Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kenneth Bellamy

File: B-261639

Date: May 24, 1996

DIGEST

1. A transferred employee purchased a lot near his new duty station, settled on it, and then constructed a residence, but final settlement on the residence occurred after the third anniversary of the date the employee reported for duty. The employee requests that the 3-year time limit in § 302-6.1(e), Federal Travel Regulation (FTR), be waived because litigation between the contractor and the employee caused the delay. Since the provisions of the FTR have the force and effect of law, this Office is without authority to modify or waive those requirements. William Buchanan, B-245281, Feb 20, 1992.

2. A transferred employee purchased a lot near his new duty station, settled on it and then constructed a residence. Although final settlement on the residence occurred after the third anniversary of the date the employee reported for duty, the employee occupied the nearly completed residence as his commuting residence before the time limit expired. The allowable expenses he incurred at the lot purchase settlement may be reimbursed. Lloyd E. McLaughlin, B-189997, Feb. 1, 1978.

DECISION

This decision responds to a request from the Manager, Financial Services Branch, Federal Aviation Administration (FAA).[1] The question asked is whether a transferred employee may be reimbursed for expenses incurred incident to the purchase of a lot when the final settlement on a newly constructed residence did not occur until after the maximum time limit for residence transactions had expired. We conclude that allowable expenses incurred to purchase the lot may be reimbursed, but not the expenses incurred at final settlement after the 3-year time limit had expired.

[1]Ms. Deborah A. Osipchak.

BACKGROUND

Mr. Kenneth Bellamy, an employee of the FAA, was transferred from Miami, Florida, to Hampton, Georgia, and reported for duty on April 22, 1990. Incident to that transfer, he executed a contract on April 2, 1991, to have a residence constructed on a lot that he was purchasing near his new duty station. On April 19, 1991, he went to settlement on the lot purchase and on June 4, 1991, filed a claim for the expenses associated with that purchase ($3,667.50). His claim was rejected for the reason that the expenses of the lot purchase could not be processed until a residence is completed and settlement is concluded.

Although the construction contract called for the residence to be completed in 6 months, it was only two-thirds complete nearly a year later. Mr. Bellamy discharged the contractor for failing to comply with the terms of the contract and arranged to complete the additional work on the residence on his own. During this time, he requested and received two successive 6-month extensions of the 2-year time limit, not to exceed April 22, 1993, the third anniversary of the date he reported for duty at his new permanent duty station. On October 19, 1992, Mr. and Mrs. Bellamy moved into the nearly completed residence and he began regularly commuting from there to his new duty station.

In the meantime, the contractor sued Mr. and Mrs. Bellamy for damages claiming that he was wrongfully discharged. On March 11, 1994, a jury awarded damages to the contractor, but required the contractor to reconvey unencumbered title to the property to Mr. and Mrs. Bellamy.[2] They were thereafter able to obtain a final mortgage and completed the final settlement process later in 1994. On October 3, 1994, Mr. Bellamy submitted an additional claim for $34,724, which included the real estate expenses incurred at final settlement on the residence in 1994 ($4,784), and $29,940 in litigation expenses. The agency denied reimbursement because the time limit for settlement on the residence had expired on April 22, 1993. Mr. Bellamy appeals that action, asserting that the delays caused by the litigation were beyond his control and requests that the time limit contained in section 302-6.1(e) of the Federal Travel Regulation (FTR),[3] be waived.

OPINION

The statutory provisions governing reimbursement for real estate expenses incident to a transfer in 5 U.S.C. § 5724a(a)(4) (1988) and the implementing regulations in

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[2]Title to the lot had been conveyed by Mr. and Mrs. Bellamy to the builder as part of the original construction contract.

[3]41 C.F.R. § 302-6.1(e) (1995).

Part 302-6 of the FTR[4] generally provide that a transferred employee is entitled to be reimbursed certain expenses for the purchase of a residence at the new duty station. However, section 302-6.1(e)(1) and (2) of the FTR,[5] require that the settlement date for purchase transactions must occur not later than 3 years after the date that the employee reports for duty at the new official station. Since the provisions of the FTR have the force and effect of law, this Office is without authority to modify or waive its requirements to allow reimbursement for otherwise proper real estate expenses that were not incurred within the applicable time limitation.[6]

Notwithstanding the 3-year time limitation, since an employee may construct a residence and be reimbursed those expenses that are comparable to expenses that would be reimbursable for an existing residence,[7] the employee's failure to go to final settlement until after the prescribed period has elapsed does not preclude reimbursement for otherwise allowable expenses properly incurred within the prescribed period. Thus, in decision Lloyd E. McLaughlin, B-189997, Feb. 1, 1978, a transferred employee purchased a lot near his new duty station shortly after his transfer and began constructing a residence on it. During construction, the employee occupied a mobile home on-site from which he regularly commuted to and from work. Since the house was not completed within the time limit allowed in the FTR, the employee could not be reimbursed for final settlement expenses. However, because the lot purchase settlement had occurred within the time limit and he began residing in a mobile home on the lot before the time limit expired, we permitted reimbursement for the allowable expenses incurred in the purchase of the lot.[8]

The ruling in McLaughlin is controlling in Mr. Bellamy's case. Although he was unable to go to final settlement within the 3-year period authorized, since he began occupancy of the residence before the 3-year period expired, he may be reimbursed certain of the expenses incurred when he purchased the lot.

Each of the itemized expenses he claims for the lot purchase may be reimbursed since they are types of expenses an employee would incur to purchase an existing

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[4]41 C.F.R. Part 302-6 (1995).

[5]41 C.F.R. § 302-6.1(e)(1) and (2) (1995).

[6]William Buchanan, B-245281, Feb. 20, 1992, and decisions cited.

[7]41 C.F.R. § 302-6.2(d)(1)(x) (1995).

[8]See also Edmund J. Koenke, B-214362, Aug. 7, 1984, and Donnie R. Sparks, B-213769, May 1, 1984.

residence and are not precluded from reimbursement under the FTR. Other than the loan origination fee, the items are reasonable and may be reimbursed. As to the $3,000 claimed as a loan origination fee, section 302-6.2(d)(1)(ii) of the FTR[9] limits the reimbursable amount to 1 percent of the loan, unless the lender itemizes the administrative charges and shows that the higher rate does not include prepaid interest, points, or mortgage discount and there is a further showing that the higher rate is customarily charged in the locality where the property is located. The record does not disclose the amount of the loan Mr. Bellamy obtained to purchase the lot, but its purchase price was only $53,500. If his loan was for the full purchase price, the maximum amount Mr. Bellamy could be reimbursed for his loan origination fee would be $535.

As for Mr. Bellamy's claim for reimbursement of his litigation costs, section 302-6.2(c) of the FTR[10] specifically excludes the costs of litigation. Accordingly, the FAA may certify Mr. Bellamy's June 4, 1991, voucher for payment consistent with the foregoing.

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

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[9]41 C.F.R. § 302-6.2(d)(1)(ii) (1995).

[10]41 C.F.R. § 302-6.2(c) (1995).