Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kathryn M. MacVey—Extension of Period for Residence Transaction

File: B-258026

Date: November 29, 1995

DIGEST

An agency, acting within its discretion, denied an employee's request for a 1-year extension of the 2-year period in which an employee must complete a real estate transaction for purposes of relocation expense reimbursement. The determination to grant an extension is for the agency, and the General Accounting Office will not object to such determination unless it is found to be arbitrary or capricious. In addition, it appears that the employee's delay in exercising her entitlement carried beyond a subsequent transfer effected at her request for which relocation benefits are prohibited by 5 U.S.C. § 5724(h), and she has therefore forfeited the unused benefit which accrued from the previous transfer.

DECISION

This is in response to a request for an advance decision from the Farmer's Home Administration concerning an employee's request for reimbursement for real estate purchase expenses incident to a relocation.[1] The issue in the matter is whether the agency properly exercised its discretion in denying Ms. Kathryn M. MacVey's request for a 1-year extension of the 2-year period in which an employee must complete her real estate transaction for purposes of relocation expense reimbursement. We find no fault in the agency's denial in this case.

BACKGROUND

Ms. MacVey was transferred from Minnesota to Mercer, Pennsylvania, in late May 1991, in the interest of the government, and not primarily for her convenience or benefit or at her request. Accordingly, she was authorized reimbursement of

[1]The matter was submitted by an authorized certifying officer (reference FSD-1 RJP), National Finance Center, New Orleans, Louisiana.

travel expenses for herself and transportation of her household goods to move to the new station. At that time she indicated that she would not incur expenses incidental to the purchase of real estate since she was single and was moving directly into an apartment at her new duty station. She married in June 1992 and moved with her husband to Chardon, Ohio, from which she commuted to Mercer. In September 1992 she transferred from the Mercer county office to the Meadville county office in Meadville, Pennsylvania, somewhat closer to her apartment in Chardon. This is stated to have been a voluntary transfer at Ms. MacVey's request, for which she waived relocation expenses and for which none were authorized.

On May 2, 1993, Ms. MacVey and her husband signed a sales agreement to purchase a house in Chardon, but the septic system of the house did not pass inspection, so the settlement on the house was delayed beyond the anticipated May 25, 1993, settlement date, which would have been almost exactly 2 years from the effective date of her transfer from Minnesota to Mercer, Pennsylvania. Ms. MacVey apparently submitted a memorandum on May 10, 1993, requesting an extension under the Federal Travel Regulation, 41 C.F.R. § 302-6.1e(2)(iii), of the 2-year period to complete a residence transaction. The agency denied the request for extension on May 17, 1993, and Ms. MacVey did not go to settlement on the house until June 28, 1993, beyond the 2-year period to qualify for reimbursement for purchase expenses under the FTR.

The agency advised Ms. MacVey that she would not be reimbursed real estate expenses for purchase of the house because such expenses may not be reimbursed if they do not occur within the 2-year period and the period is not extended. The agency also advised Ms. MacVey, that in view of her voluntary transfer from Mercer to Meadville in 1992, she had relinquished any remaining entitlement to relocation expenses incident to the 1991 transfer to Mercer, per our decision 27 Comp. Gen. 748 (1948). In addition, the agency advised Ms. MacVey that the matter had been reviewed by both the agency's state office and its national travel unit in reaching these conclusions.

At Ms. MacVey's request, the agency certifying officer sent the matter here for our decision.

ANALYSIS AND CONCLUSION

Pursuant to 5 U.S.C. §§ 5724 and 5724a, an employee transferred in the interest of the government is entitled to certain travel, transportation and relocation expense reimbursements, as set out in implementing regulations found in the FTR. Included is reimbursement for certain expenses an employee is required to pay in connection with the purchase of a dwelling "at his/her new official station." FTR § 302-6.1. To qualify for reimbursement, the regulations require that the settlement date for the purchase may not be "later than 2 years after the date that the employee reported

for duty at the new official station." FTR § 302-6.1(e)(1). However, an agency may grant an extension of the period for not to exceed an additional year if the agency determines:

> ". . . that extenuating circumstances, acceptable to the agency concerned, have prevented the employee from completing the . . . purchase . . . in the initial time frame and that the residence transactions are reasonably related to the transfer of official station." FTR § 302-6.1e(2)(iii).

We have consistently held that we will not disturb a determination by an agency whether to grant an extension in accordance with this provision unless the determination is arbitrary or capricious. Robert H. Meyer, 68 Comp. Gen. 419 (1989). Thus, although the certifying officer refers to the defective septic system which caused the settlement to be delayed as a possible "extenuating circumstance" allowing an extension, the ultimate question we are concerned with is whether the agency's denial of an extension was arbitrary or capricious.

The agency's May denial letter stated that Ms. MacVey had not shown that extenuating circumstances had prevented her from completing the purchase of her home within 2 years. The agency noted that Ms. MacVey did not request expenses incidental to the purchase of real estate in her transfer to Mercer and she indicated that the transfer from Mercer to Meadville was for personal reasons, specifically waiving any relocation expenses for that transfer. In a subsequent letter to the agency, Ms. MacVey concedes that at the time of her transfer to Mercer she "was single and did not foresee that within a short time I would become engaged, married and purchase a home; therefore, I did not request expenses incidental to the purchase of real estate." Besides the change in marital status, Ms. MacVey states that after her transfer to Mercer in May 1991, a proposed reorganization in the Mercer county office made her cautious about buying a house and that she did not seriously begin househunting until after her reassignment to the Meadville county office provided her with sufficient geographical and occupational security. She also states that because of the nature of her husband's employment, it was important that the house be located in Chardon. Thus, it was not until after she was married and transferred to Meadville, nearly 2 years after her transfer from Minnesota, that she and her husband signed a contract to purchase a house (with a contemplated settlement date less than a month later and at the very expiration point of the 2-year period).

In these circumstances we believe the agency was justified in its determination that extenuating circumstances have not been shown to have prevented the employee from purchasing a residence within the initial timeframe and that the purchase was not reasonably related to the transfer from Minnesota to Mercer. See Ronald F. Houska, B-191087, Feb. 28, 1979, a somewhat similar situation in which we upheld

an agency's extension denial. Accordingly, regardless of whether the defective septic system delayed the house purchase, we do not believe the agency's determination to deny an extension is arbitrary or capricious.

This then brings us to the second point raised by the agency, which is that upon Ms. MacVey's subsequent transfer at her own request from Mercer to Meadville, she relinquished any remaining unused relocation benefits that accrued incident to her prior transfer from Minnesota to Mercer. As the agency notes, we have held in several cases that employees who attempted to exercise moving expense reimbursement entitlements accruing from a prior transfer after requesting and accepting a subsequent transfer primarily for their own benefit, had relinquished their entitlement to such benefits upon taking the subsequent transfer. See 27 Comp. Gen. 784 (1948); B-154389, July 10, 1964; Lester J. Reschley, 71 Comp. Gen. 111 (1993); and Joseph Smith, B-256233, May 12, 1994. Those decisions are grounded on the provisions of 5 U.S.C. § 5724(h) (and its predecessor statutes), which specifically preclude payment for such expenses where a transfer is made primarily for the convenience or benefit of an employee, or at his request.[2]

In those decisions it was clear that the relocation entitlements sought by the employee were in fact in connection with the second voluntary transfer for which the entitlements are specifically precluded rather than the initial transfer that was in the interest of the government. The facts in Ms. MacVey's case show that the decision to incur real estate purchase expenses was not made in connection with the transfer from Minnesota to Mercer but after and in connection with the voluntary transfer from Mercer to Meadville for which such expenses are not reimbursable.

Ms. MacVey argues that this prohibition should not apply in her case since she was not aware of it when she transferred from Mercer to Meadville, which she states are only 30 miles apart and either is within commuting distance of her new residence in Chardon.[3] These facts, however, would not overcome the statutory proscription.

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[2]While this statutory prohibition applies specifically to the travel and transportation entitlements authorized by 5 U.S.C. § 5724(a), it has the same effect of prohibiting reimbursement of real estate purchase expenses authorized by 5 U.S.C. § 5724a, since such expenses are reimbursable "for an employee for whom the Government pays expenses of travel and transportation under section 5724(a)." 5 U.S.C. § 5724a(a).

[3]Chardon, Ohio, is about 71 miles from Mercer, Pennsylvania, and about 67 miles from Meadville, Pennsylvania.

Therefore, the agency's view in that regard also appears correct; that is, at the time she purchased the residence she no longer qualified for real estate expense reimbursement by virtue of her previous transfer.

/s/Seymour Efros
for Robert P. Murphy
General Counsel