



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 2, 2012

CBCA 2499-RELO

In the Matter of BRANNON FRAZIER

Brannon Frazier, Tuskugee, AL, Claimant.

Linda Harris, Controller Operations Division, Travel Section, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

SHERIDAN, Board Judge.

Claimant, Brannon Frazier, requests this Board's review of the denial by the Department of Agriculture of his request for reimbursement of \$1612¹ in real estate expenses incurred pursuant to a permanent change of station (PCS) transfer. We find that, without a basis on which to evaluate whether the fee sought is permitted to be reimbursed, the agency was correct in refusing to pay the \$1612 claimed.

Background

Claimant, an employee of the United States Forest Service (FS), Department of Agriculture (USDA), underwent a PCS move in the interest of his agency, with a report date of September 4, 2009. On February 2, 2011, claimant entered into a contract to purchase a home near his new duty station. The purchase was finalized on March 3, 2011. The settlement statement (HUD-1) lists the principal amount of the loan as \$199,220. Settlement

¹ At times claimant and the agency asserted that the amount in dispute was \$1612, in other instances they stated the sum was \$1612.20. For clarity in the decision and because the difference was small, we use \$1612 as the amount in dispute.

charges, pertinent to the issues at hand, were listed on line 801 of the settlement statement as “our origination charge [of] \$380.00” and line 802 as “your credit or charge (points) for the specific interest rate chosen [of] \$2490.25,” for a total on line 803 of “your adjusted origination charges [of] \$2870.25.” A letter from the lender bank states: “At BB&T, the 1% fee discount point serves the same purpose as the origination fee. They are both [sic] administrative fees that the bank collects as part of gaining a mortgage loan.”

USDA Form AD-424 shows the agency paid the \$380 “origination charge.” Referencing the letter from the lender, claimant seeks an additional \$1612 as an “administrative fee in lieu of balance of 1% origination fee - line 802.”²

The agency disallowed the \$1612, stating:

Suspended \$1612 for administration/loan discount points fee. This fee is non-reimbursable on [sic] a purchase expense. The loan discount is a one-time charge imposed by the lender or broker to lower (or permanently buy down) the interest rate and an administrative fee is charged by real estate agent/broker to attend closing. *See* GSBICA 16868-RELO and GSBICA 16763-RELO decisions attached.

Claimant resubmitted his voucher, reclaiming the \$1612 and attaching another BB&T letter further explaining:

[T]he 1% fee discount point serves the same purpose as the origination fee. They are both an administrative fee [sic] that the bank collects as part of gaining a mortgage loan. This is standard and was not used for the purpose of buying down the interest rate.

The reclaim was denied by the agency, stating “[t]his fee is non-reimbursable on a purchase expense. The loan discount is a one-time charge imposed by the lender or broker to lower (or permanently buy down) the interest rate and an administrative fee [sic] charged by real estate agent/broker to attend closing.” The agency also cited Federal Travel Regulation (FTR) 302-11.202 as authority for its denial. FTR 302-11.202 provides:

² Having recouped the origination charge of \$380 and seeking the \$1612, claimant hopes to recover fees of \$1992. According to claimant, the \$1612 currently in issue would compensate him for the 1% maximum allowable for loan origination fees.

What residence transaction expenses will my agency not pay?

Your agency will not pay:

. . . .

(d) Interest on loans, points, and mortgage discounts;

. . . .

(g) Any fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, as amended, and Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR part 226), unless specifically authorized in §302-11.200.

41 CFR 302-11.202 (2010).

Claimant asks us to review the agency’s decision.

Discussion

Asserting that the \$1612 is an allowable administrative fee that serves the same purpose as an origination fee, and that the “points” referred to in the lender’s letter were not used for the purpose of buying down the interest rate, the claimant urges us to find he is entitled to the \$1612 that has been denied by the agency.

Claimant has failed to convince us that he should be reimbursed for a fee which the lender describes as a “1% fee discount point [that] serves the same purpose as the origination fee” and as “administrative fees that the bank collects as part of gaining a mortgage loan.” It is obvious from the settlement statement that the \$2490.25 listed on line 802 is in addition to the \$380 referenced as “origination charges” in the line above. The lender’s characterization of the fees as a “1% fee discount point” further obscures the nature of the fees being sought. The reference to “1%” only compounds the confusion because no fees amounting to 1% can be located in the documentation.³ After thoroughly reviewing the record, we cannot discern the nature of the fees or the amounts of those fees. Without that knowledge we cannot find claimant is entitled to the \$1612 he seeks.

³ If, in fact, the \$2490.25 contains the 1% in fees referenced in the lender’s communications, it must also contain other fees.

It is the claimant's burden to establish the purpose of a particular fee and his entitlement to be reimbursed for it under applicable regulations. *Mark Bodycombe*, CBCA 1389-RELO, 09-1 BCA ¶ 34,022 (2008); *Edward D. Ellis*, GSBCA 16763-RELO, 06-2 BCA ¶ 33,304. The letters from the lender do not provide sufficient information to make such determinations.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge