



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 23, 2015

CBCA 4366-RELO

In the Matter of DAVID D. BATTLE

David D. Battle, Robins Air Force Base, GA, Claimant.

T. Greer Aiken, Jr., Attorney-Advisor, Department of the Air Force, Robins Air Force Base, GA, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

The Department of the Air Force transferred David D. Battle to a new permanent duty station in Georgia in February 2014. Mr. Battle's travel orders authorized reimbursement of real estate transaction expenses associated with the purchase of a residence in Georgia. He did buy such a residence, and he asked the Air Force to reimburse him for costs incurred and paid for the purchase in the amount of \$12,605.07. The agency reimbursed him in the amount of \$8984.69.

Mr. Battle has asked the Board to direct the Air Force to pay him an additional \$2248.39, which he characterizes as closing cost expenses. As agency counsel points out, this was an unfortunate decision on Mr. Battle's part because a review of the matter demonstrates not only that he is not entitled to this additional amount, but also that the Air Force's original determination was incorrect and that the employee owes the agency the amount by which he was overpaid.

Background

Mr. Battle initially submitted a voucher requesting reimbursement for the following amounts:

Legal and related fees	\$ 1530.00
Lender's appraisal fee	400.00
Certification fee (for home inspection)	350.00
Credit report fee	12.01
Mortgage title policy fee	2341.84
Escrow agent's fee	4765.48
City/county/state tax stamps	1443.84
Sales or transfer taxes; mortgage tax	771.90
Other incidental expenses	990.00

The Air Force office which reviewed this request looked to the HUD-1 settlement statement, rather than the voucher, in analyzing which expenses should be reimbursed. The HUD-1 statement shows that the following expenses, in addition to the purchase price of the property, were paid by Mr. Battle at settlement:

Property taxes (\$467.60 to city; \$896.24 to county)	\$ 1363.84
Loan origination charges	990.00
Appraisal fee	400.00
Credit report	12.01
VA funding fee	4082.85
Daily interest charges on mortgage loan (2 days)	43.84
Homeowner's insurance	768.00
Initial deposit for escrow account (\$192 for homeowner's insurance; \$758.56 for city property taxes; \$1453.92 for county property taxes; (\$448) for aggregate adjustment)	1956.48
Title services and lender's title insurance	1066.50
Owner's title insurance	463.50
Government recording charges	80.00
Transfer taxes	771.90

From among these expenses, the office determined that the following expenses were reimbursable:

Property taxes (\$467 to city; \$896.24 to county)	\$ 1363.84
Loan origination charges	990.00
Appraisal fee	400.00
Credit report	12.01
Initial deposit for escrow account (\$192 for homeowner's insurance; \$758.56 for city property taxes; \$1453.92 for county property taxes; (\$448) for aggregate adjustment)	1956.48

Title services and lender's title insurance	1066.50
Owner's title insurance	463.50
Government recording charges	80.00
Transfer taxes	771.90

The office also held that the cost of a home inspection (\$350), for which Mr. Battle paid separately, was reimbursable. Additionally, the office appears to have doubled the amounts for title services and lender's title insurance, and owner's title insurance, to make the total allowed \$8984.23 (not \$8984.69, as asserted by the office).

The amount Mr. Battle seeks in addition to the amount allowed by the reviewing office, \$2248.39, is the net amount he actually paid at settlement – the gross amount due from him to cover the purchase price and settlement costs, less amounts paid by or on his behalf by his mortgage lender and the seller of the property.

Discussion

Statute provides that subject to regulations issued by the Administrator of General Services, “an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, [between official stations located in the United States,] expenses of the . . . purchase of a residence at the new official station that are required to be paid by the employee.” 5 U.S.C. §§ 5724a(d)(1), 5738(a)(1) (2012). The regulations issued by the Administrator, called the Federal Travel Regulation (FTR), specify with particularity which expenses of purchase are reimbursable by an employee's agency and which are not. 41 CFR 302-11.200 through -11.202 (2013).

The Air Force office which reviewed Mr. Battle's voucher acted reasonably in analyzing his claim through the prism of the HUD-1 settlement statement, for that statement conveys the best delineation of which expenses were paid by each party to the transaction. *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593. The office properly determined that the following expenses incurred by Mr. Battle were reimbursable, in accordance with the FTR: loan origination fees in an amount less than one percent of the loan amount, 41 CFR 302-11.200(f)(2); appraisal fee, *id.* 302-11.200(b); credit report, *id.* 302-11.200(f)(3); title services and premium for lender's title insurance, *id.* 302-11.200(d), (e); government recording charges, *id.* 302-11.200(f)(6); and transfer taxes, *id.* 302-11.200(f)(4).

The reviewing office also properly determined that some of the expenses Mr. Battle claimed were not reimbursable. The largest of these is the VA funding fee. This is a “loan fee,” which is required to be collected under 38 U.S.C. § 3729 as a condition to the making,

guaranteeing, or insuring of a loan through the Department of Veterans Affairs. This fee is an element of the cost of obtaining credit, comparable to points assessed in connection with a conventional mortgage. It is thus a finance charge and is not reimbursable. *Jeffrey B. Hicks*, GSBCA 15860-RELO, 03-1 BCA ¶ 32,083 (2002); 41 CFR 302-11.202(d), (g). The other expenses correctly found to be not reimbursable were the daily interest charges on the mortgage loan, 41 CFR 302-11.202(d), and the premium on homeowner's insurance, *id.* 302-11.202(c).

As noted by agency counsel, two of the expenses allowed by the reviewing office are not reimbursable, per the FTR. One of these is property taxes paid to the city and county. 41 CFR 302-11.202(e). The other is the deposit for an escrow account of amounts for homeowner's insurance and city and county property taxes. As stated above, premiums on homeowner's insurance and property taxes are not reimbursable. The fact that these expenses were paid in advance, into an escrow account, does not make them allowable. Also, of course, double-counting of the amounts for title services and lender's title insurance, and owner's title insurance, was improper.

Two of the expenses allowed by the reviewing office may be reimbursable but have not been demonstrated to fall into this category, based on the record presented in this case. These are the premium for owner's title insurance and the cost of the home inspection. Owner's title insurance premiums are reimbursable only if they are "a prerequisite to financing" or "inseparable from the cost of other insurance which is a prerequisite." 41 CFR 302-11.200(f)(9); *see also id.* -11.202(c). The cost of a home inspection is reimbursable only "when required by Federal, State, or local law; or by the lender as a precondition to [the] purchase." *Id.* 302-11.200(f)(11).

Thus, we conclude that the following expenses are reimbursable:

Loan origination charges	\$ 990.00
Appraisal fee	400.00
Credit report	12.01
Title services and lender's title insurance	1066.50
Government recording charges	80.00
Transfer taxes	771.90

The total of these expenses is \$3320.41.

In addition, the following expenses are reimbursable if Mr. Battle makes the requisite showing:

Owner's title insurance	\$ 463.50
Home inspection fee	350.00

If the showing is made for both of these expenses, the total amount reimbursable will rise to \$4133.91. The total amount by which the Air Force has overpaid Mr. Battle is a minimum of \$4850.78 (\$8984.69 less \$4133.91) and a maximum of \$5664.28 (\$8984.69 less \$3320.41), with the final amount being dependent on whether Mr. Battle can make the requisite showing for the owner's title insurance premium and/or the home inspection fee. Although reimbursement of these expenses would normally be denied because the employee did not prove entitlement, we find that affording him the opportunity to make the showing is appropriate in this case, since the agency did not place these expenses at issue.

The fact that Mr. Battle had to pay a net amount of \$2248.39 at settlement is not relevant to our analysis. This amount results from the confluence of a number of factors, only one of which is the expenses of the transaction. *See Maloney*, 10-2 BCA at 170,522-23 ("the term 'closing costs' tends to be used broadly . . . and may, in the context of real estate transactions in general, bring under its umbrella items that are not allowable expenses under the FTR"). Those expenses are the ones that must be the focus of attention in determining, in accordance with the FTR, the extent to which the agency is obligated to make reimbursement.¹

Decision

Mr. Battle must pay to the Air Force the amount by which he has been overpaid for the expenses he incurred in purchasing his home at his new duty station. This amount is

¹ We note that the HUD-1 statement shows that the seller paid \$2809 of the costs incurred by Mr. Battle at settlement. Because Mr. Battle incurred far more than \$2809 in non-reimbursable costs, and agencies are required to apply seller credits first to non-reimbursable expenses, the payment by the seller has no impact on our analysis of which expenses of this transaction are reimbursable. *See Michelle D. Thomas*, CBCA 3572-RELO, 14-1 BCA ¶ 35,561; *Andrea M. Duff Hinkle*, CBCA 2841-RELO, 12-2 BCA ¶ 35,183; *James C. Dalton*, CBCA 896-RELO, 08-1 BCA ¶ 33,743 (2007).

\$5664.28, unless it is reduced because he has shown that his payment of a premium for owner's title insurance and/or the home inspection fee meets the qualifications for reimbursement.

STEPHEN M. DANIELS
Board Judge