

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 9, 2001

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GSBCA 15524-RELO

In the Matter of DUANE CHRIS ALLEN

Duane Chris Allen, New Baltimore, MI, Claimant

James G. Cole, Section Chief, Accounting Section, Finance Division, Federal Bureau of Investigation, Department of Justice, Washington, DC, appearing for Department of Justice.

**GOODMAN**, Board Judge.

Claimant, Duane Chris Allen, is an employee of the Federal Bureau of Investigation, United States Department of Justice. He submitted a claim to his agency for reimbursement of certain costs incurred which he alleges were incident to a permanent change of station (PCS), and the agency has refused to make payment. Mr. Allen asks this Board for a determination as to his entitlement to reimbursement of the costs.

## Background

Claimant's wife, Mrs. Wendy Allen, had formerly been married to another man. Her divorce decree required that she receive sole ownership of her home and required her to relieve her former husband of liability on the mortgage. Her former husband transferred sole ownership of the home in February 2000. Thereafter Mrs. Allen continued to make the payments on the home mortgage, but the mortgage instrument was not amended and continued to show her former husband as well as herself as a mortgagor.

On August 24, 2000, claimant and his wife were married. On September 11, 2000, claimant relocated from Washington, D.C., to Clinton Township, Michigan, to assume a new position with his agency. Upon his arrival in Michigan, he moved into the home near Clinton Township which was owned by his new wife. Claimant states that after their marriage, the home mortgage continued to show his wife's former husband as a mortgagor, but his wife was attempting to determine how to refinance the mortgage.

On January 4, 2001, a real estate settlement occurred. Mrs. Allen, by quitclaim deed, transferred ownership of the property from herself to Mr. and Mrs. Allen jointly. At the same time, Mr. and Mrs. Allen were formally substituted for Mrs. Allen and her former husband

as the persons liable for the mortgage by an agreement dated December 9, 2000, to become effective on the date title was transferred. Claimant seeks reimbursement of costs totaling \$1309.50 which were paid in conjunction with this settlement: application fee for loan assumption - \$125; credit report - \$10.50; mortgage assumption fee - \$900; and settlement charges - \$274.

Initially, the agency denied reimbursement of the costs sought by claimant. The agency believed that the transfer of title was not incident to Mr. Allen's PCS and the substitution of mortgagors was a refinancing of an existing loan rather than a purchase of a residence. Later, the agency decided, based on its review of decisions of the Comptroller General, that because a conveyance of ownership had taken place, the expenses incurred for that conveyance "may be reimbursable." The agency continues to believe, however, that the expenses associated with the assumption of liability for the mortgage are not reimbursable because they were not for a purchase.

### Discussion

Pursuant to the Federal Travel Regulation (FTR), a transferred employee is entitled to reimbursement of certain expenses "required to be paid by him/her . . . for purchase (including construction) of one dwelling at his/her new official station." 41 CFR 302-6.1 (1999). There is an implicit requirement, additionally, that the expenses be necessarily incurred as a result of the transfer. Jeffery R. Jenkins, GSBICA 15339-RELO, 00-2 BCA ¶ 31,066; Paul W. Gard, Jr., GSBICA 15311-RELO, 00-2 BCA ¶ 31,053; Mrs. Jack Kimbrough, GSBICA 13908-RELO, 97-2 BCA ¶ 29,041.

Both claimant and respondent have noted that the Comptroller General has held that the statutes and regulations authorizing transferred federal employees to be reimbursed for real estate expenses place no definitive limitations on the meaning of the terms "sale" or "purchase." Transfers of title accomplished other than by open market sales, such as by gift and barter, have been deemed to be "sales" if the Government employee is the one transferring title, John C. Bisbee, 65 Comp. Gen. 473 (1986), and "purchases" if the Government employee is the one to whom title is transferred. Comp. Gen. Dec. B-173652 (Oct. 27, 1971).

What has occurred here is a transfer of title by a spouse, as sole owner, to herself and her husband jointly, with the husband becoming jointly liable for the mortgage. The agency has stated that it believes the costs arising from the transfer of title are reimbursable, presumably because this transaction would be a "purchase" according to the Comptroller General, but the costs arising from the husband's assumption of the mortgage are not reimbursable, because his spouse would have incurred these same costs when she relieved her former husband of his obligation under the mortgage. The claimant asserts that the costs of both the title transfer and assumption of the mortgage are reimbursable.

Claimant is not entitled to reimbursement for either the costs arising from the title transfer or the assumption of the mortgage, even if one or both of these transactions are a "purchase" under the Comptroller General's criteria discussed above. At the time claimant and his wife were married, in August 2000, claimant's wife was the sole owner of her home in the vicinity of claimant's new duty station. When claimant's PCS became effective in

September, he moved into the home. The transactions which took place in the settlement in January 2001 restructured the financial relationship between claimant and his wife with regard to the home which she already owned and in which they were living. These transactions were not made necessary by claimant's PCS, but by the personal financial decisions of claimant and his wife. Accordingly, the transactions were not incident to claimant's PCS, and claimant is not entitled to reimbursement.

Decision

The claim is denied.

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ALLAN H. GOODMAN  
Board Judge