



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 21, 2014

CBCA 3695-RELO

In the Matter of ROBERT A. SCHOENBERG

Robert A. Schoenberg, Lacey, WA, Claimant.

Vickie Kitchen, Human Resources Specialist, Department of the Air Force, Joint Base Lewis-McChord, McChord Field, WA, appearing for Department of the Air Force.

STERN, Board Judge.

Claimant, a civilian employee of the United States Air Force (Air Force), seeks reconsideration of our decision denying his claim for certain real estate expenses incurred for the purchase of his new home in the state of Washington. Claimant was transferred by the Air Force from New Mexico to Washington in connection with his employment. A motion for reconsideration may be granted if the Board determines that there was an error of law.

In the earlier decision, we concluded that claimant was not entitled to be paid certain expenses which would be normally reimbursable, since he did not actually pay these expenses. Rather, the charges were covered by a lender credit issued by the mortgage company. Claimant received this credit in exchange for the payment of a higher interest rate on his loan. *Robert A. Schoenberg*, CBCA 3695-RELO, 14-1 BCA ¶ 35,637. We concluded that claimant had no out-of-pocket expenses for these fees. Claimant argues that this decision is not consistent with the Board's decision in *Jeffrey A. Halvorson*, CBCA 2949-RELO, 13 BCA ¶ 35,228. In *Halvorson*, the Board permitted the reimbursement of a loan origination fee paid by an employee that had been transferred to a new duty station, though

the fee was paid from a credit issued by the mortgage company. This credit was issued in exchange for the purchaser paying a higher rate to the lender. The Board found that the origination fee had been paid from the claimant's own funds. An earlier decision by our predecessor Board in deciding these matters, referenced in and consistent with *Schoenberg*, reached a different conclusion where the lender issued a credit for a loan origination fee in exchange for a higher interest rate. *Judith C. Rothschild*, GSBCA 14787-RELO, 99-1 BCA ¶ 30,285.

The regulations clearly provide that the Government will not reimburse expenses incurred with a residential transaction if paid by someone other than the employee or his immediate family. 41 CFR 302-11.303 (2013). While there may have been unique circumstances in *Halverson*, the correct interpretation, as set forth in *Rothschild*, is that expenses are not reimbursable where the lender has paid the expenses, regardless of whether such payments were made in exchange for a higher interest rate to be paid by the purchaser. The regulations prohibit the payment of expenses not actually paid by an employee. Higher mortgage payments to be made by an employee in the future, due to a higher interest rate assessed by the lender, do not qualify as residential transaction expenses paid by a purchaser pursuant to the regulation. This is the law that this Board must follow.

Decision

The motion for reconsideration is denied.

JAMES L. STERN
Board Judge