



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 9, 2012

CBCA 2776-RELO

In the Matter of ROBERT C. SALES

Robert C. Sales, Huntsville, AL, Claimant.

Capt. Gabriel V. Tese, Office of Command Counsel, Department of the Army, Redstone, AL, appearing for Department of the Army.

McCANN, Board Judge

Claimant asks for reimbursement of certain real estate expenses incurred when he purchased a house at his new duty station.

Discussion

Claimant, Robert C. Sales, a civilian employee of the Department of the Army, purchased a residence in Madison, Alabama, incident to his permanent change of station (PCS) orders. He submitted a real estate reimbursement claim in the amount of \$13,982.88. The agency reimbursed him \$2968.25. Claimant has not indicated where he disagrees with the agency and has simply asked the Board to review the entire claim.

Employees who are transferred in the interest of the Government are reimbursed for the expenses they incur in purchasing a residence at a new duty station in the United States. 5 U.S.C. § 5724a(d) (2006); 41 CFR 302-11.6 (2011). Reimbursable expenses are discussed at 41 CFR 302-11.200 and in the Joint Travel Regulations (JTR), which are applicable to civilian employees of the military departments, at C5756.

To determine whether an employee has paid an expense, we usually look to the settlement statement (HUD-1). This document generally sets forth the expenses that are paid for by the buyer and those that are paid for by the seller. *See Barbara A. Maloney, CBCA 2023-RELO, 10-2 BCA ¶ 34,593.* The HUD-1 settlement sheet is the only evidence in the record explaining how expenses were split between the buyer and the seller. It forms the basis for identifying the expenses for which claimant is eligible to be reimbursed.

Claimant has claimed entitlement to the following expenses, as found on the HUD-1 settlement sheet (with the exception of the last two items):

Description	Amount Claimed	Amount Reimbursed
804 Appraisal fee	\$425.00	\$425.00
805 Credit Report	12.50	12.50
807 Flood certification	0	15.00
810 VA funding fee	5,160.38	0
1001 Initial Deposit for escrow account	1,097.00	0
1101 Title services and lenders title insurance	1,229.00	1,229.00
1103 Owner's title insurance	976.00	488.00
1104 Lender's title insurance	614.00	0
1107 Agent's portion of total title insurance	1,113.00	0
1201 Government recording charges	112.75	112.75
1202 Deed	23.25	0
1203 Transfer taxes	686.00	686.00
1204 County tax stamps	619.00	0
1302 Pest inspection	100.00	0
1303 Home warranty	1,140.00	0
Unknown	75.00	0
Home inspection	600.00	0
Total	\$13,982.88	\$2,968.25

As can be seen from the above table, claimant has received full reimbursement for the appraisal fee (804), credit report (805), flood certification (807)¹, title services and lender's title insurance (1101), recording charges (1201), and transfer taxes (1203). Claimant also received partial recovery (½ of \$976, or \$488) for owner's title insurance (1103). Claimant's total reimbursement was \$2968.25.

Claimant asks for additional reimbursement of \$11,014.63, but has not set forth a justification for all or any part of this amount. His claim items are discussed below.

a. VA funding fee (810) in the amount of \$5160. The JTR does not allow for the reimbursement of VA funding fees. JTR C5756-A.4.b(7); *see also Jeffrey B. Hicks*, GSBCA 15860-RELO, 03-1 BCA ¶ 32,083 (2002); *Anders E. Flodin*, 64 Comp. Gen. 674 (1985).

b. Initial deposit for escrow (1001) in the amount of \$1097. The initial deposit is part of the purchase price. It is not an independent fee or expense charged to claimant. Accordingly, it is not reimbursable. *See Maloney*.

c. Owner's title insurance (1103) in the amount of \$976. Generally, owner's title insurance is not reimbursable. JTR C5756-A.4.b(1). However, there are conditions under which owner's title insurance can be reimbursable, such as when it is a prerequisite to financing or to the transfer of the property. JTR C5756-A.4.a(9). Claimant has made no showing that this insurance is a prerequisite to financing or transfer of the property. Accordingly, it is not reimbursable. The Army, nevertheless, reimbursed claimant one-half of the \$976, or \$488, in the mistaken belief that he was so entitled. The agency is entitled to recoup this \$488.

d. Lender's title insurance (1104) in the amount of \$614. Claimant is entitled to reimbursement for the expense of paying for lender's title insurance in the amount of \$614. JTR C5756-A.4.a(8). However, he has already been reimbursed this amount under item 1101, title services and lender's title insurance. The claimed \$614 is included in the \$1229 he received for item 1101. Claimant is not entitled to reimbursement a second time.

¹ Claimant did not request reimbursement of \$15 for the flood certification. Nevertheless, the Army reimbursed him for it. The agency's action was appropriate only if this expense was customarily paid by a purchaser of a residence at claimant's new duty station. 41 CFR 302-11.200(f)(12); *Wayne E. Smith*, GSBCA 14844-RELO, 99-1 BCA ¶ 30,247.

e. Agent's portion of total title insurance (1107) in the amount of \$1113. This amount is part of the \$1229 paid for title services and insurance under item 1101 and already reimbursed to claimant. The \$1113 simply reflects the amount of the premium retained by the title agent. Claimant is not entitled to be reimbursed for this item a second time.

f. Deed (1202) in the amount of \$23.25. This amount was properly denied by the agency as it had already been paid as part of the \$112.75 reimbursed under item 1201, government recording charges. *See* JTR C5756-A.4.a(5), (6).

g. County tax stamps (1204) in the amount of \$619. This amount was properly denied by the agency as it had already been paid as part of the \$686.86 reimbursed under item 1203, transfer taxes. *See* JTR C5756-A.4.a(5).

h. Pest inspection (1302) in the amount of \$100. This amount was properly denied by the agency as the \$100 cost of the pest inspection was paid by the seller.

i. Home Warranty (1303) in the amount of \$1140. A home warranty is not required for closing. It is optional insurance paid by the purchaser for his own protection. As such, it is not reimbursable. *Juanita L. Nason*, GSBCA 15746-RELO, 02-2 BCA ¶ 31,890; JTR C5756-A.4.b(1).

j. Home inspection in the amount of \$600. There is no evidence in the record that \$600 was paid by claimant for a home inspection. This item was not included on the HUD-1 settlement statement. Accordingly, the agency properly denied reimbursement. Even if claimant had paid it, the Army should not have reimbursed claimant. Home inspections are only reimbursed when "required by Federal, State or local law; or by the lender as a precondition to sale or purchase." Even then, to be reimbursed, home inspections must normally be paid in the locality of the residence and not exceed the amounts customarily paid in that locality. 41 CFR 302-11.200(f)(11). Claimant has made no such showing.

k. Unknown expense in the amount of \$75. An employee can only be reimbursed for expenses actually incurred. There is no evidence in the record that this claimed \$75 expense was ever actually incurred. It was not included on the HUD-1 settlement statement. Further, claimant has not provided any justification for incurring this expense. Accordingly, the agency correctly denied reimbursement.

Decision

The claim is denied.

R. ANTHONY McCANN
Board Judge