



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 25, 2007

CBCA 699-RELO

In the Matter of STEPHEN R. MATTHES

Stephen R. Matthes, Edmonds, WA, Claimant.

Loretta Brock, Chief, Travel Section, VA Finance Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

GOODMAN, Board Judge.

Claimant is an employee of the Department of Veterans Affairs. He has asked this Board to review the agency's denial of reimbursement of real estate expenses that he incurred as the result of a permanent change of station (PCS).

Factual Background

Claimant received PCS orders to transfer from San Diego, California, to Edmonds, Washington, to report to his new duty station on August 7, 2005. On January 21, 2007, he entered into a contract to purchase a home at his new duty station for \$320,500. On January 26, 2007, a home inspection was conducted. The contract was modified by a document entitled "Inspection Notice for Form 35" with a list of fourteen items for the seller to repair, including the fence, siding, roof, attic ventilation, and electrical system, as a condition of sale. Claimant then asked the seller for a \$2000 credit toward his prepaid costs in lieu of the seller correcting the items listed in the contract modification and the seller agreed.

The settlement sheet indicated a gross amount due from the claimant of \$329,274.06, which was the sum of the purchase price of \$320,500 and total additional charges of \$8774.06. Line 217 of the settlement sheet contained a \$2000 credit "from SLR [seller] for prepaids."

Claimant submitted a voucher seeking reimbursement of the following specific real estate transaction costs in the amount of \$5029.54, as indicated on the settlement sheet:

Loan origination fee	\$3205.00
Appraisal	450.00
Credit report	14.00
Closing fee	641.92
Lender title insurance	582.62
Recording fee	83.00
Flood certificate (lender)	13.00
Fee for second mortgage	<u>40.00</u>
	\$5029.54

The settlement sheet also included additional costs totaling \$3744.52, including the following prepaid items whose total exceeded \$2000:

6 months' property taxes	\$1462.15
County property taxes	487.38
Interest	<u>426.58</u>
	\$2376.11

The agency did not determine that any of the costs for which claimant requested reimbursement were not reimbursable. However, the agency reduced the amount which claimant was reimbursed by \$2000, with no explanation other than identifying the amount not paid as the \$2000 credit in line 217 of the settlement sheet.¹ The agency reimbursed the claimant \$2720.53 of the requested \$5029.54.

Claimant asked this Board to review the agency's reduction of the amount to which he was entitled by the \$2000 credit. In response to the claim filed at this Board, the agency replied:

[The settlement sheet] provided by Mr. Matthes reflects a \$2000.00 credit in line 217 "Buyer credit from SLR for Prepaids." . . . The document . . . provided to the Board (Inspection Notice for Form 35) was not provided for the auditor to review with the claim. The statement that the "buyer credit from seller for prepaids" does not address any specific prepaids. The employee had

¹ In determining the actual amount due claimant, the agency also included other credits and deductions which claimant does not dispute.

a total of \$8774.06 in closing costs and the claim filed with our office as for \$5029.54. The auditor made the determination to suspend \$2000.00 because the credit was indicated to be used for closing costs.

Discussion

Provided certain requirements are met, when an employee transfers in the interest of the Government, the employing agency is required to reimburse the employee for expenses of the purchase of a residence at the employee's new duty station. 5 U.S.C. § 5724a(d) (2000). One such requirement is the employee must actually incur and pay an expense in order to be reimbursed. 41 CFR 302-11.303 (2005). In order to determine whether an employee has incurred and paid an expense, we usually look to the settlement statement. *Nicholas A. Mendaloff*, GSBICA 14542-RELO, 98-2 BCA ¶ 29,983.

In the instant case, the buyer has requested reimbursement of specific closing costs listed on the settlement sheet totaling \$5029.54. The agency did not determine that claimant was not entitled to reimbursement of these costs but has paid the claimant \$2000 less than the requested amount, apparently because it believes a \$2000 credit from the seller was to be applied to these costs, and therefore claimant did not actually incur costs in that amount.

The agency's position in this case is supported by neither the itemized costs on the settlement sheet nor the specific language of the credit. As claimant emphasizes, and the settlement sheet indicates, the \$2000 credit was to be applied to prepaid costs, not the costs for which he sought reimbursement. The settlement sheet itemizes prepaid costs that total in excess of \$2000 which were not included in the costs which for which claimant seeks reimbursement and would not be reimbursable as real estate transaction expenses—prepaid taxes and interest. If the credit is applied to \$2000 worth of these prepaid, non-reimbursable costs, as claimant and the seller agreed, the costs for which claimant seeks reimbursement were actually incurred and paid by claimant.² Accordingly, claimant's entitlement to reimbursement should not be reduced by this credit.

² There have been cases in which employees received credits from the seller that were applied to otherwise reimbursable real estate transaction costs. In those cases, reimbursement was properly denied, as the costs were not actually incurred and paid by the employee. *See, e.g., Terrence T. Smith*, GSBICA 15695-RELO, 02-2 BCA ¶ 31,954; *Marilyn Wire*, GSBICA 15485-RELO, 01-1 BCA ¶ 31,413. As the decision in *Wire* notes, the structure of the transaction and the specific use of the credit determines the outcome.

Decision

The claim is granted.

ALLAN H. GOODMAN
Board Judge