Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 21, 2001

GSBCA 15543-RELO

In the Matter of AMAN B. KAY

Aman B. Kay, Evans, GA, Claimant.

W.H. Sharpe, Director of Human Resources, Certifying Officer, United States Army Signal Center and Fort Gordon, Fort Gordon, GA, appearing for Department of the Army.

BORWICK, Board Judge.

Claimant, Dr. Aman B. Kay, a civilian employee of the Department of the Army, the agency, contests the agency's determination that he was not entitled to reimbursement of a $595 loan processing fee incurred when he purchased his residence incident to his transfer. We deny the claim, as the agency correctly applied the pertinent provisions of the Joint Travel Regulations (JTR).

The facts indicated by the record are as follows. On August 7, 2000, the agency authorized claimant's transfer in the interest of the Government from Monterey, California, to Fort Gordon, Georgia. Among other entitlements, the agency authorized claimant to be reimbursed for allowable real estate transaction expenses in the purchase of a residence at the new station.

Claimant purchased a residence at the new station and, on September 27, 2000 (the date of settlement), he incurred certain transaction expenses charged by his mortgage lender, Wells Fargo Home Mortgage: a one percent loan origination fee of $994, an appraisal fee of $300, a credit report of $14, a tax service fee of $59, a flood search fee of $16, and a processing fee of $595.

Claimant submitted a voucher to the agency seeking reimbursement of the real estate transaction expenses, including the $595 processing fee. The agency approved the $994 loan origination fee for payment but questioned other items, including the processing fee of $595. The claimant secured an explanation of the processing fee from Wells Fargo Home Mortgage, which advised that: "This fee is not part of the loan origination. This fee is entirely a separate charge for credit analysis on determination of the loan." Wells Fargo Home Mortgage did not state that the fee was customarily charged customers in the local area or that the fee was a required item for all loans. The agency denied claimant reimbursement of the $595, which denial claimant contests here.

The pertinent part of the JTR, in effect at the time of claimant's transfer, provided, as it does now, that loan origination fees or similar charges are reimbursable. If the charges exceed one percent, they may be reimbursed only if an 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 residence locality. JTR C14002-A.4(2).

The $595 charge was a charge for a credit analysis performed by Wells Fargo Home Mortgage. To the extent that the charge was similar to a loan origination fee, the agency correctly denied the expense because claimant has not met his burden to show that the rate in excess of one percent was customarily charged in the Fort Gordon, Georgia, area. Waymont T. Saxon, Jr., GSBCA 15419-RELO, 01-1 BCA ¶ 31,209; Sarah Blanding, GSBCA 14493-RELO, 98-2 BCA ¶ 29,790; Philip R. Merkel, GSBCA 14668-RELO, 98-2 BCA ¶ 30,094.

If the $595 charge is not a loan origination or processing fee, then it is like an underwriting fee since it would be a charge imposed directly or indirectly by the creditor incident to the extension of credit. Such charges are not reimbursable because they are considered finance charges under the Truth in Lending Act, 15 U.S.C. § 1605(a) (Supp. V 1999) and Regulation Z, 12 CFR 226.4(a) (1999), issued in accordance with that law by the Board of Governors of the Federal Reserve System. JTR C14002-A.4.b(5); Richard Poisel, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284.

Claimant argues that he received what he understood to be inconsistent advice from his travel office. That fact, if true, does not create an entitlement where none exists in statute or regulation. We sustain the agency's determination since it correctly applied the JTR.

ANTHONY S. BORWICK
Board Judge