

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 11, 2000

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GSBCA 15357-RELO

In the Matter of DANIEL J. CUSHINE

Daniel J. Cushine, Swansboro, NC, Claimant.

Dennis C. Grayless, Acting Director, Financial Policy Procedures Branch, Defense Finance and Accounting Service, Kansas City Center, Kansas City, MO, appearing for Department of Defense.

**DeGRAFF**, Board Judge.

Claimant asks to be reimbursed for all of the real estate expenses that he incurred when he and his girlfriend purchased a house at his new duty station. The agency correctly decided that regulations usually limit reimbursement when an employee takes title to a house jointly with someone who is not a member of the employee's immediate family. We return the claim to the agency, however, so that it can consider whether claimant had an equitable title interest in the house when it was purchased. If he did have such an interest, the agency can then determine the appropriate amount to reimburse claimant. In addition, the agency has the authority to waive repayment of any amount that it overpaid.

## Background

In mid-March 1999, the Department of Defense (DoD) transferred Daniel Cushine from Fort Campbell, Kentucky to the Marine Corps Air Station at Cherry Point, North Carolina. In connection with the transfer, Mr. Cushine and his girlfriend purchased a house in North Carolina and took title to the house jointly. DoD reimbursed Mr. Cushine for all of the real estate expenses that he and his girlfriend incurred when they purchased the house.

After DoD reimbursed Mr. Cushine, it decided that it had overpaid him. The regulations upon which DoD based its decision provide that because title to the North Carolina house was in the name of Mr. Cushine and someone who is not a member of his immediate family, DoD should have reimbursed Mr. Cushine for only one-half of the real estate expenses. 41 CFR 302-1.4(f), -6.1(c), -6.1(f)(2) (1999); Joint Travel Regulations (JTR) C14000. After DoD alerted Mr. Cushine to this problem, he changed the title to the house so that it is now in his name alone.

### Discussion

DoD asks whether Mr. Cushine can be reimbursed for all of the real estate expenses incurred in connection with the purchase of the house in North Carolina, based upon the fact that he now owns the house in his name only. Even though title to the house is now solely in Mr. Cushine's name, this does not mean that DoD can reimburse him for all of the incurred real estate expenses. The regulations provide that Mr. Cushine is entitled to be reimbursed for the expenses that he was required to pay in connection with the purchase of a house at his new duty station, provided certain conditions were met. 41 CFR 302-6.1; JTR C14000. Whether Mr. Cushine met those conditions should be determined as of the time he purchased the house, and not at some later date after he learned that there might be a problem with getting reimbursed in full for real estate expenses. Although Mr. Cushine changed the title to his house after DoD decided that it made a mistake when it reimbursed him in full, this does not create eligibility for full reimbursement if none existed at the time he and his girlfriend purchased the house.

DoD asks whether Mr. Cushine can be reimbursed for all of the real estate expenses because Mr. Cushine's girlfriend is the mother of his two children, or based upon her "non-dependent status." Nothing in the regulations suggests that either of these things can be used as a basis for reimbursing Mr. Cushine in full. 41 CFR pt. 302; JTR C14000.

It is clear from DoD's submission to us that it would like to find some way to reimburse Mr. Cushine in full, and there might be a way to do so. There are instances in which an employee is deemed to have an equitable title interest in a house. These include titles held in trust, titles held by financial institutions, titles which include accommodation parties, titles held by sellers of property under financing agreements providing for fixed periodic payments and transfer of title, and other equitable title situations. In such situations, the agency is able to reimburse the employee for all of the allowable real estate expenses he was required to pay. 41 CFR 302-6.1(c)(3), (f)(2); JTR C14000. So far as we can tell, DoD has not evaluated whether Mr. Cushine might have had an equitable title interest, as well as a legal title interest, in the North Carolina house at the time he and his girlfriend purchased it. DoD should ask Mr. Cushine for the information that it needs in order to determine whether he had equitable title to the house when it was purchased. If he did, then DoD can reimburse him for all of the real estate expenses incurred in connection with the purchase of the house.

Mr. Cushine has advised DoD that he intends to ask DoD to waive the amount that DoD determined he was erroneously reimbursed. As DoD recognizes, we lack the authority to waive Mr. Cushine's debt. If DoD determines that it made an erroneous payment and that collection of the debt would be against equity and good conscience and not in the interest of the United States, it may exercise its authority and grant a waiver of Mr. Cushine's debt. 5 U.S.C. § 5584(a) (1994 & Supp. IV 1998).

### Decision

We return the claim to the agency, so that it can determine whether Mr. Cushine had equitable title to the North Carolina house and, if so, the amount that he should be reimbursed for the real estate expenses incurred when the house was purchased.

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MARTHA H. DeGRAFF  
Board Judge