



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 1, 2013

CBCA 2949-RELO

In the Matter of JEFFREY A. HALVORSON

Jeffrey A. Halvorson, Pampa, TX, Claimant.

Jennifer A. Aranda, Assistant District Counsel, United States Army Corps of Engineers, Tulsa, OK, appearing for the Department of the Army.

ZISCHKAU, Board Judge.

Jeffrey A. Halvorson, the claimant, appeals the denial of his claim for reimbursement of a \$685 origination charge incurred in the purchase of a home at his new duty station. The agency asserts that Mr. Halvorson did not pay the loan origination fee because the lender issued him a credit, based on the interest rate selected, that covered the origination fee. We find that Mr. Halvorson actually paid the origination fee as shown on the HUD settlement statement and thus is entitled to reimbursement of the origination fee.

Background

On April 16, 2012, the Army Corps of Engineers executed travel orders authorizing the claimant to be reimbursed various expenses, including real estate expenses, in connection with his relocation and purchase of a new home. The claimant submitted a travel voucher worksheet with attached form DD-1705 identifying \$2193.41 in closing costs he believed to be allowable. The costs consisted of: government recording charge (\$100), survey fees (\$497.95), appraisal (\$400), flood certification (\$5.25), termite inspection (\$92.01), credit report (\$14), title services (\$399.20), and loan origination fee (\$685). The agency agrees that all of these expenses claimed by Mr. Halvorson would be reimbursable to him if he actually paid these expenses. However, because the lender gave the claimant a credit towards his closing costs in the amount of \$1793.75 (the credit was given because the claimant selected a higher interest rate for his mortgage loan), and \$685 of this credit was applied to the loan origination fee on the settlement sheet, the agency concluded that the claimant had not paid

the origination fee and thus was not entitled to reimbursement of the fee. The agency noted in its travel voucher approval memorandum that “[t]he remaining credit of \$1,108.75 was not specifically allocated toward any particular settlement charge” and that the agency “assume[d] [Mr. Halvorson] would prefer that this credit be applied to those expenses that are not otherwise reimbursable to him under the JTR [Joint Travel Regulations] and we are processing his claim for reimbursement as if the remaining credit was applied towards the \$7,166.60 in out of pocket expenses that are not reimbursable under the JTR.”

The HUD-1 settlement sheet shows at line 801 an origination charge (a processing fee charged by the lender) of \$685. Line 802 shows a credit of \$1793.75 for the specific interest rate chosen. Line 803 shows a credit for adjusted origination charges of \$1108.75 – the net of the loan origination charge in line 801 and the credit in line 802. Line 804 shows an appraisal fee of \$400. Line 805 shows a credit report fee of \$14, and line 807 shows a flood certification fee of \$5.25. Under the column entitled “Paid from Borrower’s Funds at Settlement,” the credit amount of \$1108.75 is shown for line 802 and the fee amounts in lines 804, 805, and 807 are shown as well. There can be no dispute that the total credit amount of \$1793.75 was provided as funds belonging to the claimant. The net credit of \$1108.75 was calculated by deducting the \$685 origination fee (that the settlement sheet shows was to be paid by the claimant) from his credit funds of \$1793.75. The agency certainly recognized that the credit amount of \$1793.75 belonged to the claimant and no one else. It would torture the reality of the financial transaction that actually took place here to conclude that Mr. Halvorson did not pay the origination fee. We find that the claimant paid the origination fee of \$685 from his own funds.

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) (2006); 41 CFR 302-11.6(a) (2011). The Government will not reimburse expenses incurred in connection with the residence transaction if they are paid by someone other than the employee or the employee’s immediate family. 41 CFR 302-11.303. In order to determine whether an employee has incurred and paid an expense, we usually look to the settlement statement. This document generally sets forth the expenses that are paid by the buyer and those that are paid by the seller. *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593. Unlike cases such as *Ernesto Mesorana*, CBCA 1107-RELO, 08-2 BCA ¶ 33,874, where the seller paid certain costs for the buyer through an incentive credit, here it is clear that the buyer (the claimant), not the seller, paid the loan origination fee. Although the agency also cites *Judith C. Rothschild*, GSBCEA 14787-RELO, 99-1 BCA ¶ 30,285, in support of its argument that the claimant did not pay the loan origination fee, that case is

distinguishable because there the board found that the lender paid the loan origination fee and charged the employee for that amount through an increase in the interest rate it charged. Here, we have found that the employee selected an interest rate entitling him to receive a present lump sum amount of \$1793.73, and it was \$685 of this amount belonging to the claimant that was used to pay the loan origination fee.

Decision

The record demonstrates that the claimant paid the \$685 loan origination fee. Accordingly, he is entitled to reimbursement of that amount as part of his relocation expenses.

JONATHAN D. ZISCHKAU
Board Judge