



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 26, 2009

CBCA 1588-RELO

In the Matter of SHAUN L. BLOCKER

Shaun L. Blocker, Richmond Hill, GA, Claimant.

Ralph J. Werthmann, Chief, Real Estate Division, Savannah District, Corps of Engineers, Savannah, GA, appearing for Department of the Army.

VERGILIO, Board Judge.

On May 18, 2009, the Board received a claim from Shaun L. Blocker (claimant), a civilian employee of the Department of Defense (agency), who changed his permanent duty station with a start date in June 2008. The claimant, who has been reimbursed various amounts, including two loan origination fees of \$1320 each (.5% of the amount of a construction loan and .5% of the amount of a permanent loan), here disputes the disallowance of \$1264, consisting of three expenses incurred in the construction and purchase of a residence at the new duty station. The claimant bears the burden of establishing Government liability. Rule 401(c).

The \$1320 origination fee for the permanent loan is reimbursable, but the \$1320 origination fee for the construction loan is not, because it represents a cost that would not have been incurred with the purchase of an existing home. This record reveals that the \$625 "administrative fee" is an underwriting fee. By regulation and decisions, it is not reimbursable. The processing (\$550) and document storage (\$89) fees are treated as reimbursable loan origination fees. The sum of the three reimbursable fees is \$1959, which is less than 1% of the loan amount. That amount is reimbursable. The claimant is not entitled to additional reimbursements from the agency for the items in dispute.

Background

The Government authorized the claimant to recover real estate transaction expenses incurred in the change of his permanent duty station. The claimant opted to have a residence

constructed. He obtained a construction loan, for which he paid a loan origination fee of \$1320, which is .5% of the loan amount. Thereafter, he obtained permanent financing, for which he paid a separate loan origination fee of \$1320 (.5% of the loan amount). The settlement sheet also indicates that he incurred an administrative fee of \$625, a processing fee of \$550, and a broker storage fee of \$89. An individual at the mortgage company used by the claimant provided a written explanation of these three charges:

The administrative fee, also “referred to as [an] underwriting fee[,] is charged for the underwriting of the loan to meet Fannie [Mae], Freddie [Mac], and Government guidelines. This fee is charged by the lender and is required since the lender funds the loan.”

The processing fee “includes the compiling, maintaining and dispensing of accurate information on a mortgage transaction, including the credit report, appraisal, verification of employment, assets, homeowners insurance, title and tax information which is handled by the loan processor.”

The broker storage fee relates to “the physical and electronic storage of the documents that make up a loan file for the duration required by state/federal law.”

The same individual states in the written explanation that the closing costs were normal and customary charges that occur in the mortgage industry on a daily basis and in the locality.

In allowing and disallowing various expenses the claimant incurred in the purchase, the agency paid the two origination fees (each of \$1320) totaling 1% of the claimant’s loan amount. The agency treated the three disputed costs here in question as processing fees, a part of the origination fees. Based upon experience regarding purchases in the area, the agency’s reviewing official concluded that origination fees in excess of 1% were not customary for the locality. Because of Joint Travel Regulations (JTR) C5756-A.4.a(2), the agency disallowed reimbursement for the three items which were in excess of the 1% paid.

Discussion

An employee who opts to have a residence constructed is permitted to recover real estate expenses to the same extent as an employee who purchases an existing home; however, the employee will not be reimbursed for “duplicative” costs. Federal Travel Regulation (FTR) 41 CFR 302-11.200(f)(2), (10), -11.201, -11.202 (2008); JTR C5756, C5759; *Lincoln E. Burton*, CBCA 682-RELO, 07-1 BCA ¶ 33,561; *Reed T. Rollo, Jr.*, GSBICA 15415-RELO, 01-2 BCA ¶ 31,453; *Robert D. Lee*, GSBICA 14843-RELO, 99-1 BCA ¶ 30,244.

Provided they are customarily paid by a purchaser of a residence at the new official duty station, an agency will reimburse various expenses of a claimant. Regulations categorize loan origination fees and similar charges as miscellaneous expenses which are reimbursable, provided they are normally paid by a purchaser in the locality of the residence. Reimbursement may exceed 1% of the loan amount only with specific showings by a claimant. FTR 302-11.200(f)(2); JTR C5756-A.4.a(2).

The claimant here has been reimbursed for two loan origination fees, each of \$1320, representing .5% of the loan amount--one for a construction loan and one for a permanent loan. Only one of these two charges would have been incurred with the purchase of an existing home. Accordingly, reimbursement is permitted only for \$1320, not the \$2640 reimbursed by the agency. *Robert D. Lee*.

Underwriting fees, apart from loan origination and processing fees, are not reimbursable by the Government. FTR 302-11.202(g); JTR C5759-A.4.b(5); *Wilbur W. Bhagat*, CBCA 1616-RELO (Sept. 25, 2009); *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722. Because the administrative fees claimed here represent underwriting fees of the lender, the claimant is not entitled to be reimbursed the \$625 he seeks.

Although the settlement sheet identifies the processing and storage charges as broker's fees (expressly prohibited from reimbursement for the purchase of a home, FTR 302-11.202(b)), the explanation and nature of the charges demonstrate that the charges are processing fees and to be considered as part of the loan origination fee, as the agency concluded. *Mervin H. Kemp*, CBCA 889-RELO, 07-2 BCA ¶ 33,715; *William L. King, Jr.*, CBCA 457-RELO, 07-1 BCA ¶ 33,504; *Timothy R. Defoggi*, GSBCA 16496-RELO, 05-1 BCA ¶ 32,907. Accordingly, the \$550 and \$89 charges represent reimbursable expenses.

The sum of the origination and processing fees which reflect reimbursable expenses is \$1959 (\$1320 + \$550 + \$89). The record supports the conclusion that these fees, totaling less than 1% of the loan amount, are customary in the locality. No further specific showing need be made for the claimant to retain \$1959 of the amounts reimbursed.

Decision

The claimant is not entitled to additional compensation for the items in dispute.

JOSEPH A. VERGILIO
Board Judge