

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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May 4, 2001

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GSBCA 15485-RELO

In the Matter of MARILYN WIRE

Marilyn Wire, Sacramento, CA, Claimant.

Ray Bolyard, Director, Budget Division, Office of Management, Food Safety and Inspection Service, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

**HYATT**, Board Judge.

This matter concerns a claim for closing costs incurred in connection with the purchase of a residence at the new duty station following a relocation pursuant to permanent change of station (PCS) orders. Claimant, Marilyn Wire, an employee of the United States Department of Agriculture (USDA), relocated from Alameda, California, to Sacramento, California. Her claim for closing costs was disallowed by USDA because the agency concluded she had not actually incurred the costs.

Background

Ms. Wire relocated to Sacramento in July 1998. In March 2000, she purchased a new home in the Sacramento area. At the time she entered into an agreement to purchase the house, which was being constructed, the builder was offering a cash incentive of \$6000 which buyers could use in a variety of ways – to reduce the price of the house, to defray closing costs, or to pay for upgrades and options. Ms. Wire elected to use the cash incentive to pay for closing costs. In accordance with claimant's decision, the builder paid the closing costs at settlement.

Thereafter, Ms. Wire submitted her claim to USDA for the reimbursement of cost items associated with purchasing the home. The claim was returned unprocessed with the explanation that because the closing costs were paid by the seller they could not be submitted for reimbursement. USDA further explained that under the Federal Travel Regulation (FTR) agencies may only reimburse costs that are actually incurred by the employee. Since Ms.

Wire did not incur these costs, the agency could not process them for payment.

Ms. Wire responds that while the builder paid settlement costs, she could have asked to have the same monies applied to upgrades and options in the home instead and been reimbursed by the Government for the closing costs. She argues that, under the circumstances, she should be reimbursed for closing costs the buyer would normally be expected to pay. Ms. Wire has requested that the Board review the agency's disallowance of her claim.

### Discussion

Under 5 U.S.C. § 5724a(a)(4)(Supp. IV 1998), employees who are transferred in the interest of the Government may be reimbursed for certain expenses incurred in the purchase of a residence at the new duty station. The FTR provides that the Government will reimburse a transferred employee for allowable expenses "required to be paid by him/her . . . for purchase (including construction) of one dwelling at his/her new official station." 41 CFR 302-6.1 (1998). The applicable regulations provide that "[a]n employee shall be reimbursed only for expenses actually incurred and paid by the employee." 41 CFR 302-6(f)(1). In determining what expenses are actually incurred and paid by the employee, the Board looks to the settlement sheet. Marion L. Ladd, GSBCA 15138-RELO, 00-1 BCA ¶ 30,890; Nicholas A. Mendaloff, GSBCA 14542-RELO, 98-2 BCA ¶ 29,983; Harlan C. Thiel, GSBCA 13668-RELO, 97-1 BCA ¶ 28,710 (1996); see David K. Goldblum, GSBCA 14142-RELO, 97-2 BCA ¶ 29,140.

Analogous situations have previously been addressed by the Board. In Mendaloff, the employee and the seller agreed that the employee would pay more for the house and the seller would in return pay the employee's closing expenses. The Board agreed that the agency was not required to reimburse the employee for the closing costs because the employee had not actually paid them. The Board's decision in Ladd is particularly apposite. There the employee, like Ms. Wire, purchased a house from a builder. The builder agreed to give a \$3000 credit to be applied by the purchasers in any manner they wished. Although Mr. Ladd and his spouse asked for the credit to be applied to various upgrades and options to be added to the house, the builder applied the credit at settlement to pay certain closing costs that would normally have been paid by the purchaser. Like claimant, Mr. Ladd knew prior to settlement that the builder planned to apply the credit to closing costs, but he did not object because he did not anticipate that he could not be reimbursed for the closing costs paid by the builder. Because the settlement sheet accurately reflected that these costs were paid by the seller, Mr. Ladd was not eligible for reimbursement.

These cases are dispositive here. The settlement sheet reflects that closing costs were paid by the seller. Although Ms. Wire might have structured the transaction differently had she realized that she would not be eligible for reimbursement of closing costs if they were paid by the builder rather than by her, neither the Board nor the agency is authorized to reimburse employees for expenses based on theoretical transactions that might have been made by the parties. See Thiel. The agency properly disallowed the claim.

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CATHERINE B. HYATT  
Board Judge