UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 5, 2026

CBCA 8411-RELO

In the Matter of KEVIN K.

Kevin K., Claimant.

Gabrielle Y. Doty, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

O'ROURKE, Board Judge.

Claimant, an Army civilian employee, seeks reimbursement of relocation expenses incurred when he permanently transferred from one duty station to another pursuant to official orders. Although the agency approved and reimbursed the majority of claimant's expenses, the agency denied some expenses, citing regulatory prohibitions and insufficient evidence. Claimant supplemented the record with relevant information and sought the Board's review of the unreimbursed expenses. Because we find the additional evidence responsive to most of the regulatory requirements, we grant the claim in part.

Background

Pursuant to permanent change of station (PCS) orders, claimant, his spouse, and their three young children relocated from Florida to Texas in early March 2024. The move was fraught with challenges resulting in increased costs for claimant. Although the agency approved and reimbursed the majority of claimant's travel expenses, the following expenses were denied: (1) temporary quarters subsistence expenses for one week of meals; (2) a seller's credit for the sale of their Florida residence; (3) a homeowners association (HOA) estoppel certificate fee; and (4) title insurance for the Florida residence. Claimant asked the

Board to review the agency's decision. We summarize the relevant facts and circumstances for each expense below.

Temporary Quarters Subsistence Expenses (TQSE)

Claimant's PCS orders authorized thirty days of TQSE, which covered lodging expenses and meals for claimant and his dependents. Extensions of TQSE are permitted in thirty-day increments up to a maximum of 120 days. Claimant made reservations for temporary lodging in the vicinity of his new duty station from March 13 to April 2, 2024. Claimant planned to close on his new home in Texas on March 26. Delivery of their household goods (HHG) was expected soon thereafter. Despite meticulous planning, claimant's PCS was disrupted by a number of factors. First, the closing date on the new home was delayed until March 28. Second, as there were no carriers available at that time to deliver claimant's HHG, a delivery date could not be scheduled.[1] Third, claimant received last-minute temporary duty (TDY) orders for April 2 to 5, 2024. In consideration of these delays, claimant requested an extension of TQSE, which his agency granted.

Even though the agency had no issue with the TQSE extension, the hotel could not accommodate claimant and his family beyond April 2. Not only was this hotel not available after this date, but lodging facilities across the area near claimant's new duty station were also sold out due to a widely-publicized solar eclipse.[2] Despite this predicament, the hotel managed to find the family another room from April 2 until 5; however, the replacement room was much smaller than the first room and was nearly triple the price due to the surge in demand for lodging. Claimant accepted the smaller room at the higher rate, and his family stayed there while he was on TDY.

Claimant returned from his TDY on April 5. With the eclipse just three days away, none of the lodging facilities had vacancies. Leaving the area was not an option because at least one of claimant's children was already attending a local school. Furthermore, a HHG delivery date remained elusive due to carrier unavailability and weather. With no other options, claimant stated that he and his family "temporarily moved into our incomplete home, which lacked HHG and had a broken window, as no other lodging options were available." Unlike the hotel, the new home had no beds, linens, kitchen items, or furniture. Claimant noted that there was not even a refrigerator at the new home. Nevertheless, his spouse

[1] Claimant's HHG sat in a warehouse until a carrier became available to pick it up for delivery.

[2] The solar eclipse occurred on April 8, 2024, and the area near claimant's new duty station was considered a prime viewing region for this event.

purchased air mattresses and a few other items to accommodate the family until the HHG arrived, which ultimately occurred on April 11.

During the week of April 5 to 12, claimant and his family had shelter but no accommodations for meals, so they continued to eat at local establishments.[3] The agency acknowledged that this decision saved the Government money but nonetheless denied the request for partial TQSE because claimant and his family had moved out of temporary lodging and into their new home. The agency deemed this to be a move into permanent housing, signifying the conclusion of temporary quarters. As such, the agency denied all TQSE after April 5.

Seller's Credit, HOA Estoppel Certificate, and Title Insurance

Claimant's orders authorized reimbursement of real estate expenses. The real estate expenses at issue in this case are related to the sale of claimant's home at his former duty station in Florida. These expenses included a $2000 seller's credit, a fee of $259.95 to generate an HOA estoppel certificate, and a title insurance policy that cost $2597.80.

Seller's Credit

On May 3, 2024, claimant closed on the sale of his Florida home. According to the settlement statement, claimant offered a $2000 seller's credit as part of the transaction. To support his request for reimbursement of this credit, claimant initially provided a letter from his realtor, who stated that "requesting closing cost incentives and other concessions is customary practice in Florida to ensure smooth transactions." The agency rejected this data as insufficient because it was too broad and lacked information specific to what was customary in the local market.

Claimant followed up with local data such as statistics on home sales in the area that offered seller credits. The information showed that from January to June 2024, 220 out of 267 (eighty-two percent) of the home sales included seller credits. Claimant also provided documentation of seventy-one real estate sales over a one-month period that included seller credits ranging from $850 to $30,000. Claimant maintains that these examples demonstrate that sellers in the area of his former residence routinely offer credits to buyers to close real estate deals. Still uncertain, the agency asked the Board to determine if this additional data adequately demonstrated that seller credits were customary in the area.

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[3] Because claimant's family was unpacking on April 12 and was not yet fully functional in the house, claimant included April 12 as the final day of TQSE for meals.

HOA Estoppel Certificate

Claimant's Florida residence was located in a development with a community association. When selling a home in such a community, an HOA estoppel certificate is required by state law. The purpose of these certificates is to ensure transparency in the sale of a property by informing interested parties about the seller's account status with the HOA, listing any outstanding fees or unpaid assessments, and identifying any HOA violations. Pursuant to that requirement, claimant requested an estoppel certificate from his HOA to demonstrate that his membership was in good standing. The agency requested evidence that this certificate was required, such as by state law or by the lender, to ensure the smooth transfer of the property. Claimant responded with additional information to satisfy the request, including citations to relevant Florida statutes and communications from an attorney and closing agent showing that receipt of the HOA estoppel certificate was the only remaining item needed in order to close on the property.

Claimant specifically referenced section 720.30851 of the Florida Statutes (2023), which directs HOAs to produce the estoppel certificates within ten days of receiving a request from the parcel owner. This provision also identified the information that must be included in the certificate, such as the fee for producing the certificate and the requirement to deliver the certificate by hand, regular mail, or electronic mail to the requestor/parcel owner. Claimant also referred to other laws, such as section 720.401(1)(a) of the Florida Statutes, which states that a prospective parcel owner (in a community with an HOA) must be presented with a disclosure summary before executing the contract for sale. A disclosure summary lists the obligations of membership in the association. As the parcel owner, claimant paid the fee but was denied reimbursement by the agency for the fee.[4]

Owner's Title Insurance

The record contains a copy of claimant's settlement paperwork, which lists all of the costs and fees for which the seller was responsible, including an expense for owner's title insurance in the amount of $2597.80. The paperwork contains standard provisions for residential sales in Florida. The provision related to title insurance stated:

> Within the time period provided in Paragraph 9(c), the Title Commitment . . . shall be issued and delivered to Buyer. The Title

[4] Since the agency expressly stated that it was not disputing that this fee was customarily provided by the seller, we dispense with further facts related to the custom of paying such fees.

> Commitment shall set forth those matters to be discharged by the Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, *an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer* insuring Buyer's marketable title to the Real Property.

Agency's Submission (part 2 of 2) at 25; Claimant's Reply, Attachment (July 29, 2024) at 13 (emphasis added). Responsibility for payment of this fee was based on which box was checked under paragraph 9(c). Subparagraph (i) directed the *seller* to select the closing agent and pay for the owner's title insurance policy, whereas subparagraph (iii) directed the *buyer* to select the closing agent and pay for the owner's title insurance policy. In this case, subparagraph (i) was checked, so claimant was responsible for paying the fee. A statement from a retired legal professional (Ms. Eller), with forty years of home closings experience, explained that the seller customarily covers this cost. In her statement, Ms. Eller recounted that "[i]n my many years of handling closings, I might have had less than 5 closings whereby the Buyer [paid] for the owner's title insurance." Furthermore, out of the sixty-seven counties in Florida, Ms. Eller noted that only four have the opposite custom where the buyer covers the cost of title insurance: Broward, Collier, Miami-Dade, and Sarasota. Claimant's former residence is located in Lake County.

Claimant also included in the record an email from the closing agent verifying that owner's title insurance is required by the title company conducting the closing. The title company would not produce closing documents without such a policy. The closing agent stated that "[i]n Florida, this is a seller's fee and it is based on the purchase price. The buyer is then responsible for the lender policy, as the lender requires a policy."

Discussion

Title 5 of the United States Code requires the Government to reimburse certain expenses when an employee is transferring from one permanent duty station to another. 5 U.S.C. § 5724(a)(1) (2018). As a civilian employee of the Department of Defense, claimant is subject to the provisions of the Federal Travel Regulation (FTR), as supplemented by the Joint Travel Regulations (JTR). *Bryan L.*, CBCA 8470-RELO, 25-1 BCA ¶ 38,920, at 189,428 (citing *Robert S.*, CBCA 8426-RELO, 25-1 BCA ¶ 38,865, at 189,146 n.2).

Temporary Quarters Subsistence Expenses

With regard to claimant's request for partial TQSE for the week of April 5 to 12, the FTR expressly addresses the issue of when TQSE reimbursement ends:

> **When does my authorized period for TQSE reimbursement end?**
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> The period for TQSE reimbursement ends at midnight on either the day before you and/or any member of your immediate family occupies permanent residence quarters (even if some, but not all household goods have been delivered such that the residence is suitable for permanent occupancy), or the day your authorized period for TQSE reimbursement expires, whichever occurs first. (See § 302-6.207 for details.)

41 CFR 302-6.14 (2024) (FTR 302-6.14).

Claimant's gaining unit authorized an extension of TQSE when claimant and his family checked out of temporary lodging on April 5, 2024, and moved into their empty Texas home that was completely devoid of HHG until April 11, 2024. The above provision points to a different part of the regulation to help agencies determine whether quarters are temporary or permanent. It states:

> **What factors should we consider in determining whether quarters are temporary?**
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> In determining whether quarters are "temporary," you should consider factors such as [the] reasonable time when the employee's residence at the old official station becomes temporary and no longer suitable for permanent residence (e.g., household goods have been shipped and are unavailable to the employee and their immediate family), the duration of the lease, movement of household goods into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

FTR 302-6.207.

Many of the cited factors are instructional in the instant case, such as whether HHG "are unavailable to the employee and their immediate family" or have been moved into quarters. Here, it was clear that claimant never intended to move into his new home without his HHG. All along, he sought to schedule his closing and HHG delivery as back-to-back events while remaining in temporary quarters. Moving into the new home *without* HHG only became an option when it was the *only* option. This is further evidenced by the actions of claimant and his family. Claimant's spouse made a special trip to purchase air mattresses, the family continued to eat out for all of their meals, and the family washed their laundry at a laundromat. These actions demonstrate the temporary nature of the arrangement. Once his

HHG were moved into the residence, however, it became suitable for permanent occupancy. The home could no longer be considered temporary quarters. Accordingly, we grant the claim for partial TQSE (meals only) from April 5 to 11, 2024, which amounts to $1383.55. We deny TQSE for April 12, 2024, since claimant's HHG had been delivered.

Residential Expenses

With regard to the three expenses at issue related to the sale of claimant's former residence (the seller's credit, the HOA estoppel certificate, and the owner's title insurance policy), we find that the additional evidence that claimant provided in support of each expense substantiates two of the claimed expenses: the fee for the HOA estoppel certificate and the cost of the owner's title insurance policy.

HOA Estoppel Certificate

The FTR provides a detailed list of reimbursable real estate expenses for employees selling a residence at an old permanent duty station. Among these expenses is a "catch all" provision that authorizes reimbursement of "[o]ther expenses of sale . . . made for required services that are customarily paid by the seller of a residence at the old official station." FTR 302-11.200(f)(12). The Board has previously determined that "a required service is one that is imposed by either a lender or by Federal, State, or local government as a precondition of sale." *Charles Brown*, CBCA 6566-RELO, 20-1 BCA ¶ 37,524, at 82,232 (citing *Gregory Cellos*, CBCA 5105-RELO, 16-1 BCA ¶ 36,430, at 177,586 (quoting *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593, at 170,524)).

Florida law compels production of an HOA estoppel certificate to ensure that the residence, when transferred to a new owner, is unencumbered. The statute provides that the parcel owner, as the HOA member, requests the certificate. The purpose of the certificate is to comply with state law and demonstrate that the parcel owner is current on all fees and assessments, clearing the way for the sale. The law further requires that, as part of the certificate, a disclosure summary containing the obligations of association membership be presented to the prospective buyer prior to closing.

The facts in this case are similar to those in *Charles Brown* and *Gregory Cellos*, where state law required the seller to provide specific documents and certifications to the buyer as a pre-condition of the sale. Here, statutory references, together with the facts, establish that the certificate is legally required when the property at issue belongs to an HOA and that the fee is customarily covered by the seller (the parcel owner). However, since Florida limits the amount of the fee to $250, reimbursement should be consistent with that limit. *See* Fla. Stat.

§ 720.30815(6). Accordingly, we grant the claim in part and reimburse claimant $250 for the HOA estoppel certificate fee.

Owner's Title Insurance Policy

Florida law requires that sellers provide a title that is free from defects and encumbrances. *See* Fla. Stat. § 712.04. Title insurance facilitates this requirement by insuring a buyer's marketable title to real property. The JTR expressly authorizes reimbursement of a title insurance policy as long as the cost of obtaining the policy is customarily paid by the seller, the policy is a prerequisite to transferring property, and the cost is not already reimbursed under another category or as part of another fee. JTR 054504-D (Feb. 2024). The record contains multiple examples of pre-printed Florida real estate forms requiring owner's title insurance, including the residential contract executed in this case. However, the forms do not specify which party pays for the cost of that insurance. Instead, the form presents two options, one where the seller pays and one where the buyer pays. In the instant case, the first box was checked, indicating that claimant, as the seller, was required to cover the cost of the owner's title insurance. By itself, this evidence does not meet the JTR's requirement to establish entitlement to reimbursement. The form did not specify that a particular party cover the cost—it offered the parties a choice. *Cf. Laurie A. Sonju*, CBCA 2206-RELO, 11-1 BCA ¶ 34,740, at 171,026 (A pre-printed settlement sheet directing the seller to cover the cost of title insurance constituted evidence of a custom.).

Claimant provided additional information from seasoned professionals, including a real estate law firm and a closing company, showing that it is extremely rare for a buyer to cover the cost of owner's title insurance in the state of Florida. Over a forty-year time period during which Ms. Eller was involved in numerous closings, she counted only five instances where this cost was covered by the buyer. She also stated that only four of sixty-seven counties in Florida customarily have the buyer cover this cost. Claimant's former residence was not located in one of those four counties.

The closing agent confirmed this custom: "In Florida, [the cost of owner's title insurance] is a seller's fee and it is based on the purchase price [of the home]. The buyer is then responsible for the lender policy, as the lender requires a policy." With this additional evidence, we find that claimant has met his burden regarding reimbursement of the owner's title insurance policy in the amount of $2597.80.

Seller's Credit

"[A]n expense is customarily paid if 'by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent

within a community.'" *Alexandria N.*, CBCA 8196-RELO, 25-1 BCA ¶ 38,832, at 188,941 (quoting *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412). The agency determined that the letter from the real estate agent did not meet this requirement because it was devoid of statistical data and referred to statewide seller concessions rather than those offered in the community of claimant's former residence. The Board has previously determined that evidence of custom in such cases may consist of "historical data which show that *over a number of years* a commanding percentage of sellers have contributed to buyers' closing costs." *Bradley N. McDonald*, CBCA 5025-RELO, 16-1 BCA ¶ 36,345, at 177,205.

Claimant supplemented the record with data showing that from January to June 2024, eighty-two percent of home sales in the area (220 of 267) included seller concessions. This demonstrates that a commanding percentage of sellers in that community contributed to buyers' closing costs. Where the evidence falls short, however, is the time frame during which the transactions occurred. Claimant provided data for a six-month period. He also provided a one-month snapshot of home sales in the area which showed seventy-one home sales with seller concessions. Claimant then compared this to a case in which the Board granted reimbursement of an expense where ninety percent of the homes sold in a particular area had seller concessions over a five-year period. Claimant's analysis focused on the number of homes sold (fifty-nine), rather than the time frame (five years) or the high percentage of seller concessions (ninety percent).

To establish that an expense is customary, claimant must show *long* and unvarying habitual actions. We conclude that a six-month period is not long enough to establish evidence of a custom. *See Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533, at 174,133 ("[C]ustomary practice and data from a limited period of time . . . are not persuasive."). Claimant contends that the recent data he provided is a more precise indicator of the market and should be adequate to support his claim. He points out that this is especially true in light of Board precedent determining that a rate of seventy-five percent is sufficient to establish customary practice. We do not disagree with claimant's point about the percentage rate, but that information only satisfies one part of the legal analysis. To find that seller concessions were customary in the area of claimant's former residence, we require statistical evidence *over a period of years*. Such evidence is what distinguishes a custom from a trend.

Claimant also submitted data on generational trends for home buyers and sellers, spanning years 2021 through 2024. That data did not fill the evidentiary void here. Each 100-plus-page report produced by the National Association of Realtors contains one or two pages of information relevant to the issue of seller concessions, but it demonstrates the opposite point that claimant seeks to make. The information shows that the majority of sellers did *not* offer concessions, and, of those that did, the motivation was to attract buyers

in a competitive or uncertain market or to close the sale quickly—not because it was customary to do so. Claimant noted, "These trends reflect how market conditions and external factors, such as the pandemic, influence the prevalence of seller conditions." *See Peter G.*, CBCA 8018-RELO, 24-1 BCA ¶ 38,589, at 187,583 (The Board denied a $5181 seller's credit because the evidence showed that the credit was offered due to market conditions rather than the result of a "longstanding, habitual, and constant" practice.). Moreover, these reports reflect *nationwide* trends. The same is true for a transcript from a media interview that claimant provided. The featured real estate expert addressed the current state of the national real estate market. We require evidence of seller credits in the local area of claimant's former residence.

We offered claimant an opportunity to provide additional evidence of seller credits over a longer period of time in the local community. Instead of providing the requested data, claimant submitted a legal brief challenging the Board's interpretation of "customary" as a function of time. In his brief, claimant urged the Board to consider other interpretations of customary practice, such as those found in the commercial sector. He noted, for example, that the Uniform Commercial Code (UCC) defines "trade usage" as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. § 1-303 (2025). Applying the UCC definition to the real estate market, claimant argues that "[w]hen 82% of sellers are providing credits, it is no longer a 'negotiated incentive' but a 'regularly observed method of dealing' that a buyer expects." Claimant's Supplemental Brief (Dec. 22, 2025) at 4 (footnote omitted).

Historically, the Board has considered "time" to be a critical element in establishing customary conduct. *Christopher L. Chretien*, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701, at 143,315-16 (1996) ("An expense is 'customarily' paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community."). In addition, the Board has described the term "customarily" as referring to what is "usual, normal, habitual, or routine" and reflects "a common tradition or usage *so long established* that it has the force or validity of law." *Charity Hope Marini*, CBCA 4760-RELO, 16-1 BCA ¶ 36,192, at 176,574 (2015) (emphasis added), *reconsideration granted on other grounds*, 16-1 BCA ¶ 36,455; *see also Steven T.*, CBCA 7778-RELO, 23-1 BCA ¶ 38,430, at 186,776; *Lawrence T.*, CBCA 8106-RELO, 25-1 BCA ¶ 38,755, at 188,385.

Long-standing legal precedent is not a "mere evidentiary preference," as claimant suggests. Such precedent "promotes the evenhanded, predictable, and consistent development of legal principles." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). The relevant statute compels an agency to pay the expenses of the sale of the employee's

residence at the old official station that are *required* to be paid by the employee. 5 U.S.C. § 5724a(d)(1) (emphasis added). Therefore, the term "customary" must be applied strictly. *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,828 (2001). In light of the supplemental evidence presented by claimant to support reimbursement of this expense, we see no reason to deviate from Board precedent here. Accordingly, we deny the claim for the seller's credit.

Decision

The claim is granted in part. The agency shall pay to claimant $4231.35, which consists of $1383.55 in TQSE, $250 for the HOA estoppel certificate, and $2597.80 for the title insurance policy.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge