included evidence (presented by BLM) that Ms. Stanley-Wolfe had actually stayed in the old duty station apartment from April 19 to 21, 2017, while she was on temporary duty in a nearby area for the Department of the Air Force. Ms. Stanley-Wolfe has

attached a receipt to her reconsideration request from a hotel near Nellis Air Force Base, showing that she paid for lodging there from April 19 to 22, 2017, and did not stay in her old duty station apartment. Even accounting for that error in the original record, however, other evidence shows that Ms. Stanley-Wolfe did not abandon control over the old duty station apartment until the end of April 2017. Instead of cleaning the apartment immediately after BLM removed her HHG on March 28, 2017, Ms. Stanley-Wolfe made plans to return to the apartment for cleaning on April 19, 2017, and she provided the landlord with "an alternate and more reliable contact number for providing 24-hour notice to show the apartment" (even though the landlord had previously indicated that notice would be necessary only "until the property is vacated"). She visited the apartment between April 19 and 21, and she retained the apartment keys until April 27, just prior to her lease expiration on April 30, 2017.

"[A]n underlying premise upon which lease termination expense benefit is grounded is that the leased premises were actually vacated and the employee no longer continued to receive a benefit from the terminated lease." *Patsy S. Ricard*, 67 Comp. Gen. 285, 289 (1988). Although Ms. Stanley-Wolfe believes she enjoyed no benefit as a result of her delay, vacating the premises in the circumstances here supports the employee's obligation "to make reasonable efforts to relet the premises immediately upon his [or her] transfer," *Jeffrey S. Kassel*, 56 Comp. Gen. 20, 21 (1976), because it makes the apartment immediately available for rental, furthering "the concept of lessening [the employee's] potential lease termination expenses." *H. Roy Fiscus*, B-201153 (Jan. 18, 1982).[1] By deciding to wait until April 19 to clean her apartment, and retaining the keys to the apartment until April 27, Ms. Stanley-Wolfe failed to act expeditiously to release the apartment to the landlord in anticipation of a potential new tenant.

We deny Ms. Stanley-Wolfe's request for reconsideration.

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HAROLD D. LESTER, JR.
Board Judge

[1] There might be circumstances in which, to further mitigation efforts, the employee would need to retain some access to the leased property – for example, if the employee was engaged in active efforts to find a replacement tenant. Here, though, the leasing company was taking full responsibility for those efforts. Ms. Stanley-Wolfe had no need, for mitigation purposes, to retain access and control.