



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 15, 2019

CBCA 6364-RELO

In the Matter of STEPHEN G. TRYON

Stephen G. Tryon, Washington, DC, Claimant.

John Kannady II, Financial Specialist, National Operations Center, Bureau of Land Management, Department of the Interior, Denver, CO, appearing for Department of the Interior.

RUSSELL, Board Judge.

Claimant, Stephen G. Tryon, is employed by the Bureau of Land Management (BLM), Department of the Interior. In December 2016, Mr. Tryon was relocated at government expense from Norman, Oklahoma, to Washington, D.C. As part of the relocation, the agency authorized reimbursement of Mr. Tryon's expenses associated with purchasing a new residence. This claim relates to the agency's decision to deny payment of an expense which the agency characterized as points, a cost that is not reimbursable under applicable federal travel regulations. Mr. Tryon challenges the agency's decision, arguing that the disputed expense is actually a loan origination fee for which he should be reimbursed.

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." *Jeffrey A. Halvorson*, CBCA 2949-RELO, 13 BCA ¶ 35,228, at 172,838; *see* 5 U.S.C. § 5724a(d) (2006); 41 CFR 302-11.6(a) (2012). Reimbursable expenses are discussed at 41 CFR 302-11.200, and include loan origination fees not to exceed one percent of the loan amount unless certain requirements are met. 41 CFR 302-11.200(f)(2). Mr. Tryon's claim relates to whether an

expense he incurred when purchasing his home in Washington, D.C., can properly be characterized as a loan origination fee.

The agency's position is that the cost in dispute reflects an amount for a real estate point, which is not reimbursable under federal travel regulations. The problem, as Mr. Tryon notes, seems to be with the mandatory closing disclosure form now used to set out mortgage loan terms and closing costs. On or before October 3, 2015, an individual applying for a mortgage would receive a HUD-1 form listing all charges and credits to the buyer and seller in a real estate transaction.¹ After that date, and for most mortgages, buyers and sellers now receive a closing disclosure form instead of a HUD-1.² On the HUD-1 form, the loan origination fee would have been captured as a specific line item. However, on the closing disclosure form, there is a section for origination charges, noted as a percentage of the loan amount or points:

Loan Costs	
A. Origination Charges	
01 % of Loan Amount (Points)	

Mr. Tryon initially received a closing disclosure form showing \$8400 for origination charges reflecting 1.75% of the loan amount or points:

Loan Costs		
A. Origination Charges		
01 1.750 % of Loan Amount (Points)		\$8,400.00

According to Mr. Tryon, the charges include one percent for the loan origination fee (\$4800, or 1% of the \$480,000 loan amount) and an additional .75% (\$3600) to buy down the interest rate on his mortgage. The BLM supervisory employee reviewing the expenses, who has since retired, denied Mr. Tryon's claim for the loan origination fee, explaining that the fee was part of origination charges which are shown on the closing disclosure form as points, and the Department of the Interior Permanent Change of Station Policy, consistent with the Federal Travel Regulation (FTR), precludes reimbursement for points. *See* 41 CFR 302-11.202(d) (stating "[i]nterest on loans, points, and mortgage discounts" will not be reimbursed).

¹ *See* <https://www.consumerfinance.gov/ask-cfpb/what-is-a-hud-1-settlement-statement-en-178/>.

² *Id.*

Mr. Tryon argues that the terms “percentage” and “point” are synonymous on the closing disclosure form, meaning that Mr. Tryon incurred a reimbursable \$4800 loan origination fee regardless of whether the fee is characterized as a “percent” of the loan or one “point.” Nevertheless, in an attempt to clearly show that the loan origination fee is a reimbursable expense, and not a non-reimbursable point, Mr. Tryon had his broker generate a version of the closing disclosure form expressly itemizing the \$8400 as an “origination fee”:

Loan Costs		
A.	Origination Charges	
01	1.750 % of Loan Amount (Points)	
02	Origination Fee	\$8,400.00

A non-supervisory BLM employee initially reviewing the expense seemed to agree with Mr. Tryon that \$4800 of the loan origination charges (i.e., one percent of the loan amount) was a reimbursable loan origination fee, but that employee’s view was subsequently rejected by the employee’s supervisor.

The closing disclosure form, depending on how it is filled out, can potentially conflate “percentage of loan” and “point,” which can muddle whether a specific origination charge is reimbursable under the FTR. Here, however, Mr. Tryon provided a revised closing disclosure form itemizing the \$8400 origination charge as a “fee.” Under the FTR, loan origination fees not exceeding one percent of the loan amount are reimbursable expenses. Mr. Tryon requests reimbursement for \$4800 of this fee, which is one percent of his loan amount. Based on the revised version of the closing disclosure form submitted by Mr. Tryon, we believe that he has met his burden of showing entitlement to reimbursement of the fee.

Finally, Mr. Tryon requests that the Board compel an audit of BLM relocations since October 2015. He explains that the audit would be for the purpose of determining whether other BLM employees were denied relocation expenses due to the discontinuation of the HUD-1 settlement statement on which loan origination fees were more clearly broken out from other percentage-based fees. The Board takes no action on Mr. Tryon’s request. “Th[e] Board settles claims involving expenses incurred by federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.” *Robert D. Rahmes*, GSBICA 14220-TRAV, 98-2 BCA ¶ 29,796, at 147,609. In fulfilling this duty, we look to the FTR. *Id.* We have no authority to compel agencies to undertake reviews of agency travel management programs. *Id.*

Decision

The claim is granted in the amount of \$4800.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge