UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 4, 2008

CBCA 758-RELO

In the Matter of MILTON E. GEIGER

Milton E. Geiger, Sheridan, WY, Claimant.

Tam Nguyen, Authorized Certifying Officer, Administrative Certification and Disbursement Section, Office of the Chief Financial Officer, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

DRUMMOND, Board Judge.

Claimant, Milton E. Geiger, an employee of the United States Department of Agriculture (USDA), incurred costs as a result of a permanent change of station move from Casper, Wyoming, to Sheridan, Wyoming. Mr. Geiger, who reported to his new duty station in September 2004, decided to purchase as his residence a structure that required extensive rehabilitation[1] to be suitable for that purpose. Mr. Geiger had his real estate financed through a state program which provides financing for the purchase and rehabilitation of substandard real estate. Under the program, Mr. Geiger was required to complete construction to

1 Rehabilitation to this structure included: (1) replacing the existing roof, (2) new windows, (3) new bathroom fixtures, (4) enlarging the existing bathroom, (5) foundation repair, (6) new flooring (7) new attic insulation, (8) new exterior doors, (9) new siding, and (10) new furnace.

rehabilitate the real estate prior to receiving permanent financing. The agency has requested an advance decision pursuant to 31 U.S.C. § 3529 (2000) as to whether certain expenses arising from the rehabilitation of his home should be reimbursed.[2]

Background

In March 2006, Mr. Geiger closed on a short-term loan which he used to fund the purchase and renovation of a structure located in Sheridan, Wyoming. Mr. Geiger's lender explained that it is the practice to fund the initial purchase of the structure with the rehabilitation loan which is similar to a new construction loan. The settlement sheet signed by Mr. Geiger showed settlement charges to the borrower included, *inter alia*:

$ 170.00	Loan Origination Fee (1% loan amount)
326.00	Title Insurance
16.74	Credit Report
31.00	Recording Fee
1340.00	Loan Disbursement Fee
16.00	Flood Determination

In September 2006, Mr. Geiger and a lender closed on a second loan to provide permanent financing for his newly renovated residence. Mr. Geiger's lender explained that while the mortgage loan in the amount sought by him received initial approval in March 2006, the actual loan could not be granted until construction to complete the rehabilitation requirement of the state program was met. According to the settlement statement, he incurred the following expenses relating to the permanent loan which are relevant to this proceeding:

$ 1340.00	Loan Origination Fee
326.00	Title Insurance
16.74	Credit Report

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2 Under 31 U.S.C. § 3529 (2000), a disbursing or certifying official of an agency, or the head of an agency, may request a decision from the Board regarding expenses incurred by a federal civilian employee for official travel and transportation, or relocation expenses incident to a transfer of official duty station. The Board's response to the agency's request is referred to as an "advance decision." *David A. Anderson*, CBCA 556-RELO, 07-1 BCA ¶ 33,580; *Lincoln E. Burton*, CBCA 682-RELO, 07-1 BCA ¶ 33,561; *Danny Dean Butrick*, CBCA 515-RELO, 07-1 BCA ¶ 33,527.

53.00	Recording Fee
16.00	Flood Determination

Following the second closing, Mr. Geiger submitted a voucher and claimed reimbursement of $4972.48. After USDA audited the voucher, it reimbursed him $2591.74, which included the above-mentioned expenses claimed for the second closing plus certain one-time expenses claimed for the first closing.

Mr. Geiger submitted a reclaim voucher for the amount which had not been reimbursed and included documentation from a lender to explain the program and his expenses. Mr. Geiger's lender described the loan disbursement fee and the loan origination fee in excess of 1% of the loan amount as construction monitoring expenses required by the program. The lender further described the other expenses (flood determination, title insurance, credit report, and recording) as customary charges for this state program.

The analysis provided by USDA with its request submitted to the Board addressed each element of Mr. Geiger's reclaim:

Expenses	Claimed	Allowed	Reclaimed
Loan Origination Fee	1510.00	1340.00	170.00
Title Insurance	653.00	326.00	326.00
Credit Report	33.48	16.74	16.74
Recording Fee	84.00	53.00	31.00
Loan Disbursement Fee	1340.00	0.00	1340.00
Flood Determination	32.00	16.00	16.00

USDA poses several questions. It asks whether Mr. Geiger should be reimbursed for the items considered to be duplicate fees. It also asks whether it should make special allowances for this state special program.

Discussion

It is of course true, as the agency has observed in its letter to the Board in this case, that if an employee does not purchase a completed residence, he may be reimbursed for otherwise allowable expenses incurred in connection with the purchase of the land and the renovation of his residence to the same extent as an employee who purchased a completed residence. *Steven F. Bushey*, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291; *J. Dean Maddox,* B-214164, (July 9, 1984). In general, the agency should determine the appropriate reimbursement by looking at the expenses an employee incurs incident to permanent financing on a completed house as those expenses are most like the expenses an employee would incur to purchase an existing residence and the agency should base its examination primarily on that settlement. *Lincoln E. Burton*, CBCA 682-RELO, 07-1 BCA ¶ 33,561; *Bushey*; *Michael B. Holtzclaw*, GSBCA 14044-RELO, 97-2 BCA ¶ 29,287. When the renovation process involves multiple closings, the employee might incur similar fees and expenses more than once. However, an employee may be reimbursed only once for each type of expense which is allowable according to the applicable regulations. Duplicate expenses and expenses incurred solely because an employee decided not to purchase a completed residence cannot be reimbursed. *Burton; Bushey; Maddox*.

These general rules provide the answers to the USDA's questions. While it is possible that charges for an item which appears on more than one settlement statement might not be duplicate charges, this would be unusual. As indicated above, an employee may be reimbursed only once for each type of expense. If an item appears on more than one settlement statement, the charges for the item are usually duplicate, non-reimbursable charges. Therefore, USDA is not required to reimburse duplicative renovation expenses because to do so would provide reimbursement to Mr. Geiger to a greater extent than an employee who purchased an existing home would receive.

USDA should not simply reimburse charges required by this state program which appear on more than one settlement statement. As discussed before, an agency should determine the appropriate reimbursement by looking at the expenses incurred in connection with the permanent financing transaction because the expenses incurred incident to permanent financing are usually the most representative of those an employee would incur in connection with the purchase of an existing residence. Documentation in the record indicates that USDA has already paid Mr. Geiger's real estate transaction expenses (flood determination, title insurance, credit report, and recording) incurred in connection with the permanent loan as it would have if he had purchased an existing home. The Federal Travel Regulation (FTR) dictates that it pay no more. USDA's initial determination was in accord with these precepts.

Looking at the expenses Mr. Geiger incurred in March 2006, we see a loan disbursement fee which is described as the same amount as the loan origination fee. We view the loan disbursement fee to be similar to the loan origination fee. Mr. Geiger has received reimbursement of one percent of his loan amount, and has not demonstrated that he is entitled to be reimbursed at a higher rate. The loan disbursement fee duplicates the loan origination fee paid in connection with the permanent loan transaction, and therefore is not reimbursable.

Likewise, we see the title insurance fee, the credit report fee, the recording fee, the flood determination fee, and the loan origination fee in excess of 1% of the loan amount are all duplicates of the fees paid in connection with the permanent loan transaction, and therefore not reimbursable.

We trust this decision provides USDA with the guidance it needs concerning Mr. Geiger's claim.

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JEROME M. DRUMMOND
Board Judge