

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 21, 2000

GSBCA 15419-RELO

In the Matter of WAYMON T. SAXON, JR.

Waymon T. Saxon, Jr., Duluth, GA, Claimant.

Berlitta Garnett, Travel Coordinator, Veterans Affairs Medical Center (Atlanta), Decatur, GA, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

The Department of Veterans Affairs transferred Waymon T. Saxon, Jr., to Atlanta, Georgia, in July 1999. Mr. Saxon and his wife later purchased a home near this new duty station. The agency reimbursed the employee for all transaction expenses he incurred in buying the house, save four: lender's inspection fee (\$75), Georgia residential loan fee (\$6.50), processing fee (\$300), and administration fee (\$625). Mr. Saxon has asked us to review the agency's denial of reimbursement of these expenses.

The only document in the record which bears on the issues raised is a letter from Southeastern Mortgage and Financial Services, Inc., to Mr. Saxon. The letter explains that the inspection fee was paid to an appraiser. The original appraisal was made before the construction of a new house on the property was complete. The \$75 fee was an extra charge imposed because the appraiser had to return to the property and perform supplemental work to complete his appraisal. The letter also explains that the other fees were charged by the lender in addition to a one-percent loan origination fee, and that these fees are standard and necessary prerequisites for the making of a mortgage loan.

The information provided by Southeastern Mortgage confirms that the agency's determination not to reimburse the employee for any of the fees was correct.

Under the Federal Travel Regulation (FTR), "[t]he customary cost of an appraisal . . . may be reimbursed." 41 CFR 302-6.2(b) (1999). However, expenses that result from construction of a residence and would not have been incurred if the property being purchased were an existing residence are not reimbursable. *Id.* 302-6.2(d)(1)(x), (2)(vi). Because the appraisal fee at issue was charged only because Mr. Saxon was buying a newly-constructed house, it is not reimbursable.

As to the other fees in question, the FTR states that "[n]o fee, cost, charge, or expense determined to be part of the finance charge" is reimbursable, unless specifically authorized by the regulation. 41 CFR 302-6.2(2)(v). The fees in question fall within this category, since they are imposed by the creditor as an incident to the extension of credit. Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513 (1997). One of the items specifically authorized by the FTR as reimbursable, notwithstanding its being part of the finance charge, is "[l]oan origination fees and similar charges such as loan assumption fees and loan transfer fees." Id. 302-6.2(d)(1)(ii). The fees Mr. Saxon paid may be reimbursable if they fall within this category. The FTR limits reimbursement for these fees, however:

Reimbursement may exceed 1 percent [of the loan amount] only if the employee shows by clear and convincing evidence that:

- (A) The higher rate does not include prepaid interest, points, or a mortgage discount; and
- (B) The higher rate is customarily charged in the locality where the residence is located.

Id.

Mr. Saxon has already been reimbursed for a loan origination fee of one percent of the loan amount. The letter from Southeastern Mortgage does not constitute the clear and convincing evidence needed to meet the FTR's test for reimbursement in excess of that one percent. The letter does not address part (A) of the test, and since both parts of the test must be met for reimbursement to be appropriate, that ends the matter. Even if the finding required under part (A) had been made, however, Mr. Saxon still could not receive reimbursement of the fees in question. To the extent that the letter discusses matters relevant to part (B), it says only that the fees were generally charged in the community where Mr. Saxon lives, not that the customary charge for those fees plus other elements of a loan origination fee customarily exceed one percent of the loan amount in that community.

The claim is consequently denied.

STEPHEN M. DANIELS
Board Judge