

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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July 15, 2004

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GSBCA 16403-RELO

In the Matter of CINDY L. LUCIANO

Cindy L. Luciano, Ewa Beach, HI, Claimant.

Shirley L. Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**BORWICK**, Board Judge.

Claimant, Cindy L. Luciano, is an employee of the United States Army Corps of Engineers (agency). The agency requested repayment of monies paid to claimant for reimbursed expenses that the agency now maintains are non-reimbursable under the Joint Travel Regulations (JTR). Claimant filed a claim with the Board, arguing that the claimed expense items are reimbursable and that the agency demand for a refund is unwarranted. We deny the claim since the expenses at issue are not reimbursable charges under the JTR.

## Background

Claimant transferred in the interest of the Government from Edmonds, Washington, to Ewa Beach, Hawaii; the agency authorized claimant reimbursement of real estate transaction expenses. On October 1, 2003, claimant purchased a home at her new station and submitted a reimbursement voucher for \$9542.36 for real estate transaction expenses associated with the purchase.

On January 21, 2004, the agency's Chief, Real Estate Division, approved reimbursement of \$9310.17, which is the requested amount reduced by \$232.19, claimed on the voucher for non-allowable expenses of county property taxes and interest. Following reimbursement of \$9310.17, claimant received an e-mail message from an official of the agency's Finance Center. The e-mail message notified claimant that her submission had been audited and certain items disallowed. The agency demanded return of \$1608.81 for the following expenses:

(a) Tax Service Fee	\$ 75.00
(b) Processing Fee	\$536.00
(c) Underwriting Fee	\$855.00

(d) Administration Fee                      \$375.00

The total of those expenses is \$1841, not \$1608.81. The latter figure is \$232.19 less than the former figure. As noted above, the agency had already deducted \$232.19 from claimant's reimbursement for the unallowable tax and interest expense, but in a later audit, the agency stated that its "audit review does not show that traveler claimed these items." This conclusion may be erroneous since the expenses totaling \$232.19 evidently were included in claimant's voucher for \$9542.36. Nevertheless, the agency, thinking it had not included that amount in its reimbursement, subtracted \$232.19 from the amount it determined it had overpaid claimant and sought a refund of \$1608.81, not \$1841.

Following receipt of the agency's e-mail message, claimant contacted the mortgage banking company and obtained an explanation of some of the fees. The processing fee of \$536 was the mortgage company's fee for ordering, receiving, and reviewing the title and appraisal. Although the agency refused to reimburse claimant for the processing fee charged by the mortgage company, the agency did reimburse her for the \$325 application fee charged by that same company.

The administrative fee of \$375 was the fee charged every customer for the mortgage corporation's liability insurance. A separate document noted that the insurance was for "corporate insurance."

#### Discussion

The JTR expressly list which real estate transaction expenses are reimbursable and which are non-reimbursable when a transferred employee purchases a new residence at a new duty station. JTR C14002-A4a, -A4b. The agency argues that these expenses fall into the second category. In so concluding, the agency has correctly applied the JTR.

The JTR describe non-reimbursable items to include any:

fee, cost, charge or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, PL 90-321, and Regulation Z issued in accordance with PL 90-321 by the Board of Governors of the Federal Reserve System, unless specifically authorized [elsewhere in the JTR].

JTR C14002-A4b(5).

The Truth in Lending Act defines "finance charge" to be "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. § 1605(a) (2000). Regulation Z defines the term similarly: "It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." 12 CFR 226.4(a) (2003). We have previously held that underwriting fees and tax service fees are fees imposed incident to the extension of credit and are not reimbursable. Craig A. Czuchna, GSBCE 15799-RELO, 02-2 BCA ¶ 31,898, at 157,594.

Claimant says that the mortgage company's \$536 processing fee is an administrative cost and should be reimbursed. It is claimant's burden to establish her entitlement to payment. Larry J. Wakefield, GSBCA 15823-RELO, 03-1 BCA ¶ 32,066 (2002); Roy Dye, 69 Comp. Gen. 299 (1990). The agency had reimbursed claimant \$325 for the loan application fee. Such a fee is imposed on all applicants whether or not credit is extended, so it is not considered an unallowable finance charge. Jeffrey B. Hicks, GSBCA 15860-RELO, 03-1 BCA ¶ 32,083 (2002). Claimant has not met her burden of establishing that the additional loan processing fee is anything but a finance charge incident to an extension of credit. April K. Hunt, GSBCA 15785-RELO, 02-2 BCA ¶ 31,995.

Claimant is not entitled to reimbursement of the mortgage company's \$375 administration fee, since that fee is for corporate liability insurance. Although the cost of owner's or mortgage title insurance is reimbursable if certain regulatory requirements are met, JTR C14002-A4a(8), (9), this fee is not for title insurance.

Finally, claimant maintains that since the agency overpaid her, it should absorb the cost of its overpayment. Statute provides general authority for agency heads or their designees to seek repayment of debts due the agency by its employees. 5 U.S.C. § 5514 (2000). Whether the agency waives the debt is solely within the discretion of the agency. Id. § 5584; Patricia Russell, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291.

Claimant is not entitled to reimbursement for the tax service fee, the processing fee, the underwriting fee, or the administration fee. The agency properly disallowed these expenses, so the reimbursed amount must be repaid, whether that amount turns out to be \$1608.81 if, in fact, the \$232.19 had already been deducted from claimant's reimbursement, or \$1841.

The claim is denied.

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ANTHONY S. BORWICK  
Board Judge