



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 14, 2007

CBCA 896-RELO

In the Matter of JAMES C. DALTON

James C. Dalton, Stafford, VA, Claimant.

Shirley L. Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

SOMERS, Board Judge.

On September 5, 2007, the Board received from James C. Dalton a request to resolve a claim for reimbursement of expenses incurred in connection with his relocation to a new duty station, where he purchased a residence. Under the purchase contract, the seller agreed to pay \$10,000 towards Mr. Dalton's closing costs of \$16,809.54, if he agreed to mortgage his property to a lender affiliated with the seller.

Mr. Dalton sought reimbursement in the amount of \$7208 for some of his closing costs incurred in connection with his transfer. After receiving the claim, the Department of the Army's Corps of Engineers (ACE) asked Mr. Dalton to provide documentation to show that the price of Mr. Dalton's house would have been reduced by the amount of his closing costs if he had mortgaged the house through a mortgage company not affiliated with the builder.

Mr. Dalton submitted a letter from the builder. Upon review, the agency informed Mr. Dalton that he needed to provide a more specific statement from the seller clearly stating that the price of his home would have been reduced by the closing costs, up to the amount of \$10,000, if he had not financed through the seller's mortgage company. Mr. Dalton responded, stating "[t]he letter from the builder is all I can get" When the agency did not make a final determination on his claim, Mr. Dalton filed this appeal.

In its response to the appeal, the agency asserts that it denied Mr. Dalton's claim on

the grounds that the seller had paid \$10,000 of Mr. Dalton's closing costs and that amount exceeded Mr. Dalton's claim of \$7208. In addition, the agency asks that the Board resolve the following questions:

Does Mr. Dalton's letter from his seller satisfy the test for reimbursement set out in [*Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 (1999)] when it does not indicate that the price of his house would have been reduced by the amount of his closing costs had he not mortgaged that house through the seller's mortgage company?

In determining Permanent Change of Station (PCS) closing costs reimbursements, is the Finance Center correct in applying credits paid by the seller for the buyers' [sic] closing costs to reimbursable expenses first rather than applying such credits on a pro rata basis for all closing costs incurred?

Agency Submission at 1. We remand Mr. Dalton's claim to the agency for further evaluation in accordance with the guidance set forth below.

Discussion

Under certain circumstances, 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). In order to determine whether an employee has incurred and paid an expense, we usually look to the settlement statement. *Robert L. Bankert*, CBCA 558-RELO, 07-2 BCA ¶ 33,601; *Nicholas A. Mendaloff*, GSBCA 14542-RELO, 98-2 BCA ¶ 29,983. Mr. Dalton's settlement statement shows that he actually incurred \$6809.54 in expenses – the \$16,809.54 for which he was responsible as purchaser, less the \$10,000 credit given to him by the seller. The figure of \$6809.54 is the maximum that he may be reimbursed by the agency.

The agency cites the case of *Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 (1999), as the basis for rejecting Mr. Dalton's claim. Under *Parrish*, in order to receive reimbursement for costs shown on the settlement statement as having been paid by the seller, an employee must establish that: (1) the closing costs were clearly discernible and separable from the price paid for the house; (2) both the seller and the purchaser regarded the costs as having been paid by the purchaser; and (3) documentation showed the amount of closing costs and the purchaser's liability for them. The agency asserts that Mr. Dalton failed to provide documentation sufficient to fulfill requirements set forth in *Parrish*.

We conclude that the agency's focus on the test for reimbursement in *Parrish* is inappropriate, since Mr. Dalton is not requesting reimbursement for the credit that was given to him by the seller. He is seeking, instead, an amount which is approximately equal to the maximum amount that he may be reimbursed by the agency.

As to the issue of the allocation of credits paid by the seller towards a buyer's closing costs, the Board has recently addressed this question in the case of *Neal R. Eckrich*, CBCA 813-RELO, 07-2 BCA ¶ 33,663. In that appeal, the agency asserted that a seller's credit of \$3000 should be deducted from reimbursable expenses first. We rejected the agency's argument, holding that in the absence of any contractual agreement allocating the seller's credit to specific items, it is appropriate to apply the credit to the non-reimbursable expenses first.

The agency should evaluate each of the items for which Mr. Dalton seeks reimbursement in accordance with the rules established in the Federal Travel Regulation at 41 CFR pt. 302-11 (and in particular at subpart C of that part, 41 CFR 302-11.200 - .202) and in the Joint Travel Regulations at C14002, C14003 (since revised and now at C5756, C5659). Mr. Dalton should be reimbursed for the total amount the agency finds reimbursable, up to a maximum of \$6809.54.

Decision

_____ The Board remands this claim to the agency for further evaluation.

JERI KAYLENE SOMERS
Board Judge