



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 21, 2019

CBCA 6520-RELO

In the Matter of DAVID C. SHINN

David C. Shinn, Arlington, VA, Claimant.

Nihar H. Vora and Daniel K. George, Office of General Counsel, Federal Bureau of Prisons, Department of Justice, Washington, DC, counsel for Department of Justice.

ZISCHKAU, Board Judge.

Claimant, David C. Shinn, seeks reimbursement of \$5221.28 in closing costs incurred when purchasing a home in connection with his permanent change of station (PCS). The agency contends that certain seller credits should be deducted from the reimbursable amount, which precludes reimbursement of the full amount claimed. For the reasons set forth below, we sustain Mr. Shinn's claim.

Background

In August 2018, the agency transferred Mr. Shinn from Victorville, California, to the agency's central office in Washington, D.C. As part of the transfer, the agency authorized reimbursement of Mr. Shinn's real estate expenses incurred in the purchase of a new residence. Mr. Shinn bought a home in Arlington, Virginia, in October 2018. An inspection of the home conducted before the purchase revealed that various repairs, estimated to cost \$16,000, needed to be made to the home.

Mr. Shinn directly paid \$23,492.48 in closing costs. The agency calculated that Mr. Shinn would have qualified for a reimbursement of \$12,134.76. But because Mr. Shinn received a seller credit totaling \$16,579, the agency reduced his maximum allowable reimbursement to \$6913.48. The settlement statement's description of the deducted seller

credit does not state that it was a credit toward closing costs. The home inspection contingency removal addendum indicates that a \$16,000 credit was for the cost of making the necessary repairs that were discovered during the home inspection. There is a listing of an “LA credit,” but again there is no indication that this credit was for closing costs.

Discussion

Provided certain requirements are met, when an employee transfers in the interest of the Government, the employing agency is required to reimburse the employee for certain expenses related to purchasing a residence at the employee’s new duty station. 5 U.S.C. § 5724a(d) (2012). To be reimbursable, residence transaction expenses such as closing costs must have been incurred and paid by the employee or an immediate family member of the employee. 41 CFR 302-11.303 (2018). “In order to determine whether an employee has incurred and paid an expense, we look to the settlement statement . . . , which generally delineates what expenses are paid for by the purchaser and what expenses are paid for by the seller.” *Kevin Kelleher*, CBCA 4889-RELO, 16-1 BCA ¶ 36,206, at 176,666 (2015). We may also review other relevant documents to understand a claimant’s residence transaction. *See, e.g., Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605, at 151,115 (1999) (holding that the Board may look at documentation that shows the amount of the closing costs and the purchaser’s liability for them in instances where the settlement statement shows that the closing costs were paid by the seller).

The agency argues that Mr. Shinn is ineligible for full reimbursement of the closing costs he admittedly paid, because Mr. Shinn received a credit from the seller for the cost of the repairs to the house that were identified during the home inspection. The agency argues that the repair credit and LA credit must be deemed as payments of the buyer’s closing costs. We do not agree.

The home inspection contingency removal addendum establishes that the credit was to offset Mr. Shinn’s costs for making the repairs discovered during the pre-sale home inspection. There is nothing in the settlement statement that contradicts the addendum’s indication that the seller credit is for anything other than the cost of repairs. Therefore, the credit cannot be deemed to be for closing costs where Mr. Shinn himself paid the closing costs as the buyer. Nor can we find in the record any indication that the LA credit was applied toward closing costs. These credits were improperly deducted from the total amount of closing costs when the agency calculated Mr. Shinn’s reimbursement. An agency should not be making a presumption that seller credits are to be applied toward closing costs.

The agency argues further that under *Parrish*, an employee who purchased a house at a new duty station must meet certain elements to be reimbursed for closing costs that were

paid by the seller at closing. *Parrish* is inapposite given the fact that the settlement statement shows that Mr. Shinn paid the closing costs as the buyer. There have been cases in which employees received credits from the seller that were applied to otherwise reimbursable real estate transaction costs. In those cases, reimbursement was properly denied, as the costs were not actually incurred and paid by the employee. See, e.g., *Terrence T. Smith*, GSBCA 15695-RELO, 02-2 BCA ¶ 31,954 (claimant received a seller credit toward his closing costs in lieu of making repairs required as a result of a home inspection); *Marilyn Wire*, GSBCA 15485-RELO, 01-1 BCA ¶ 31,413 (same). As we noted in *Stephen R. Matthes*, CBCA 699-RELO, 07-2 BCA ¶ 33,600, at 166,420 n.2, the structure of the transaction (e.g., whether a credit is applied to reduce the amount of closing costs paid by the employee) determines the outcome. In the present case, as in *Matthes*, the seller credits were not applied toward the closing costs and Mr. Shinn paid the closing costs himself.

Decision

We sustain the claim. The agency shall reimburse Mr. Shinn \$5221.28 for his remaining reimbursable closing costs.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge