

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 11, 2002

GSBCA 15891-RELO

In the Matter of THOMAS GENE GALLOGLY

Thomas Gene Gallogly, San Antonio, TX, Claimant.

Capt. Julie Rutherford, Chief, and Capt. Julie A. Jiru, Deputy Chief, Civil Law Division, Office of the Staff Judge Advocate, 311th Human Systems Wing, Brooks Air Force Base, TX, appearing for Department of the Air Force.

NEILL, Board Judge.

Claimant in this case asks that we review his agency's denial of a request for reimbursement of the cost of an owner's title insurance policy acquired in conjunction with his purchase of a home after a permanent change of station move. The agency has denied the claim on the ground that Mr. Gallogly cannot prove that the policy was a prerequisite to obtaining financing or the transfer of property. We find that the claimant is entitled to reimbursement but only up to an amount equal to what the cost of the lender's title insurance policy would have been had that policy been purchased separately.

Background

In July 2001, claimant, a civilian employee of the United States Air Force, was transferred from the Air Force Academy in Colorado Springs, Colorado, to Brooks Air Force Base in Texas. He subsequently filed a claim for reimbursement of various relocation expenses. Among these was a claim for the cost of title insurance purchased for his new residence.

The settlement sheet for the purchase of Mr. Gallogly's home at his new permanent duty station in Texas lists various title charges. One charge is \$2153 for title insurance. Of this amount, \$175 is said to represent the cost of the lender's coverage, while \$1978 is said to represent the cost of the owner's coverage. Based on these entries, the Air Force allowed only \$175 of the \$2153 claimed by Mr. Gallogly for the costs of title insurance paid by him at settlement. The agency noted that, under the Department of Defense's Joint Travel Regulations (JTR), to which Mr. Gallogly is subject as a civilian employee of the Department, the cost of owner's title insurance is not reimbursable unless the policy is a prerequisite to financing or the transfer of property or the cost of the policy is inseparable

from the cost of other insurance which is itself a prerequisite to financing or the transfer of property. See JTR C14002-A.4.a(9), .b(1).¹

Mr. Gallogly objected to the agency's denial of his request for reimbursement of the cost of the owner's title insurance. He explained to the agency that the lender's policy and the owner's policy had been purchased at the same time but that the allocation of the costs for these policies between the owner and the lender, as shown on the settlement sheet, was misleading. Mr. Gallogly also stated that the lender's title insurance policy was a prerequisite to financing and, if purchased separately, would have cost \$2053. However, the title insurance company offered him the option of purchasing an owner's title insurance policy as well and for no more than an additional \$100. He accepted the offer.

When the entries for the cost of the two policies were made on the settlement sheet, this was done in accordance with state procedures which provide that, if the title insurance policies of an owner and a lender are purchased simultaneously, then the cost of the discounted policy is allocated to the lender while the cost of the more expensive policy is allocated to the owner. Regardless of how the cost of these policies may have been allocated on the settlement sheet, Mr. Gallogly contends that, in purchasing the title insurance, he was required to pay at least \$2053 as a prerequisite to financing and that he should, therefore, be reimbursed for this cost.

Discussion

E-mail messages in the record from the claimant's title insurance company confirm that a title insurance policy for the lender was a prerequisite to financing in this case and that the cost of that policy, if purchased alone, would have been \$2053. These messages also confirm that, in Texas, the cost of the discounted policy which is made available when an owner's policy and a lender's policy are purchased simultaneously is allocated to the lender, not the owner.

Notwithstanding the claimant's explanation and the title insurance company's confirmation of his assertions, Mr. Gallogly's agency still is of the opinion that he has failed to prove that any portion of the cost of the title insurance policy allocated to him on the settlement sheet was, in reality, a prerequisite to financing. No doubt, the agency's position on this matter is due, in part, to the title insurance company's correct but somewhat misleading statements that the owner's title insurance policy was not a prerequisite to financing and that the charges made to Mr. Gallogly for his policy represent only premium.

We disagree with the agency's conclusion. Had Mr. Gallogly chosen not to pay an additional \$100 to obtain an owner's title insurance policy as well as a lender's policy, there would be no doubt as to his entitlement to reimbursement for the full \$2053 he would otherwise have paid. Of course, by simply declining the usual offer of an additional policy for the owner when purchasing a policy for the lender, a relocating employee could readily ensure reimbursement for the full cost of a lender's title insurance policy. This, however, is

¹ These JTR provisions reflect similar provisions in the Federal Travel Regulation. See 41CFR 302-6.2(d)(1)(ix), (2)(i) (2001).

hardly a practice to be encouraged. The employee's interests may be well served by accepting the offer of an owner's title insurance policy for such a small additional charge. The consequence of doing so, however, should not be the forfeiture of a benefit to which the employee would otherwise be entitled.

The situation encountered by Mr. Gallogly in claiming expenses for the cost of title insurance when policies are purchased simultaneously for the owner and the lender is not unprecedented. Although this Board has not previously examined the issue, the General Accounting Office (GAO), our predecessor in deciding cases involving relocation benefits, encountered it on various occasions. The GAO readily recognized the basic inequity presented by a provision in the Government's travel regulation which, with only very narrow exceptions, might be read as prohibiting reimbursement for the cost of owner's title insurance when, in fact, the cost of such a policy actually includes or reflects the cost of title search and related expenses for which an employee would ordinarily be reimbursed.

The conundrum presented in situations such as this is how to make a reasonable allocation between the actual net cost of the owner's insurance and the cost of the title search and related expenses included in the overall cost of the owner's policy. The GAO's solution to this problem was to make the allocation simply by subtracting from the overall cost of the owner's insurance policy the cost of the lender's insurance had the lender's policy been purchased separately. The GAO, therefore, approved reimbursement of the employee up to, but not in excess of, the cost of the lender's title insurance policy if purchased separately -- regardless of how the cost of the policies nominally might be apportioned. See James R. Hladik, Jr., 66 Comp. Gen. 206 (1987); John G. Evans, B-197098 (Apr. 24, 1980); William E. Harris, B-181074 (Aug. 27, 1974).

We consider GAO's approach to cases of this type to be both practical and sensible and will, consequently, adopt it as our own. If Mr. Gallogly's claim for the cost of title insurance is otherwise acceptable, therefore, he is entitled to a reimbursement of \$2053 less, of course, any amount of his claim for this cost which may already have been paid to him.

EDWIN B. NEILL
Board Judge