



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 26, 2025

CBCA 8106-RELO

In the Matter of LAWRENCE T.

Lawrence T., Claimant.

Keith A. Mills, Deputy Director, and Elizabeth S. Moseley, Agency Representative, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**RUSSELL**, Board Judge.

Claimant, a civilian employee of the United States Army Corps of Engineers (agency), seeks review of the agency's refusal to reimburse him for a closing cost fee he incurred selling his house during a permanent change of station (PCS) move. We affirm the agency's decision and deny the claim.

Background

The agency authorized a PCS transfer of claimant from Tennessee to Texas in January 2024, with a report date to his new duty station of February 14, 2024. Claimant closed on the sale of his Tennessee home on March 14, 2024. Claimant sought reimbursement of several moving expenses from the agency including a brokerage fee of \$16,800, legal and related fees of \$275, an escrow agent's fee of \$895, and at issue here, \$12,100 for a credit (seller's credit) claimant paid towards the buyer's closing costs. On April 10, 2024, the agency notified claimant that it would reimburse the incurred expenses, except for the \$12,100 seller's credit. The agency denied claimant's request for reimbursement of the credit because the expense "was not customary in the location of the property." Agency Response at 1.

Claimant appealed the agency's decision to the Board. Claimant argues that reimbursement for a seller's credit is permissible for three reasons: 1) the amount of the seller's credit was not used for betterments; 2) paying closing costs were customary for the area; and 3) the seller's credit was within range of what sellers in the area usually provided. The agency only argues against the second point, i.e., reimbursement of the seller's credit is not allowable because the expense is not customary in the location where claimant sold his home.<sup>1</sup>

### Discussion

The relevant statute directs agencies to “pay . . . an employee who transfers in the interest of the Government, expenses of the sale of the residence . . . of the employee at the old official station . . . that are required to be paid by the employee, when the old . . . official station[is] located within the United States.” 5 U.S.C. § 5724a(d)(1) (2018). The statute limits reimbursement to expenses which are customarily charged in the locality for which the sold home was located. *Gary J. Maynard*, CBCA 5751-RELO, 17-1 BCA ¶ 36,874, at 179,749 (citing 5 U.S.C. § 5724a(d)(4)). The regulations which define what is customary are found in the Federal Travel Regulation (FTR). *Id.* The FTR provides that an employee can be reimbursed for certain fees so long as they are “customarily charged to the seller of a residence in the locality of the old official station.” 41 CFR 302-11.200 (2024) (FTR 302-11.200). These fees can include a seller's credit. *Gary J. Maynard*, 17-1 BCA at 179,749. As a Department of Defense civilian employee, claimant is also subject to the Joint Travel Regulations (JTR). *Id.* As relates to the seller's credit at issue here, the JTR similarly limits reimbursement to “the amounts customarily charged where the residence is located.” JTR 054504-C (March 2024).

To claim a seller's credit, the burden is on claimant “to establish by a preponderance of the evidence that ‘it is customary for the seller to assume . . . [some or all] of the buyer's closing costs in the locality of the residence sold.’” *Steven T.*, CBCA 7778-RELO, 23-1 BCA ¶ 38,430, at 186,775 (quoting *Joseph H. Molton*, CBCA 2572-RELO, 12-1 BCA ¶ 34,930, at 171,748). Claimant may meet his burden in several ways, to include:

showing that a cost is allocated to the seller by state law or a preprinted sales form; submitting letters from local realtors and brokers confirming that a

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<sup>1</sup> In his filing, claimant submitted a buyer's American Land Title Association (ALTA) settlement statement for the sale of his property. The ALTA lists the seller's credit as being \$11,614.62, which differs from the \$12,100 claimant requested in his reimbursement form to the agency. The agency does not address this discrepancy. Since we do not grant the claim, we need not address the discrepancy.

particular cost is invariably assumed by the seller for the buyer; or providing data showing that over the years a *commanding percentage* of sellers have contributed to buyers' closing costs.

*Id.* (emphasis added) (citing *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412). This Board applies the term "customary" "strictly, [because] the statute on which the regulatory phrase is based makes agencies responsible for paying transferred employees' closing costs only where those costs are required to be paid." *Timothy C. Fudge*, CBCA 6226-RELO, 19-1 BCA ¶ 37,255, at 181,317-18 (quoting *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,828 (2001)) (internal quotations omitted). "An expense is 'customarily' paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community." *Erwin Weston*, 09-1 BCA at 168,412 (quoting *Monika J. Dey*, 02-1 BCA at 156,827).

To support the claim that his seller's credit is customary, claimant provided a list of 212 homes located within the locality of his Tennessee home that were sold between January 1 and May 2, 2024. Of these homes, claimant states that 118 of them, 55.7%, involved a seller's credit. He reasons that this makes offering a seller's credit customary in the locality where he sold his home because "more than 50% of buyers [were] requesting this assistance if they [were] not receiving some other type of government program assistance." Notice of Claim at 1. However, the Board has stated that evidence of a seller's credit simply occurring in more than 50% of house sales in a locality does not mean it is customary. *Timothy C. Fudge*, 19-1 BCA at 181,318 ("we do not agree that 'over 50% of total house sales' constitutes a custom."). A seller's credit "is customary only when such a practice occurs in the course of a high percentage of transactions." *James W. Orr*, CBCA 6218-RELO, 19-1 BCA ¶ 37,370, at 181,695 (2018) (reviewing this Board's and our predecessor board, the General Services Board of Contract Appeals's, case history and recognizing 61% as not customary but 75% or greater as customary). The limited, approximate four-month period of data provided by claimant showing that 55.7% of homes sold during the period involved a seller's credit does not evidence that provision of a seller's credit was customary as reflected by "*long and unvarying habitual actions, constantly repeated*" in the area where he sold his home. *Erwin Weston*, 09-1 BCA at 168,412 (emphasis added). Instead, the data suggests a commonly adopted market practice reflecting "the give and take in negotiating a sufficiently attractive price to facilitate the sale" of a home. *James E. Miller*, GSBCA 16123-RELO, 04-1 BCA ¶ 32,450, at 160,525 (2003) (citations omitted).

Decision

The claim is denied.

*Beverly M. Russell*  
BEVERLY M. RUSSELL  
Board Judge