



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 10, 2012

CBCA 3022-RELO

In the Matter of EUGENE ANDRUCHOWICZ

Eugene Andruchowicz, Carmel, CA, Claimant.

Lt. Col. William A. Schmittel, Staff Judge Advocate, Defense Language Institute Foreign Language Center, Department of the Army, Monterey, CA, appearing for Department of the Army.

DRUMMOND, Board Judge.

Eugene Andruchowicz contests the Department of the Army's (agency) denial of his request for an extension of time beyond the two-year period in which he was allowed to submit a claim for real estate expenses incident to a permanent change of station (PCS).

In 2008, Mr. Andruchowicz received authorization to recover real estate transaction expenses incurred in connection with a PCS from San Antonio, Texas, to Monterey, California. The effective date of the transfer was his reporting date, November 4, 2008. 41 CFR 302-2.4 (2008) (Federal Travel Regulation (FTR) 302-2.4). On that date, applicable regulations stated that all aspects of the relocation must be completed within two years of the effective date of the transfer. FTR 302-11.21. However, the two-year period could be extended for an additional two years. FTR 302-11.22. To be eligible for consideration of an extension request, a claimant must have submitted a request to the agency not later than thirty calendar days after the expiration date, unless the thirty-day period was specifically extended by the agency. FTR 302-11.23. The initial two-year period expired on November 4, 2010.

On December 22, 2010, forty-eight days after the initial two-year period expired, Mr. Andruchowicz requested a two-year extension. He stated that due to unfavorable market

conditions following the move, he decided to wait to sell his old residence. He stated further that due to an improving housing market he expected to sell the residence in 2011.

The request was made beyond the period stated in the FTR. The agency did not extend the two-year period; rather, an authorized agency official determined that the request was untimely and that Mr. Andruchowicz had failed to demonstrate extenuating circumstances that would justify approving the extension.

Mr. Andruchowicz disagrees. He alleges that he received incorrect advice regarding approval of the requested extension. He further alleges that the agency owes him \$20,320 for estimated real estate transaction expenses (6% sales commission on sale price of \$297,000, \$17,820 + closing costs, estimated at \$2500). The record includes no evidence that the property was sold.

We have stated that erroneous advice by government employees forms no basis for us to grant relief to a claimant. Only expenses that are authorized by statute and regulations may be reimbursed. *Terry L. Patrick*, CBCA 1200-RELO, 08-2 BCA ¶ 33,978.

We have also held that the FTR vests broad discretion in agencies to decide whether to approve requests for additional periods of time in which transferred employees' real estate transactions may generate reimbursable expenses. Because this discretion is considerable, we will not disturb an agency's decision unless it is arbitrary, capricious, or clearly erroneous. *Nhat D. Nguyen*, GSBCA 15859-RELO, 02-2 BCA ¶ 31,986. The agency's determination, which complies with the FTR, is reasonable. The Board upholds the denial of the requested relief.

The claim is denied.

JEROME M. DRUMMOND
Board Judge

