



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 10, 2015

CBCA 4355-RELO

In the Matter of PATRICK H. HANNIGAN

Patrick H. Hannigan, Fort Bliss, TX, Claimant.

Mary M. Dreyer, Attorney-Advisor, Administrative and Civil Law, Office of the Staff Judge Advocate, Department of the Army, Fort Bliss, TX, appearing for Department of the Army.

WALTERS, Board Judge.

Claimant, Patrick H. Hannigan, a civilian employee of the Department of the Army, seeks Board review of the agency's refusal to reimburse him for two items of expense incurred in connection with his relocation from Korea to Fort Bliss, Texas, in July 2014. For the reasons enunciated below, we find the agency's refusal to have been correct and deny the claim.

The two expense items at issue in this claim are: (1) a legal fee of \$200 claimant incurred for an attorney's review of documents relating to his purchase of a home in El Paso, Texas; and (2) a home inspection fee of \$150 that claimant incurred in connection with that purchase.

As to the \$200 paid for legal services, under the Joint Travel Regulations (JTR), applicable to claimant as a civilian employee of the Department of Defense and in effect when claimant was to report to Fort Bliss, legal and related costs are reimbursable to an employee as the purchaser to the extent such costs do not exceed amounts customarily charged, if such fees are not included in broker costs or other expenses already being

claimed, but only where such costs are customarily borne by the purchaser. JTR C5696-A.3 Likewise, the Federal Travel Regulation (FTR) allows for reimbursement to a purchaser of “other expenses of . . . purchase made for required services,” only when such fees are themselves “customarily paid by the purchaser of a residence at the [locality of the] new official station.” 41 CFR 302-11.200(f)(12) (2014) Here, claimant has established to our satisfaction that the cost he expended for an attorney to verify compliance with Texas law was not included elsewhere in his claim, and the agency does not challenge the \$200 amount being sought for legal fees. It does take issue, however, with legal fees being a cost customarily borne by a purchaser in the El Paso, Texas, area, and provides some evidence (in the form of correspondence from local realtors) to support its belief. Claimant, on the other hand, has not furnished evidence of any sort to establish that legal fees are customarily a purchaser cost in El Paso. Thus, he has failed to meet his burden of proof for that expense item, and the Army was correct in denying reimbursement.

In terms of the \$150 home inspection fee, the FTR allows for reimbursement to the employee as purchaser when the fee is normally paid by the purchaser in the locality in question and does not exceed the amount customarily paid in that locality, but only if the inspection fee is required either by federal, state, or local law, or by the lender as a precondition to the purchase. 41 CFR 302-11.200(f)(11); *Theresa A. Almada*, CBCA 3594-RELO, 14-1 BCA ¶ 35,721. A similar provision in the JTR limits reimbursement to the employee/purchaser for property inspection fees to those instances when the fee is mandated by federal, state, or local law, or by the lender as a precondition of purchase. JTR C5696-A.4.a(11). Though the Army concedes that property buyers regularly pay for home inspections in El Paso as elsewhere, and does not challenge the reasonableness of the \$150 claimant paid as beyond the customarily charged inspection fee, it nevertheless rejects claimant’s demand for reimbursement, since the inspection fee was not required by federal, state, or local law, or by a lender in this case. In this latter regard, claimant puts forth the novel argument that, since he purchased the new home near Fort Bliss completely with his own funds (i.e., for cash), he should be regarded as the “lender,” such that his decision to proceed with a home inspection as a condition for going forward with the purchase should qualify for reimbursement under the regulations. This interpretation of the regulations is plainly invalid. Claimant here was clearly an investor in the new property, not a lender. The notion that any employee providing funds for his home purchase should be regarded as a “lender” would render meaningless the wording of the regulations pertaining to “lenders” since, in the great majority of cases, a home buyer will provide at least some of the funds for purchase, in the form of a down payment. The Army thus was correct in rejecting claimant’s demand for the home inspection fee as well.

Decision

The claim is denied.

RICHARD C. WALTERS
Board Judge