



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 19, 2017

CBCA 5669-RELO

In the Matter of CHRISTY L. PAULK

Christy L. Paulk, Stafford, VA, Claimant.

Yvonne M. Segovia, Civilian Personnel Officer, Headquarters Air Combat Command, Department of the Air Force, Joint Base Langley-Eustis, VA, appearing for Department of the Air Force.

HYATT, Board Judge.

In April of 2016, claimant, Christy L. Paulk, a criminal investigator for the Department of the Air Force, relocated in the interest of the Government from her permanent duty station at the Air Force Academy in Colorado to Quantico, Virginia. The Air Force has denied her request for reimbursement of certain expenses incurred in purchasing a home at her new duty station. She has requested our review of that decision.

Background

Ms. Paulk purchased a newly constructed home at the new duty station, using the builder's preferred lender. She submitted a voucher seeking reimbursement of \$6845.55 in allowable real estate expenses associated with the purchase of a residence at the new duty station. The settlement sheet for her purchase listed the sum of \$10,000 as a "seller credit," and included the amount of \$250.96 as a "lender credit," in the column showing costs paid by the seller at closing. Ms. Paulk states that the "seller credit" amount was intended to be an incentive off the total amount of the home loan.

The claim submitted by Ms. Paulk includes a settlement statement prepared by the American Land Title Association (ALTA), reflecting total closing costs of \$17,704.63. In her request for reimbursement, Ms. Paulk submitted DOD Form 1705, which lists the

categories of expenses allowable under applicable regulations for residence transactions incident to a transfer. She itemized the following expenses, totaling \$6845.55:

Legal and Related Fees	\$ 1702.00
Lender's Appraisal Fee	\$ 450.00
Certification Fee	\$ 15.00
Credit Report Fee	\$ 33.95
Mortgage Title Policy Fee (lender)	\$ 177.60
Escrow Agent's Fee	\$ 550.00
City/County/State Tax Stamps	\$ 3917.00

In addition to the expenses listed by Ms. Paulk on Form 1705, a variety of additional expenses that are not reimbursable under the regulations were also incurred by Ms. Paulk, most notably a VA funding fee of \$12,496.85, points in the amount of \$ 2,226.54, and an underwriting fee of \$ 550. The ALTA settlement statement also reflects a \$10,000 credit provided to the borrower by the seller. The \$10,000 seller credit is not allocated in any particular manner on the settlement sheet.

The Air Force, in reviewing the claim, obtained a second document, entitled "closing disclosure," which, like the ALTA settlement statement, sets forth the full panoply of expenses paid by Ms. Paulk in connection with her purchase of the residence. This document, unlike the ALTA settlement statement, splits the closing costs into those purportedly paid by the borrower and those paid by the seller. The costs claimed by Ms. Paulk on the DOD Form 1705 are listed in the section setting forth costs paid by the seller. The VA funding fee and the points are listed as having been paid by the buyer. This document, however, was generated by the lender and provided to the buyers prior to closing. There is no indication that it reflected an agreement between the seller and buyer as to how the seller credit should be applied.¹

Discussion

When an agency transfers an employee from one permanent duty station to another within the United States, and the transfer is in the agency's interest, federal law requires the agency to pay some of the employee's real estate purchase transaction expenses. 5 U.S.C. § 5724a(d)(2012). One limitation on the reimbursement of such expenses is that the employee must actually incur and pay an expense in order to be reimbursed for it. 41 CFR

¹ Ms Paulk and her spouse signed the document for the sole purpose of acknowledging receipt.

302-11.303 (2015); *see, e.g., Kevin Kelleher*, CBCA 4889-RELO, 16-1 BCA ¶ 36,206, at 176,665.

In order to determine whether an employee has incurred and paid an expense, we usually look to the settlement statement, which delineates what expenses are paid for by the buyer and what expenses are paid for by the seller. *See, e.g., Terence L. Lynch*, GSBCA 16678-RELO, 06-1 BCA ¶ 33,153 (2005); *Marion L. Ladd*, GSBCA 15138-RELO, 00-1 BCA ¶ 30,890. We have also explained 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 nonreimbursable expenses first.” *James C. Dalton*, CBCA 896-RELO, 08-1 BCA ¶ 33,743, at 167,045 (2007) (citing *Neal R. Eckrich*, CBCA 813-RELO, 07-2 BCA ¶ 33,663); *see also Cheryl A. Paulin*, CBCA 3818-RELO, 14-1 BCA ¶ 35,719; *Michelle D. Thomas*, CBCA 3572-RELO, 14-1 BCA ¶ 35,561 (same rule for lender credits).

The Air Force views the closing disclosure document, provided by the lender to the buyers for purposes of apprising them of closing costs prior to settlement, as conclusively establishing that the seller credit was intended to cover the closing costs that would ordinarily be reimbursed to the buyer in the absence of a seller credit. Nothing in the record, however, demonstrates that this document reflects a mutually agreed assignment of the seller credit by the buyer and seller. The closing disclosure document differs from the official ALTA settlement sheet, which does not assign the seller credit to any particular closing costs paid by the buyer. The settlement sheet lists costs that would ordinarily be compensable to the purchaser as well as other costs incurred by the purchaser that are not reimbursable under the applicable regulations. Assuming the sales contract, which is not in the record, does not allocate the seller credit to any particular costs, under the rule enunciated in *Dalton* and *Eckrich*, the seller credit should first be allocated to nonreimbursable closing costs. Here, the VA funding fee, which is not compensable under the applicable regulations, exceeds the amount of the seller credit.

To conclude, Ms. Paulk should provide the Air Force a copy of the sales contract she executed to purchase the residence at her new duty station. If it does not expressly allocate the seller credit to defray the costs she has itemized on the DOD Form 1705, the Air Force should reimburse these expenses.

Decision

The claim is remanded to the Air Force for further evaluation in accordance with the above.

CATHERINE B. HYATT
Board Judge