



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 19, 2012

CBCA 2789-RELO

In the Matter of GERALD BATES, JR.

Gerald Bates, Jr., New Market, AL, for the Claimant.

Capt. Gabriel V. Tese, Office of the Command Counsel, Department of the Army, Redstone Arsenal, AL, appearing for Department of the Army.

SHERIDAN, Board Judge.

Claimant, Gerald Bates, Jr., requests this Board's review of the denial by the Department of the Army of his request for reimbursement of \$5768 in real estate expenses incurred pursuant to a permanent change of station (PCS) transfer. We find that, because the \$5768 sought is for discount points to buy down the home mortgage rate, reimbursement was properly denied by the agency.

Background

Claimant, an employee of the Department of the Army, underwent a PCS move in the interest of his agency. Claimant submitted a real estate reimbursement claim in the amount of \$10,408.80 associated with the purchase of his new residence in New Market, Alabama. Claimant's settlement statement (HUD-1) lists various settlement charges for his home mortgage. In pertinent part, the HUD-1 lists:

801. Our origination charges (includes origination point(s) 0.00%)	\$500.00
802. Your credit or charge (points) 1.00% or	<u>\$5,768.00</u>
803. Your adjusted origination charges	\$6,268.00

The agency denied reimbursement of the \$500 listed on line 801 as origination charges because claimant received a \$1980.52 credit for the origination, tax service, closing fee, and home warranty from the builder.¹ Claimant does not dispute this denial. The agency also denied reimbursement of the \$5768 listed as charges on line 802, concluding that:

Interest on loans, points, and mortgage discounts [is] not reimbursable. (See JTR [Joint Travel Regulations] § C5756-A4b(2)). In [claimant's] closing documents, the HUD-1 provided that \$5768 of the \$6268 origination fee is for points charged for the specific interest rate chosen (discount points).

In researching whether the \$5768 was reimbursable, claimant contacted his lender, Bank of America, and was informed that the bank “does not charge an origination fee on home loans.” An email message received from Bank of America’s vice president of home loans provided the following explanation:

Bank of America does not charge an origination fee on our loans. Our typical lender fees are:

1. Discount/Premium
2. Lender’s Fee
3. Appraisal Fee
4. Flood Check Fee
5. Tax Service Fee
6. Credit Report Fee

Some lenders might charge a 1% origination fee instead of [a] discount [fee], but what they are likely doing in effect with that fee is buying down the

¹ The Federal Travel Regulation (FTR) provides that an agency will pay certain residence transaction expenses “[p]rovided they are customarily paid by . . . the purchaser of a residence at the new official station.” 41 CFR 302-11.200. Among the residence transaction expenses that may be reimbursed are loan origination fees and similar charges not to exceed 1% of the loan amount. 41 CFR 302-11.200(f). Reimbursement of such fees can exceed 1% of the loan amount only if the employee provides evidence that the higher rate (a) does not include prepaid interest, points, or a mortgage discount; and (b) is customarily charged in the locality where the residence is located. 41 CFR 302-11.201; *see also Ginevra A. Hightower*, GSBICA 16512-RELO, 05-1 BCA ¶ 32,818 (2004).

[mortgage] rate, which operates the same way as discount. So for example: A lender might quote you a rate of 5% with 0% origination [fee] OR [a] 4.75% [rate] with a 1% origination fee.

The Bank of America official further explained to the agency that the fee in issue was listed as a “discount point” because Bank of America believes that the industry practice of listing one percent of the loan amount as an “origination fee” is “deceptive.” Instead, Bank of America has decided to list what other lenders refer to as their origination fee as a discount point, because it allows the bank “to originate loans at a lower, more competitive interest rate.”

Claimant asks us to review the agency’s decision, asserting that he and his family were unaware of the Bank of America practice and had he been informed in relocation briefings of potential problems associated with this practice, he would have sought another lender. Claimant also states that denial of his claim will result in financial hardship.

The agency states that it does not dispute Bank of America’s characterization of the industry practice as “deceptive” with respect to the listing of discount points as origination fees. The agency also acknowledges that mortgage lenders may be engaging in this practice and that some federal employees may be reimbursed amounts listed as origination fees while other federal employees are denied reimbursement for similar fees listed as discount points. The agency posits, however, that it is bound by the regulations and since the \$5768 was listed on the HUD-1 as discount points, the agency is prohibited from reimbursing claimant for that amount.

Discussion

Claimant argues that he was unaware of the nuances of bank practices regarding loan origination fees versus discount fees and as a result he was harmed when he was refused reimbursement for \$5768 in financing fees that he incurred.

The FTR and JTR, which are applicable to civilian Army employees, prescribe those real estate transaction expenses that are allowable and unallowable. 41 CFR 302-11.200, .202 (2011); JTR C5756-A. FTR 302-11.202 provides:

What residence transaction expenses will my agency not pay?

Your agency will not pay:

. . . .

(d) Interest on loans, points, and mortgage discounts;

41 CFR 302-11.202.

JTR C5756-A also lists and discusses the allowable and unallowable expenses associated with a sale or purchase of a residence. Loan origination fees, paid by a borrower to compensate a lender for administrative-type expenses incurred in originating and processing a loan, are reimbursable. JTR C5756-A.4.a(2). Interest on loans, points, and mortgage discounts are not reimbursable. JTR C5756-A.4.b(2).

The fees in issue were not administrative-type expenses that would normally be reimbursed as loan origination fees. Line 802 of claimant's HUD-1 clearly provides: "Your credit or charge (points) - 1.00% or \$5,768." Bank of America has confirmed that the amount listed was used to buy down the mortgage interest rate. As such, neither the FTR nor the JTR allows for reimbursement. It is claimant's burden to establish the purpose of a particular fee and his entitlement to be reimbursed for it under applicable regulations. *Mark Bodycombe*, CBCA 1389-RELO, 09-1 BCA ¶ 34,022 (2008); *Edward D. Ellis*, GSBCA 16763-RELO, 06-2 BCA ¶ 33,304.

We are sympathetic to claimant's quandary and the problems inherent in the complexities of structuring a home mortgage to maximize reimbursable expenses. While there are some expenses associated with a federal employee's relocation that an agency can reimburse, there are others that, by law and regulation, the agency cannot reimburse. The expenses in issue clearly fall in the category of fees that cannot be reimbursed.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge