

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 14, 2004

GSBCA 16450-RELO

In the Matter of WILLIAM P. LONG

William P. Long, Pleasantville, New Jersey, Claimant.

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

BORWICK, Board Judge.

Claimant, an employee of the United States Army Corps of Engineers, agency, contests the agency's disallowance of certain real estate transaction expenses incurred in connection with his permanent change of station transfer. We grant the claim in part. The agency misapplied the Joint Travel Regulations (JTR) in demanding that claimant refund \$927 it had paid him for mortgage title insurance expense. Claimant is entitled to keep the \$927 if he can demonstrate to the agency that the charge meets the requirements of the JTR.

Background

On or about April 7, 2003, the agency transferred claimant in the interest of the Government from Philadelphia, Pennsylvania, to Atlantic City, New Jersey. Among other benefits, the agency authorized claimant reimbursement of incurred and allowable real estate transaction expenses.

On or about April 28, claimant closed on a house near his new duty station and incurred real estate transaction expenses. On June 27, claimant submitted a voucher to the agency claiming reimbursement of \$3961.54 for those expenses. The agency reimbursed claimant \$3557.51, but after an audit, the agency determined it had overpaid claimant \$1162. The agency demanded claimant refund that amount.

The agency determined that it had erroneously reimbursed claimant for two expenses that were unallowable--\$927 for insurance and an \$85 tax service fee. The agency also determined that it had reimbursed claimant \$150 twice for the same expense, described in the settlement sheet as an "escrow agent's fee" and described again as part of an incidental expense total as a "closing fee."

Discussion

The agency correctly concluded that claimant should not have been reimbursed for the tax service fee, since that fee is considered to be an unallowable finance charge. JTR C14002-A.4.b(5); Cindy L. Luciano, GSBCA 16403-RELO (July 15, 2004).

The agency also correctly disallowed the double reimbursement of the \$150. The description of the two \$150 fees is similar. Claimant has the burden of proving entitlement, particularly that the \$150 escrow agent's fee and the \$150 closing fee were, in fact, separate and allowable expense items. Luciano. Here, claimant has not met that burden.

The agency, however, incorrectly disallowed reimbursement for the \$927 insurance charge. The reason for the agency's rejection is not clear. In its submission to the Board, the agency relies on the Board's decision in Thomas E. Sullivan, GSBCA 15453-RELO, 01-1 BCA ¶ 31,339. In Sullivan, the Board sustained the agency's disallowance of a claim for reimbursement of the cost of owner's mortgage default insurance. Indeed, such insurance is not reimbursable. Rebecca Manning, GSBCA 14586-RELO, 98-2 BCA ¶ 29,981; Sullivan; JTR C14002-A.4.b(1). However, the settlement sheet for the real estate transaction in this case shows that the charge was for owner's title insurance, which insures against defects in the owner's title, not against the owner's default on the mortgage. The agency has not established that the \$927 charge was actually for owner's mortgage default insurance, and in the absence of contrary evidence, we will presume that the charge is for owner's title insurance since that is how the settlement sheet describes the charge.

In another section of the submission to the Board, the agency appears to consider that both the title insurance charge and the tax service fee are unallowable finance charges. Under the JTR, however, the owner's title insurance expense is reimbursable if the expense was a prerequisite to financing or transfer of the property or the cost of the insurance is inseparable from the cost of other insurance that is a prerequisite to transfer or financing of the property. JTR C14002-A.4.a(9); Jeanette H. Walsh, GSBCA 16394-RELO (June 17, 2004); Luciano. If claimant can establish that the owner's title insurance met the requirements of the JTR in this regard, the agency must reduce claimant's indebtedness by \$927.

The Board grants the claim in part.

ANTHONY S. BORWICK
Board Judge