



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 19, 2024

CBCA 8105-RELO

In the Matter of JENNIFER M.

Jennifer M., Claimant.

Jessica Holloway, Office of the Staff Judge Advocate, 78th Air Base Wing, Department of the Air Force, Robins Air Force Base, GA, counsel for Department of the Air Force.

O'ROURKE, Board Judge.

Claimant is an employee with the Department of the Air Force (Air Force or agency). Claimant seeks \$12,264.84 in relocation expenses in connection with her official transfer from Virginia to Georgia. Based on the information submitted with her relocation claim, the agency determined that claimant should be reimbursed \$9053 for relocation expenses. Claimant seeks the Board's review of the agency's determination. Because claimant requests payment for expenses that are not reimbursable under the regulations or that lack adequate documentation, we agree with the agency's determination.

Background

In July 2023, claimant submitted a claim for reimbursement of real estate expenses in connection with her permanent change of station (PCS) from Virginia to Georgia. At her new duty station, claimant purchased a piece of land for \$70,000 and signed a contract to construct a house on the land, bringing the total cost of the new residence to \$633,585.

For several months, claimant and the agency went back and forth on the claim but could not agree on the proper reimbursement amount. Claimant was concerned that the agency asked her to sign a document that valued her home at \$70,000, the amount for the

land only—an error that would have substantially limited her cost recovery.¹ The agency, on the other hand, was concerned that certain real estate expenses were being counted twice, once as a lump sum for closing costs and again for those same costs broken out individually. The agency also found several other costs to be non-reimbursable under the regulations. Consequently, the agency recommended reimbursement in the amount of \$9008—far short of the \$26,115.68 that claimant was initially seeking. Claimant asked the Board to review the agency’s decision.

After the Clerk of the Board docketed this matter, claimant revised her claim amount and submitted it directly to the Board. The Board suspended further proceedings in the case to give the agency time to consider the claim revisions, consistent with the Board’s Rules.² The Board also encouraged the parties to resolve the revised claim informally if they could reach an agreement. The parties were able to resolve many of their concerns through multiple revisions to the DD Form 1705, which is an agency form entitled “Reimbursement for Real Estate Sale and/or Purchase Closing Cost Expenses.” The final revised claim reflected the *total* purchase price of the home and removed the lump sum closing costs from the total expenses. It also reflected the agency’s approval of an additional expense, the state deed tax stamp in the amount of \$70, an expense that the agency had previously denied.

The agency’s final calculation of claimant’s reimbursable real estate expenses amounted to \$9053, which included: (1) \$200 for the final inspection fee; (2) \$500 for the appraisal fee; (3) \$785 in attorney fees; (4) \$60 for the recording fee; (5) \$350 for the title abstract fee; (6) \$5040 for the loan origination fee; (7) \$115.40 for the credit reporting fee; (8) \$70 for the state deed tax stamp; (9) \$150 for the insurance binder fee; and (10) \$1782.60 for the lender’s title insurance fee. The agency’s calculation was based on the information provided by claimant, applicable travel regulations, and a memorandum pertaining to real

¹ Total reimbursement cannot exceed “5% of the *purchase price* of a residence at the new [permanent duty station].” Joint Travel Regulations 054504-F (July 2023) (emphasis added); *see* 41 CFR 302-11.451(b) (2023).

² Board Rule 401(c) states that “[a]ny claim for entitlement to travel or relocation expenses must first be filed with the claimant’s own department or agency” and that the agency is required to “initially adjudicate the claim.” 48 CFR 6104.401(c). The Board issued an order in September 2024, directing the agency to review and decide the revised claim, which it did.

estate reimbursement claims that the Robins Air Force Base legal office issued in August 2021.³

Claimant, on the other hand, calculated the reimbursable expenses to be \$12,264.84. In addition to the above expenses, claimant contended that the following expenses should also be reimbursed: (1) \$2881.84 for builder's risk insurance; (2) \$305 for owner's title insurance; and (3) \$25 for the balance of the appraisal fee. To substantiate reimbursement of these additional expenses, claimant provided multiple documents, including: (1) an email exchange from a local attorney stating that, "[i]n Georgia, it is customary for buyers to pay all the closing costs in the purchase of real estate except any real estate commission"; (2) a letter from Marshland Credit Union, the lender in this case, stating that "a builder's risk premium is paid by the home buyer in the state of Georgia"; (3) a letter from the lender listing items that "are always paid by the borrowers" and are "required closing costs in the state of Georgia," which included, among other items, a "builder's risk premium"; and (4) a letter from the homebuilder, Grant Construction Company, stating that "[i]t is customary for Grant Construction Group to have the buyer of a custom built home pay closing costs."

Despite the progress that the parties made, they still did not fully agree on the proper reimbursement amount. Since \$3211.84 remained in dispute, the Board continued its review.

Discussion

When a federal employee transfers to a new permanent duty station (PDS) and the transfer is in the interest of the Government, the agency is required to pay certain relocation expenses related to the purchase of a residence at the new PDS. 5 U.S.C. § 5724a(d)(1) (2018); *see Fernando B.*, CBCA 7725-RELO, 23-1 BCA ¶ 38,377, at 186,422. The Federal Travel Regulation (FTR) provides a list of residential transaction expenses that the agency will pay as a result of the relocation. 41 CFR 302-11.200 (2023) (FTR 302-11.200). The FTR also provides a list of residential transaction expenses that the agency will *not* pay in connection with an official transfer. FTR 302-11.202(a)-(i).

For civilians employed by the Department of Defense, the Joint Travel Regulations (JTR) supplement the FTR.⁴ The JTR guidance regarding residential transactions incident

³ The memorandum included specific expenses based on discussions with local real estate professionals regarding the degree to which the expenses were customary in middle Georgia. The memorandum also included dollar amounts for customary expenses.

⁴ In the event of a conflict between the JTR and the FTR, the FTR controls. *Cady L. Tyron*, CBCA 6625-RELO, 20-1 BCA ¶ 37,600, at 182,548; *see Kevin D. Reynolds*,

to a PCS is nearly identical to the guidance in the FTR. *See, e.g.*, JTR 054504, 054505 (July 2023). For home purchases at a new duty station, both the FTR and the JTR limit reimbursement of real estate expenses to those *customarily paid by a buyer in the locality of the residence*. FTR 302-11.200; JTR 054504-D. A claimant must establish this custom by a preponderance of the evidence. *Michael Vincelli*, CBCA 1828-RELO, 10-1 BCA ¶ 34,461, at 170,019. We address each of the disputed items with these requirements in mind.

Builder's Risk Premium - \$2881.84

According to the settlement statement, claimant was charged \$2881.84 for builder's risk insurance. The agency denied payment of this expense based on the list of non-reimbursable items in the FTR and the JTR. Specifically, the agency cited FTR 302-11.202(c) as the basis for its denial, which prohibits payment of various categories of insurance, including "insurance against loss or damage of property." *See also* JTR 054505-A.1 (mirroring the language of the FTR provision). The agency reasoned that builder's risk insurance is essentially insurance in the event of loss or damage to property and that, as such, it is expressly prohibited.

Claimant did not dispute the agency's characterization of the insurance but nonetheless disagreed with the agency based on letters from the lender that identified builder's risk insurance as a state-required closing cost which is paid by the borrower. The letters did not reference a statute or regulation or any other information, such as evidence of customary practice in the area, to substantiate these facts. Even if the lender or claimant had furnished this information, it would not overcome the regulations' express prohibition against reimbursing an employee for such an expense.

Claimant also pointed to FTR 302-11.200(f)(10) and JTR 054504-D.10 as justification for reimbursing the builder's risk premium. These provisions permit payment of "[e]xpenses in connection with construction of a residence, which are comparable to expenses that are reimbursable in connection with the purchase of an existing residence." FTR 302-11.200(f)(10); *see also* JTR 054504-D.10 (virtually mirroring the language of the FTR provision). Longstanding precedent sheds light on which expenses do—and do not—qualify for reimbursement under these provisions. Our predecessors in resolving travel and relocation claims—the General Accounting Office (now the Government Accountability Office) (GAO) and the General Services Board of Contract Appeals (GSBCA)—construed these provisions as follows:

CBCA 2201-RELO, 11-1 BCA ¶ 34,756, at 171,061 ("Any agency rule which is inconsistent with an FTR provision is consequently trumped by the FTR and must give way.").

[A]n employee who chooses to construct a home at the new duty station will be permitted to recover real estate expenses to the same extent as an employee who purchased an existing home. Where each stage of the building process involves a number of expenses which would appropriately be reimbursed in connection with the purchase of an existing residence, the employee may be reimbursed only once for each type of expense that is allowable under the regulations. *See, e.g., David R. Petak*, B-247860 (July 23, 1992); *James A. Schampers*, 69 Comp. Gen. 573 (1990); *Michael D. May*, B-223112 (Nov. 25, 1986). GAO has further concluded that the expenses incurred incident to permanent financing on the completed house are most representative of expenses an employee would incur to purchase an existing residence and that entitlement determinations should be based primarily on an examination of that settlement. *Schampers; Ray F. Hunt*, B-226271 (Nov. 5, 1987).

Thomas S. Cushing, GSBCA 13867-RELO, 97-2 BCA ¶ 29,022, at 144,569.

Here, the builder's risk premium was not a duplicate fee. It was a one-time charge included in a single settlement statement. Nonetheless, builder's risk insurance is the type of expense incurred in connection with the *construction* of a home. Just like elevation certificates, foundation surveys, and architectural plans, there is no comparable expense incurred when simply purchasing an existing residence. *David G. Winter*, GSBCA 14229-RELO, 98-1 BCA ¶ 29,631, at 146,834. For these reasons, we find that the agency's decision to deny reimbursement for builder's risk insurance was appropriate.

Owner's Title Insurance - \$305

Although this expense was reflected on the settlement statement as a cost that claimant incurred, it was listed as an *optional* cost. The July 2024 letter from the lender also referred to it as an optional cost. The regulations not only prohibit reimbursement of optional insurance expenses, they also expressly identify owner's title insurance as a *non-reimbursable* expense, unless "it is a prerequisite to financing." FTR 302-11.200(f)(9); *see JTR 054504-D.9*. "Your agency will not pay . . . [o]wner's title insurance" or "optional insurance paid for by you in connection with the purchase of a residence for your protection." FTR 302-11.202(c); *see JTR 054505-A.1*; *see also Robert C. Sales*, CBCA 2776-RELO, 12-2 BCA ¶ 35,186, at 172,564 (where the Board not only denied claimant's request for the balance of the owner's title insurance but also found that the agency was entitled to recoup the portion already paid to claimant because claimant failed to show that the expense was a prerequisite to financing or transfer of the property).

Here, claimant did not demonstrate that the expense incurred for owner's title insurance was required for financing or for the transfer of the property. Furthermore, it was twice identified in the record as an *optional* expense. For these reasons, we find that the agency properly denied reimbursement of owner's title insurance.

Appraisal Fee - \$525

The FTR authorizes reimbursement of "the customary cost for an appraisal." FTR 302-11.200(b).⁵ Claimant paid \$525.00 for the appraisal on her new home in Brunswick, Georgia. In 2021, the agency established a reimbursement limit of \$500 for appraisals in *middle* Georgia.⁶ The agency imposed this limit when reviewing claimant's relocation claim, even though claimant's new residence was in *southeast* Georgia. We find that the agency's application of this limit was harmless error, however, since claimant has the burden of establishing the customary amount. To recoup the \$25 overage, claimant must demonstrate, by a preponderance of the evidence, that \$525 was the customary amount for appraisals in the locality of her new residence. *Michael Vincelli*, 10-1 BCA at 170,019; *see* FTR 302-11.200(b).

The Board has found that "an expense is 'customarily' paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community." *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412 (quoting *Christopher L. Chretien*, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701, at 143,315-16 (1996)). "General, conclusive statements of customary practice . . . are not persuasive." *Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533, at 174,133.

⁵ The JTR does not specifically address appraisals for home *purchases*, only for the sale of the residence at the old PDS. JTR 054504-B. Nevertheless, we find that the appraisal expense qualifies for reimbursement under JTR 054504-D, which authorizes reimbursement of fees similar to those listed provided that they are "customarily paid by a buyer at the new PDS, within specifically stated limitations." Where no limitations have been established, the fees are based on amounts customarily paid in the location of the new residence as long as the employee has documentation to substantiate the custom. JTR 054504-D.

⁶ Since three years elapsed between the time the agency established the \$500 limit and claimant's appraisal was completed for \$525, the customary amount may have increased to \$525. However, it is not the agency's burden to establish what is customary, so the agency had no obligation to update the memorandum. If claimant can obtain information proving the increased amount as the new customary amount, she may present it to the agency for reimbursement.

Here, claimant provided two letters from Marshland Credit Union and one letter from Grant Construction Company to support her request for reimbursement of the appraisal. As the agency observed in its November 12, 2024, response to the revised claim, “[t]he letters are not accompanied by any data that shows the customary [appraisal] rates for the locality.” In the absence of this information, we find that the agency’s decision to reimburse claimant \$500 for the appraisal, versus \$525, was reasonable.

Proper Amount of Reimbursement - \$9053

We understand the significant frustration that claimant experienced during this process and acknowledge the lack of information in the regulations regarding which construction expenses are comparable to costs incurred when purchasing an existing residence. In this decision, we strive to provide a responsive and fulsome explanation using precedential decisions where the regulations fell short.

For the reasons explained above, we find that the requested reimbursement amount of \$12,264.84 should be decreased by \$3211.84.

Decision

The agency shall pay claimant \$9053 for residential transaction expenses incident to her official transfer to Georgia.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge