



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Ernest L. Harper

**File:** B-259657

**Date:** August 15, 1995

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### DIGEST

A Senior Executive Service employee was notified that he was eligible for last move home benefits upon retirement, that he had 2 years from his retirement date to exercise that right, and that he was required to give the agency 60 days' advance notice so that travel orders could be issued. He requested travel orders 67 days before the last date he could travel and ship his household goods at government expense. The agency issued the travel orders 4 days before the last date. Because there was insufficient time to act after the travel orders were issued, the employee seeks to have the time limit extended, or to have his case submitted to the Congress as a meritorious claim. His request for extension is denied since the time limit stated in 41 C.F.R. § 302-1.106 has the force and effect of law, and may not be waived or modified by the agency or this Office. Since the employee had 2 years within which to act, but waited until 67 days before the time expired to notify the agency and request travel orders, there are not sufficient equities to warrant our submitting the matter to the Congress for meritorious relief.

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### DECISION

This decision responds to a request from the Deputy Secretary of Veterans Affairs, Department of Veterans Affairs (VA).<sup>1</sup> The basic question asked is whether the 2-year time limit for the "last move home" entitlement under Part 302-1, subpart B, of the Federal Travel Regulation (FTR),<sup>2</sup> may be waived so as to permit an employee to be reimbursed expenses for a move which did not occur until after that period had elapsed. If waiver is inappropriate, we are asked to refer the matter for meritorious claim relief under 31 U.S.C. § 3702(d) (1988). We conclude that the time limit may not be waived, nor is it appropriate to refer the matter for relief under the Meritorious Claims Act, for the following reasons.

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<sup>1</sup>The Honorable Hershel W. Gober.

<sup>2</sup>41 C.F.R. § 302-1, subpart B (1994).

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## BACKGROUND

Mr. Ernest L. Harper, a Senior Executive Service (SES) employee of the VA stationed in Washington, DC, was eligible for last move home benefits when he retired on October 3, 1992. Shortly before that retirement, he was informed by agency memorandum dated September 30, 1992, that he had 2 years or until October 2, 1994, to exercise his last move home benefits and that he should contact the Office of the Assistant Secretary for Acquisition and Facilities 60 days before he was ready to relocate so that the appropriate travel authorization could be prepared.

By letter dated July 28, 1994, 67 days before the expiration of the 2-year period, Mr. Harper requested that a travel authorization and related documents covering his last move home allowances for his relocation to Seattle, Washington, be issued no later than October 2, 1994. The travel authorization was prepared and approved on September 26, 1994, and received by Mr. Harper on September 30, 1994. On the same day he received the travel authorization, he wrote to the agency and informed them that because of the delay in its issuance, it became "impossible to complete my personal travel and shipment of household goods to Seattle, WA, by Sunday, October 2, 1994." Because of the delay by the agency, Mr. Harper has requested that he be granted an extension of the time within which he could travel and be reimbursed.

The agency admits that its delay in issuing the travel authorization to Mr. Harper was due to internal discussions as to which agency organization would fund the travel expenses. Since the agency takes responsibility for its error, it seeks a waiver of the time limit involved or, if that cannot be granted, submission to Congress for relief under the Meritorious Claims Act.

## OPINION

Section 5724(a)(3) of title 5, United States Code (1988), authorizes the travel, transportation and movement of the household goods of a career appointee in the Senior Executive Service and the immediate family from that individual's last duty station to a location selected by the individual upon separation from federal service. The regulations governing this entitlement are those contained in Part 302-1, subpart B of the FTR. Section 302-1.106 of the FTR<sup>3</sup> establishes a time limit for beginning travel and transportation, as follows:

"All travel, including that for the separated individual, and transportation, including that for household goods, allowed under this

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<sup>3</sup>41 C.F.R. § 302-1.106 (1994).

regulation, shall be accomplished within 6 months of the date of separation, or other reasonable period of time as determined by the agency concerned, but in no case later than 2 years from the effective date of the individual's separation from service."

Since the provisions of the FTR are specifically authorized by subchapter II of chapter 57, title 5, United States Code, the FTR provisions have the force and effect of law and may not be waived or modified by an employing agency or by this Office.<sup>4</sup> Therefore, the 2-year period specified in section 302-1.106 of the FTR may not be extended for Mr. Harper, regardless of the extenuating circumstances.

As to the agency's request that we submit the matter to the Congress under the Meritorious Claims Act,<sup>5</sup> we do not believe that it is appropriate to do so here. This Office will exercise its authority to submit claims to the Congress under the act only if the claim presents such substantial legal or equitable elements as to be deserving of consideration by the Congress. This authority is an extraordinary remedy which is limited to extraordinary circumstances.

In the present case, the agency informed Mr. Harper before he retired on October 3, 1992, that he must exercise his last move home right not later than October 2, 1994, and that the agency required a 60-day notice for purposes of issuing a travel authorization. Mr. Harper notified the agency on July 28, 1994, of his request for travel authorization, just 67 days before the last day he could begin authorized travel and transportation of his household goods. The fact that the agency took, at most, 63 days to approve Mr. Harper's request is not an extraordinary occurrence. Indeed, a prudent employee should have anticipated the possibility of a delay and notified the agency of his travel plans sufficiently before the travel deadline so as to avoid finding himself in Mr. Harper's situation. While it may be that Mr. Harper did not decide on his travel plans until July 28, 1994, we are not persuaded that there are sufficient equities in this case to warrant submitting the matter to Congress for relief.

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

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<sup>4</sup>Donald R. Stacy, 67 Comp. Gen. 395, 400 (1988), and decisions cited.

<sup>5</sup>31 U.S.C. § 3702(d) (1988).