

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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March 31, 2003

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GSBCA 15947-RELO

In the Matter of ROBERT W. PITMAN

Robert W. Pitman, Albuquerque, NM, Claimant.

David J. Holland, Deputy Assistant Director, Business Management and Operations,  
Fish and Wildlife Service, Arlington, VA, appearing for Department of the Interior.

**BORWICK**, Board Judge.

The agency seeks reconsideration of our decision in Robert W. Pitman, GSBCA 15947-RELO, 03-1 BCA ¶ 32,092. In that matter the agency denied claimant reimbursement of \$3365.28 of real estate transaction expenses for the purchase of a house at claimant's new permanent duty station on the sole ground that claimant was not a party to the purchase transaction. We granted the claim, holding that since claimant's spouse was a party to the transaction, under the Federal Travel Regulation (FTR), claimant was entitled to reimbursement of the expenses. Based on new information, presented by both the agency and the claimant, we grant reconsideration and deny the claim.

After we issued our original decision, the agency's motion for reconsideration challenged, for the first time, claimant's marital status at the time of the purchase transaction. The agency maintained that claimant was not legally married. We requested claimant to address the agency's contention and to submit evidence of a valid marriage under state law. In response, claimant stated that he was not married in a formal ceremony, but that he had entered into a common law marriage in November 1999 in the state of New Mexico.

Issues of marital status are determined by state law and the relationship of spouse exists if common law marriage is recognized by the law of the state where the parties entered into such a marriage. Thomas E. Casey, GSBCA 15207-RELO, 00-2 BCA ¶ 30,952. In this matter, claimant identifies New Mexico as the state where he entered into a common law marriage with his spouse. In New Mexico, marriage is "contemplated by the law as a civil contract, for which the consent of the contracting parties, capable in law of contracting is essential." N.M. Stat. Ann. § 40-1-1 (2002). Ordained clergymen, authorized representatives of a federally recognized Indian tribe, and civil magistrates (a defined term which includes judges) are permitted by statute to solemnize the contract of matrimony. N.M. Stat. Ann. § 40-1-2. New Mexico courts construe these statutes as precluding common law marriage in

New Mexico. See Merill v. Davis, 673 P.2d 1285 (N.M. 1983); Hazelwood v. Hazelwood 556 P.2d 345 (N.M. 1976); Estate of Bivians, 652 P. 2d 744 (N.M. Ct. App. 1982).<sup>1</sup> Thus claimant has not established his entitlement to recovery of the real estate transaction expenses of the alleged spouse on the basis of an alleged common law marriage formed in New Mexico. 41 CFR 302-1.4(f) (1999).

In order for claimant to recover real estate transaction expenses, claimant must have incurred the expenses. 41 CFR 302-6.1(f)(1) (1999). The current version of the FTR is substantively the same. 41 CFR 302-11.303 (2002). While claimant points to a joint checking account with the purchaser of the house, claimant has not submitted evidence that the expenses for which he seeks reimbursement were paid from that joint checking account or that claimant otherwise incurred the expenses. Under those circumstances, the facts that claimant signed the purchase agreement for the house and that his name appears on the deed are irrelevant. On reconsideration, the Board denies the claim.

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ANTHONY S. BORWICK  
Board Judge

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<sup>1</sup> New Mexico will recognize a common law marriage arising in another state if valid in that state. Bivians.