



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 13, 2010

CBCA 1883-RELO

In the Matter of WALTER W. PYRIK

Walter W. Pyrik, Chula Vista, CA, Claimant.

Lani Gordon, Office of the General Counsel, Space and Naval Warfare Systems Command, Department of the Navy, San Diego, CA, appearing for Department of the Navy.

BORWICK, Board Judge.

Claimant, Walter W. Pyrik, a civilian employee of the Department of the Navy (agency), incurred an \$8000 real estate transaction expense in connection with his permanent change of station (PCS). The agency denied claimant's requested reimbursement of that expense, resulting in Mr. Pryick's claim to this Board contesting the agency's denial. Because the agency correctly applied the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR) in denying the request, we sustain the agency's decision and deny the claim.

Background

On or about January 28, 2009, the agency authorized claimant's PCS from the Washington, D.C., metropolitan area to San Diego, California, and granted claimant reimbursement of real estate transaction expenses. In October 2009, claimant entered into a contract for the purchase of a house in the San Diego Area. The sale was a "short sale," the terms of which required that claimant pay \$8000 to the second lien holder to extinguish the existing lien on the house. Claimant submitted to the agency a reimbursement voucher for that expense, together with other expenses. The agency denied reimbursement on the ground that the expense of paying off a mortgage was not an allowable real estate transaction expense under the governing regulations.

Discussion

As noted above, claimant, the purchaser of the residence, seeks reimbursement of his pay-off of the seller's second mortgage, which was a prerequisite to completing the short sale involved in this case. A short sale is a sale by a willing seller to a willing buyer for less than the total encumbrances on the home with the consent of the underlying lien holders who agree to take less than what they are owed. *Diana I Am v. National City Mortgage. Co.*, Civ. No. 09-00060, 2010 WL 571936 (D. Haw., Feb. 17, 2010) (citing *In re Fabbro*, 411 B.R. 407, 413 n. 7 (Bankr.D.Utah 2009)); *Garcia v. IndyMac*, No. C 09-01738-CW, 2009 WL 1635197 (N.D. Cal. June 8, 2009).

The applicable statute mandates that pursuant to authorized regulations, an agency shall pay to an employee who transfers in the interest of the Government expenses of the sale of the residence at the old duty station and the expenses of the purchase of a residence at the new duty station. 5 U.S.C. § 5724a(d)(1) (2006). The implicit requirement of the statute is that expenses be necessarily incurred as a result of the transfer. *Duane Chris Allen*, GSBCA 15524-RELO, 2001 WL 925725 (Aug. 9, 2001); *Jeffrey R. Jenkins*, GSBCA 15339-RELO, 00-2 BCA ¶ 31,066.

The FTR and the JTR prescribe those real estate transaction expenses that are allowable and unallowable. 41 CFR 302-11.200;202 (2009); JTR C5756-A, C5756-A.4.a; C5756.A.4.b.(Dec. 1, 2009). The allowable expenses do not include payment of a mortgage debt. Indeed, payment of interest on loans is expressly deemed an unallowable expense, 41 CFR 302-11.202(d), JTR C5756-A.4.b.(2), and is, in essence, the payment of a pre-existing debt. The debt obligation does not arise from the transfer. A principal payment is a return of capital to the mortgage lender and is not an expense incurred resulting from the transfer. It is also the payment of a pre-existing debt. *Dorothy A. Sutton*, GSBCA 14825-RELO, 99-1 BCA ¶ 30,295.¹ See also *Beth A. Wilson*, CBCA 600-RELO, 07-1 BCA ¶ 33,546 (claimant not entitled to reimbursement of pay-off of land installment contract when the employee was

¹ In contrast, mortgage pre-payment penalties are an allowable reimbursable expense because the pre-payment of the mortgage is a necessary result of the Government-authorized transfer. 41 CFR 302-11.201(e)(7); JTR C5757-A.4.a (7); *Beatrice Shearn*, GSBCA 16642-RELO, 05-2 BCA ¶ 33,075.

transferred); *Paul E. Marshall*, GSBCA 13811-RELO, 97-2 BCA ¶ 29,036 (no statutory or regulatory authority for reimbursement of outstanding mortgage for the employee's attempted sale of mobile home arising because of the employee's PCS). Since the claimed costs are unallowable, the Board denies the claim.²

ANTHONY S. BORWICK

Board Judge

² Given our disposition of this matter, we need not address the issue raised by the agency in its submission to the Board as to whether the claimant's pay-off of his seller's second mortgage was customary in the San Diego, California area.