



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 27, 2007

CBCA 682-RELO

In the Matter of LINCOLN E. BURTON

Lincoln E. Burton, Acampo, CA, Claimant.

Susan C. Lauga, Authorized Certifying Officer, Administrative Certification and Disbursement Section, Office of the Chief Financial Officer, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

DeGRAFF, Board Judge.

The United States Department of Agriculture (USDA) transferred Lincoln E. Burton from one permanent duty station to another and authorized him to incur reimbursable real estate transaction expenses in connection with the transfer. Mr. Burton, who reported to his new duty station in October 2005, decided to purchase a lot and have a house constructed instead of purchasing an existing house. The agency asks us for an advance decision pursuant to 31 U.S.C. § 3529 (2000), in order to allow it to determine which of Mr. Burton's transaction expenses ought to be reimbursed.

Background

In November 2005, Mr. Burton closed on a loan to purchase a lot. According to the settlement statement, he incurred the following transaction expenses, for which he requested reimbursement:

| | |
|------------|-----------------------------------|
| \$ 275.00* | Appraisal fee |
| 17.00* | Credit report fee |
| 393.52 | Closing fee paid to title company |
| 65.00 | Recording fee |

| | |
|--------|----------------------------------|
| 75.00 | Signing fee |
| 250.00 | Lender's title insurance premium |

In December 2005, Mr. Burton closed on a loan with a second lender to begin construction of his house and to pay off the loan he obtained to purchase the lot. According to the settlement statement, he incurred the following transaction expenses, for which he requested reimbursement:

| | |
|-----------|--|
| \$ 550.00 | Appraisal fee (\$50 paid at closing and \$500 paid outside of closing) |
| 3816.50* | Origination fee paid to lender (1% of the loan amount) |
| 19.00* | Flood fee paid to lender |
| 575.00* | Closing fee paid to title company |
| 100.00* | Notary fee paid to title company |
| 1452.00* | Lender's title insurance premium |
| 926.00 | Fees paid to title company related to construction |
| 25.00* | Fee paid to title company for lender's environmental protection |
| 100.00* | Additional escrow work charges paid to title company |
| 75.00* | Recording fee (deed of trust) |

In June 2006, Mr. Burton and his second lender modified the construction loan in order to provide permanent financing for his house. Mr. Burton's lender explained that its practice is to charge most of its fees when it makes the construction loan, not when the construction loan is modified and made permanent. According to the settlement statement, Mr. Burton incurred the following transaction expenses in connection with the permanent loan, for which he requested reimbursement:

| | |
|-----------|---|
| \$ 181.38 | Closing fee paid to title company |
| 75.00 | Notary fee |
| 75.00 | Recording fee (to record the loan modification agreement) |
| 25.00 | Fee paid to title company for lender's environmental protection |

In addition, according to the June 2006 settlement statement, Mr. Burton's lender charged a loan origination fee of \$3816.50 in connection with the permanent loan and credited Mr. Burton with having previously paid this amount.

Mr. Burton submitted a voucher and claimed reimbursement for all of the expenses listed above, which total \$9070.40. After USDA audited the voucher, it reimbursed Mr. Burton for the expenses marked above with asterisks, which total \$6454.50.

Mr. Burton submitted a reclaim voucher for the amount which he had not been reimbursed. After a second audit of Mr. Burton's voucher, USDA determined that Mr. Burton had incurred duplicate expenses as a result of his decision to construct a new house, and decided it had reimbursed Mr. Burton \$1870.62 too much. It determined it ought to have reimbursed \$275 for the appraisal fee and \$17 for the credit report fee shown on the November 2005 settlement sheet, \$3816.50 for the loan origination fee and \$19 for the flood fee shown on the December 2005 settlement sheet, all of the amounts shown on the June 2006 settlement sheet, plus \$25 for what USDA identified as "title insurance" and \$75 for what USDA identified as a "signing fee" paid in connection with the June 2006 transaction. We can find neither of these latter two fees listed on the June 2006 settlement sheet.

After several USDA employees expressed differing views as to how much Mr. Burton ought to be reimbursed, USDA asked for our assistance in resolving Mr. Burton's claim. USDA poses four questions. It asks whether charges for an item (e.g., an appraisal) should always be thought of as duplicate charges if the item appears on more than one settlement statement. It also asks whether an agency is required to reimburse expenses incurred in connection with modifying a construction loan in order to convert it to a loan for permanent financing. It asks whether it ought to reimburse the highest charge for an item which appears on more than one settlement statement. Finally, USDA asks whether it appropriately determined which of Mr. Burton's claimed expenses are reimbursable.

In response to USDA's request for an advance decision, Mr. Burton informs us that he takes issue with very few of the conclusions reached by the first USDA audit. In addition to the \$6454.50 he was reimbursed, Mr. Burton believes he ought to be reimbursed \$550 for an appraisal fee instead of the \$275 USDA initially allowed. He also believes he ought to be reimbursed an additional \$181.38 for the settlement fee paid in connection with the loan for permanent financing.

Discussion

The expenses an employee incurs in connection with the construction of a residence are reimbursable provided the expenses are comparable to the expenses which are reimbursable in connection with the purchase of an existing residence. 41 CFR 302-11.200(f)(10)(2005). In general, an agency should determine the appropriate reimbursement by looking primarily at the expenses incurred in connection with a permanent financing transaction because the expenses incurred incident to a permanent financing transaction are most like the expenses an employee would incur in connection with the purchase of an existing residence. When the construction process involves multiple closings, the employee might incur similar fees and expenses more than once. However, an employee may be reimbursed only once for each type of expense which is allowable according to the

regulations. Duplicate expenses and expenses which are incurred solely because the employee decided to construct a house cannot be reimbursed. *Richard A. Poisel*, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284 (2000); *David G. Winter*, GSBCA 14229-RELO, 98-1 BCA ¶ 29,361; *Brent T. Wahlquist*, GSBCA 14163-RELO, 97-2 BCA ¶ 29,095; *Michael J. Spann*, GSBCA 13685-RELO, 97-2 BCA ¶ 29,019; *Thomas S. Cushing*, GSBCA 13867-RELO, 97-2 BCA ¶ 29,022.

These general rules provide the answers to USDA's questions. Although it is theoretically possible that charges for an item which appears on more than one settlement statement might not be duplicate charges, this would be quite unusual. As we said above, an employee may be reimbursed only once for each type of expense. If an item appears on more than one settlement statement, charges for the item are usually duplicate, nonreimbursable charges. Like duplicate expenses, expenses which are incurred solely because the employee decided to construct a house are not reimbursable. Therefore, an agency is not required to reimburse expenses incurred in connection with modifying a construction loan in order to convert it to a loan for permanent financing.

An agency should not simply reimburse the highest charge for an item which appears on more than one settlement statement. In general, an agency should determine the appropriate reimbursement by looking primarily at the expenses incurred in connection with the permanent financing transaction because the expenses incurred incident to permanent financing are usually the most representative of those an employee would incur in connection with the purchase of an existing residence. Mr. Burton's claim falls outside this general rule because his lender explained that its practice is to charge most of its fees when it makes the construction loan, not to charge them later when the construction loan is modified and made permanent. For this reason, the expenses Mr. Burton paid in connection with the construction loan are most representative of those an employee would incur in connection with the purchase of an existing residence.

The following expenses Mr. Burton incurred in connection with the construction loan transaction are reimbursable, provided they are customarily paid by purchasers in the area: The appraisal fee (provided it does not exceed the customary cost of an appraisal), the loan origination fee, the flood fee (if required by the lender), the closing fee, the notary fee, the lender's title insurance premium, and the recording fee. The fees paid to the title company which related to construction are not reimbursable because they would not have been incurred if Mr. Burton had purchased an existing house. We do not know whether the fee paid to the title company for the lender's environmental protection or the additional escrow work charges paid to the title company are reimbursable. USDA will have to determine whether these two expenses are among the reimbursable expenses allowed by the Federal Travel Regulation, 41 CFR 302-11.200.

Looking at the expenses Mr. Burton incurred in November 2005, we see the appraisal fee, the closing fee, the recording fee, and the lender's title insurance fees are all duplicates of fees paid in connection with the construction loan transaction, so they are not reimbursable. The credit report fee is a reimbursable expense so long as it does not duplicate any part of a fee which is reimbursable in connection with the construction loan transaction. We have no idea what the "signing fee" is, so we do not know whether it duplicates an expense paid in connection with the construction loan transaction, whether it is an expense incurred only because Mr. Burton decided to construct a house, or whether it is an allowable expense. USDA will have to determine whether the credit report fee and the signing fee are duplicate fees or fees associated only with construction and, if not, whether they are among the reimbursable expenses allowed by the Federal Travel Regulation, 41 CFR 302-11.200.

None of the expenses Mr. Burton incurred in June 2006 are reimbursable. The closing fee, the notary fee, and the fee paid to the title company are all duplicates of fees paid in connection with the construction loan transaction, and the fee imposed for recording the modification of the loan agreement was incurred only because Mr. Burton decided to construct a house.

We trust this decision provides USDA with the guidance it needs in order to reimburse Mr. Burton's real estate transaction expenses.

MARTHA H. DeGRAFF
Board Judge