



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 11, 2008

CBCA 1216-RELO

In the Matter of TODD W. HULSEY

Todd W. Hulsey, Gore, VA, Claimant.

Marion Deutsch, PCS Claims Officer, Real Estate Division, United States Army Corps of Engineers, Baltimore, MD, appearing for Department of the Army.

SOMERS, Board Judge.

In early 2008, the Department of Defense (DoD) transferred Todd W. Hulsey from one permanent duty station to another. In connection with the transfer, DoD authorized Mr. Hulsey to incur reimbursable real estate purchase transaction expenses. He purchased a house at his new duty station and his total closing costs as shown on his settlement statement were \$10,810.69. His purchase contract said the seller would pay \$10,000 toward his settlement costs and the settlement statement shows a seller credit of \$10,000. Mr. Hulsey asked DoD to reimburse \$5469.50 of his closing costs plus a \$125 fee he paid for a radon test. DoD reimbursed \$816.75 of Mr. Hulsey's closing costs.¹ Mr. Hulsey asks us to review DoD's decision to reimburse less than the full amount he requested.

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. By law, an agency can

¹ Based upon the documentation available to us, it appears DoD miscalculated the amount of the closing costs shown on Mr. Hulsey's settlement statement, which accounts for the fact that it reimbursed more than the difference between his total closing costs and the \$10,000 paid by the seller.

reimburse an employee only for closing expenses which are “required to be paid by the employee” and which the employee incurs. 5 U.S.C. § 5724a(d)(1) (2000); 41 CFR 302-11.1 (2007). Applying this rule to Mr. Hulsey’s facts, we conclude DoD correctly decided to deny his claim.

Mr. Hulsey’s purchase contract says the seller would pay \$10,000 of his closing costs and the settlement statement shows a seller credit of \$10,000. Because Mr. Hulsey’s total closing costs were \$10,810.69, and because his seller paid \$10,000 toward his closing costs, Mr. Hulsey did not incur \$5469.50 of closing costs. Therefore, by law, DoD cannot reimburse Mr. Hulsey for the \$5469.50 he claims.

In his response to the agency’s submission, Mr. Hulsey points out that line 704 of the settlement statement shows that he paid an earnest money deposit of \$1000 as part of his real estate commission payment. Line 704 states “\$1,000 POC, Earnest Money retained by Weichert Realtors will be paid to Weichert Realtors as part of commission.” The funds reflected on line 704 are not included in the settlement funds due at settlement, nor does the document indicate who paid the earnest money. However, nothing in the record demonstrates that Mr. Hulsey paid the amount reflected in line 704 as part of the real estate commission. Rather, the settlement agreement shows that the seller paid the total real estate commission of \$23,495.

Mr. Hulsey says if he had known DoD would not pay his claim for closing costs, it might have had some bearing on his decision to relocate and, in addition, he would have decided to ask the seller to reduce the price of his house, which he says the seller would have been willing to do. Neither we nor an employing agency can reimburse employees based upon hypothetical bargains which they do not make. Instead, we must make our decisions based upon bargains which are actually made. *Harlan C. Thiel*, GSBCA 13668-RELO, 97-1 BCA ¶ 28,710 (1996). In this instance, Mr. Hulsey opted to have his seller pay \$10,000 of his closing costs. As a result of making this bargain, Mr. Hulsey cannot be reimbursed any more than he has already been reimbursed by DoD.

The claim is denied.

JERI KAYLENE SOMERS
Board Judge