



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 23, 2010

CBCA 1793-RELO

In the Matter of KATHY M. RICHARD

Kathy M. Richard, Milford, VA, Claimant.

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

DANIELS, Board Judge (Chairman).

The Department of Agriculture asks whether it should have reimbursed Kathy M. Richard, an employee it transferred to a new duty station in November 2005, for various expenses she incurred in entering into real estate transactions at that location.

Ms. Richard purchased a fifty-six acre plot of land in a rural area in April 2006. A bungalow was situated on the land, but it was not habitable and the county required that it be demolished. Ms. Richard paid contractors to tear down the bungalow and construct a new home to serve as her residence. When she bought the land, she took out a mortgage loan to cover some of the cost of the purchase and the construction. In September 2007, after construction was complete, the loan was converted from a construction loan to a permanent loan; the principal was not increased.

The Department of Agriculture asks four questions, which we restate in simplified form as follows:

1. Is the department responsible for any expenses incurred for the demolition of the bungalow and construction of the residence?

2. Should the department reimburse only a part of the transaction costs, given that the residence occupies only a small part of the land?
3. Ms. Richard has claimed reimbursement for a gas permit, gas set-up, dryer hook-up, temporary electric service used by the construction contractor, land survey, septic survey, and an extension fee which was associated with the conversion of the loan to a permanent loan. Are these expenses reimbursable? Does the fact that the land was purchased with a home (the bungalow) on it have any impact on the answer?
4. The department paid Ms. Richard's voucher in its entirety. If the Board finds that some of the expenses claimed but now questioned should not have been reimbursed, should the department ask the employee to refund the inappropriately paid amounts?

Discussion

When an employee is transferred in the interest of the Government from one duty station to another within the United States, her agency is obligated to reimburse her for expenses she incurs in purchasing a residence at the new station. 5 U.S.C. § 5724a(d)(1) (2006). The specific rules regarding reimbursement are established in the Federal Travel Regulation (FTR). *Id.* (citing 5 U.S.C. § 5738). The FTR prescribes a fundamental principle which guides us in resolving this case: When a transferred employee purchases land at her new duty station and constructs a residence on it, she may be reimbursed only for expenses which are comparable to the expenses that are reimbursable in connection with the purchase of an existing residence. 41 CFR 302-11.200(f)(10) (2005). This rule is consistent with statute in that it provides for reimbursement of purchase transaction costs only. In doing so, it treats home-builders equally with home-buyers. *Shaun L. Blocker*, CBCA 1588-RELO, 09-2 BCA ¶ 34,296; *Lincoln E. Burton*, CBCA 682-RELO, 07-1 BCA ¶ 33,561; *Robert D. Lee*, GSBCA 14843-RELO, 99-1 BCA ¶ 30,244.

In accordance with the principle enunciated above, expenses incurred for the demolition of the bungalow and construction of the residence, and for the provision of electricity to the construction contractor, are clearly not reimbursable. These are costs of construction, not costs of purchasing real estate. They are therefore outside the purview of the FTR, which addresses only costs resulting from property transfers themselves. *Nenia C. Powe*, CBCA 1140-RELO, 08-2 BCA ¶ 33,877; *Burton*; *Richard J. Gamble, Sr.*, GSBCA 15096-RELO, 00-1 BCA ¶ 30,657 (1999). Similarly, the charges Ms. Richard paid for surveys are not reimbursable because they were not required for her purchase of the land; the settlement sheet for this purchase shows no survey charges whatsoever. Instead, the surveys were made, according to an invoice in the record, for the purpose of determining whether the

house was located on her land, rather than someone else's. They were consequently associated with construction, not transfer of title.

Additionally, the extension fee which was associated with the conversion of the construction loan to a permanent loan is not reimbursable. It is a charge which would not have been imposed if Ms. Richard had purchased an existing residence. *James C. Brown*, CBCA 1062-RELO, 08-2 BCA ¶ 33,996; *Milton E. Geiger*, CBCA 758-RELO, 08-1 BCA ¶ 33,764; *Richard A. Poisel*, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284 (2000).

The costs of the gas permit, gas set-up, and dryer hook-up qualify for reimbursement through a miscellaneous expense allowance which is intended to help defray costs of establishing a residence at a new duty station. There are limitations on the amount of this allowance, however. 41 CFR pt. 302-16; *Dale G. Luckman, Jr.*, GSBCA 14874-RELO, 99-2 BCA ¶ 30,431. The fact that a bungalow was on the land at the time of purchase has no impact on this matter.

The FTR provides that if a transferred employee buys land "in excess of what reasonably relates to the residence site," "reimbursement will be limited to a pro rata reimbursement of the land reasonably related to the residence site." 41 CFR 302-11.308; *see also William D. Genda II*, GSBCA 15227-RELO, 01-1 BCA ¶ 31,287; *Larry D. Gatewood*, GSBCA 15343-RELO, 01-1 BCA ¶ 31,211 (2000). Ms. Richard has demonstrated that the land she purchased is zoned Rural Preservation and is of normal size for the area. There is no evidence that the land has any economic value, other than as environs for a house. Consequently, all of this land appears to be reasonably related to the residence site. There is no basis for limiting reimbursement here due to the size of the lot. *Cecilia McNicoll*, GSBCA 15377-RELO, 02-1 BCA ¶ 31,746.

The Board has determined, as explained above, that some of the money paid by the Department of Agriculture to Ms. Russell as reimbursement of real estate transaction expenses should not have been paid. Whether the department collects the inappropriately paid sum from the employee is a decision for the department, not the Board. Under 5 U.S.C. § 5584 and a delegation of authority from the Director of the Office of Management and Budget, authorized persons within agencies have the right to waive the collection of moneys owed as a consequence of erroneous payments. Waiver may be invoked when "the collection

. . . would be against equity and good conscience and not in the best interests of the United States.” *Id.*; *Robert E. Solomon*, CBCA 524-RELO, 07-1 BCA ¶ 33,533; *Patricia Russell*, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291.

STEPHEN M. DANIELS
Board Judge