

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 11, 2001

GSBCA 15645-RELO

In the Matter of PAMELA R. HARRIS

Pamela R. Harris, Central Point, OR, Claimant.

Terry A. Burton, Chief, Travel Section, VA Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

DANIELS, Board Judge (Chairman).

The Department of Veterans Affairs transferred Pamela R. Harris to a new permanent duty station in October 2000. In conjunction with this move, Ms. Harris purchased a home at her new station. The agency reimbursed her for most of the expenses she incurred in making this purchase. It refused to reimburse her for three expenses she believes should be repaid, however – a tax service fee of \$80, a document preparation fee of \$375, and a lender's inspection fee of \$100. Ms. Harris asks us to review the agency's denial of these three items.

According to the agency, the first two items are not reimbursable because they are parts of the finance charge imposed by Ms. Harris's mortgage lender. The third item may be reimbursed if the employee provides "a statement **from the settlement company or lender** verifying that the service was required as a precondition for completion of the residence transaction."

According to the employee, each item is "a valid claim as specified in the Guide on Permanent Change of Station, Part F, Real Estate Expenses." Neither of the first two items is part of a finance charge. The tax service fee "is a one time fee set by the lender to pull the tax bill on a yearly basis for review. It is in addition to the loan fees required by the lender." The document preparation fee "is a one time loan fee for preparing loan documents and title charges." Both fees are required on all real estate loans. Ms. Harris additionally states, with regard to the inspection fee, "My lender has sent a statement twice verifying that this service was required as a precondition for completion of the residence transaction."

Each of these three items has been the subject of many decisions by the Board and its predecessor, the General Accounting Office, in settling claims by or against the United States

Government which involve relocation expenses incurred by federal civilian employees incident to transfers of official duty station.

A tax service fee is not reimbursable because it is "determined to be part of the finance charge under the Truth in Lending Act, title I, Pub. L. 90-321, as amended, and Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR part 226)," and it is not specifically made reimbursable by the Federal Travel Regulation. 41 CFR 302-6.2(d)(2)(v) (2000). Although this fee is not denominated as a finance charge, it is paid incident to and as a prerequisite to the extension of credit. This is so even where the fee is, like this one, for the performance of service over a number of future years. E.g., Daniel H. Coney, GSBCA 15506-RELO (Aug. 15, 2001); Richard A. Poisel, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284 (2000); Jeffrey P. Zippin, GSBCA 15115-RELO, 00-1 BCA ¶ 30,744. The agency correctly denied Ms. Harris's request for reimbursement of this fee.

A document preparation fee is a kind of loan origination fee – "a fee paid by the borrower to compensate the lender for administrative type expenses incurred in originating and processing a loan." 41 CFR 302-6.2(d)(1)(ii). By regulation –

An employee may be reimbursed for these fees in an amount not in excess of 1 percent of the loan amount without itemization of the lender's administrative charges. Reimbursement may exceed 1 percent 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. Ms. Harris has already been reimbursed for a loan origination fee which appears to be in the amount of one percent of the amount of her loan. She has not made the two requisite showings necessary to secure reimbursement of a greater loan origination fee. Thus, she may not be reimbursed for the document preparation fee she has paid. E.g., Zippin; Joseph Thompson, GSBCA 15077-RELO, 00-1 BCA ¶ 30,615 (1999); John P. Kemp, GSBCA 14335-RELO, 98-2 BCA ¶ 29,751. The agency's determination with regard to this fee was correct, also.

A property inspection fee is reimbursable when it is "required by Federal, State, or local law; or by the lender as a precondition to sale or purchase," but only if the employee demonstrates that it is "customarily paid by . . . the purchaser of a residence at the new official station" and does "not exceed . . . amounts customarily paid in the locality of the residence." 41 CFR 302-6.2(d), (d)(1)(xi). The agency acted properly in asking the employee for proof that this fee was required by the lender as a precondition to the purchase of her home. If Ms. Harris supplied such proof (she has not shown it to us), that would go part way toward demonstrating entitlement to reimbursement of the fee paid. To recover the fee, the employee must additionally show that the fee was customarily paid by the purchaser of a residence in the relevant community, and that it did not exceed the amount customarily paid for property inspections in that locality. Although the record before us contains

insufficient evidence on which to direct the Department of Veterans Affairs to reimburse the employee for this payment, the agency may make reimbursement in the future if Ms. Harris provides the requisite information. E.g., Coney; Thomas E. Sullivan, GSBCA 15453-RELO, 01-1 BCA ¶ 31,339; Thomas E. Casey, GSBCA 15207-RELO, 00-2 BCA ¶ 30,952.

Before closing, we make two observations regarding this claim. The first is as to the "Guide on Permanent Change of Station," to which Ms. Harris refers. This guide is a publication of the Department of Veterans Affairs. The claimant's assertions notwithstanding, the pamphlet does not say that any of the items at issue here is reimbursable; indeed, it does not even mention specifically any of the items. Furthermore, even if the publication did say anything relevant to this case, its provisions would not be controlling. The pamphlet in its own words merely "outlines the benefits and allowances" which an agency employee may receive when relocating. As the document explains, "It is not a copy of the applicable regulations and has no directive authority. The regulations covering change of station transfers for civilian employees are found in the Federal Travel Regulation[] and VA Manual MP-1, Part II, Chapter 2. If any differences exist between this pamphlet and the regulations, the regulations will govern."

Our second comment concerns a misimpression of the responsibilities of a claimant and the Board with respect to a claim. Ms. Harris has written to the Board, "I would appreciate someone from your office calling the lender and the escrow officer for clarification of what I have claimed." The Board, as a quasi-judicial tribunal, does not perform independent investigations with regard to cases presented to it. As explained in our Rules of Procedure, we expect a claimant to include in its request "[a]ny . . . information which the claimant believes the Board should consider." Rule 402(a)(1)(iv) (48 CFR 6104.2(a)(1)(iv)). (Similarly, we expect an agency to submit to us "[a]ny . . . information deemed necessary to the Board's review of the claim." Rule 403(a)(3).) Our decisions are based on the information submitted to us by the claimant and the agency. Rules 401(c), 406.

STEPHEN M. DANIELS
Board Judge