

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 22, 2001

GSBCA 15541-RELO

In the Matter of ERNESTINE S. CANTY

Ernestine S. Canty, Cordova, TN, Claimant.

Michael G. Barter, Chief, Real Estate Division, United States Army Corps of Engineers, Louisville, KY, appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Ms. Ernestine S. Canty, is a civilian employee of the United States Army Corps of Engineers (the Corps). In July 2000, she undertook a permanent change of station (PCS) move. She asks that we review a determination by her agency that she is not entitled to reimbursement for the cost of owner's title insurance, which she was required to pay at the time she sold her home at her old permanent duty station (PDS).

Background

In early June 2000, Ms. Canty was issued orders transferring her from the Defense Finance and Accounting Service in Indianapolis, Indiana, to the Corps' Finance Center in Millington, Tennessee. In late October 2000, she submitted a voucher for reimbursement of costs incurred in the sale of her home in Indianapolis. Although most of this claim was paid by Ms. Canty's agency, there is one item on which she and the agency remain in disagreement. It is a charge of \$545 which the claimant was required at settlement to pay for owner's title insurance.

The agency rejected Ms. Canty's request for reimbursement of this cost on the ground that this was a buyer's cost for which a transferred employee cannot be reimbursed unless it can be shown that this is a cost which is customarily paid in the locality by the seller.

Claimant appealed this determination within the agency. In her appeal, she explained to agency officials that she had not agreed to pay this expense for the buyer. Rather, it had been explained to her that she had no choice in the matter because this was a seller's expense. In support of her claim, Ms. Canty provided the agency with a letter from her broker and from the Indianapolis Board of Realtors. Both letters confirm that, in the Indianapolis real estate area, the cost of a purchaser's or owner's title policy is paid by the seller. In addition, Ms. Canty furnished the agency with the name and telephone number of a title company

settlement agent who was prepared to confirm this fact orally and answer any questions an agency representative might have on this issue.

The agency denied Ms. Canty's appeal. The chief of the local district's real estate division simply wrote: "It remains our opinion that the purchase of an owner's title policy is an unallowable expense in accordance with the JTR [Joint Travel Regulations]."

Discussion

As a civilian employee of the Department of Defense, Ms. Canty is subject to the provisions of the JTR which implement and, to a limited degree, supplement the Federal Travel Regulation (FTR) to which all civilian Government employees are subject. In denying Ms. Canty's appeal of the initial denial of her claim for the cost of the owner's title insurance, the agency did not identify the provision of the JTR which allegedly precludes her recovery of this cost. Neither do we know even now which provision the agency official may have had in mind since the agency has declined the Board's invitation to submit a report in this case.

Chapter 14 of the JTR discusses reimbursement of real estate expenses for relocating employees. In a section dealing with miscellaneous expenses, these regulations state that various listed expenses are reimbursable in connection with a residence sale (if customarily paid by a seller of a residence at the old PDS) to the extent they do not exceed specifically stated limitations, or in the absence thereof, amounts customarily paid in the locality of the residence. JTR C14002-A.4.a. Among the expenses listed is owner's title insurance. The pertinent subparagraph reads:

(9) Owner's title insurance policy, provided it is a prerequisite to financing or the transfer of property; or the cost of the owner's title insurance policy is inseparable from the cost of other insurance, which is a prerequisite to financing or the transfer of property[.]

Id., (9). A similar provision appears in the FTR. See 41 CFR 302-6.2(d)(1)(ix) (2000) (FTR 302-6.2(d)(1)(ix)).

Alongside the list of reimbursable miscellaneous expenses in the JTR is also a list of non-reimbursable items. First on this list is "owner's title insurance policy." This provision, however, precludes reimbursement of the cost of a policy when it is paid for by an employee in connection with the purchase -- not the sale -- of a residence for the protection of the employee. See JTR C14002-A.4.b(1); FTR 302-6.2(d)(2)(i). Since, in this case, Ms. Canty was required to pay the cost of owner's title insurance as the seller rather than the buyer, we do not consider this provision applicable. Willard T. Mays, GSBCA 14275-RELO, 98-1 BCA ¶ 29,425 (1997). We turn instead, therefore, to the provision regarding owner's title insurance which is listed among the reimbursable miscellaneous expenses.

The agency has not challenged Ms. Canty's assertion that she had no choice as to whether she would pay the cost of the buyer's title insurance. Rather, its objection to reimbursing the cost is simply that this is a buyer's cost for which a transferred employee

cannot be reimbursed unless it can be shown that this is a cost which is customarily paid in the locality by the seller.

When questions of local custom arise, the burden is on the claimant to show why he or she should prevail. 48 CFR 6104.4(c); Anna M. Wharton, GSBCA 15258-RELO, 00-2 BCA ¶ 31,011; Byron D. Cagle, GSBCA 15218-RELO, 00-1 BCA ¶ 30,903; Sara Blanding, GSBCA 14493-RELO, 98-2 BCA ¶ 29,790; Pierre S. Ware, GSBCA 14150-RELO, 97-2 BCA ¶ 29,061; Christopher L. Chretien, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701 (1996). Ms. Canty has provided evidence on local custom in support of her claim, which we find to be persuasive, particularly in view of the agency's failure or inability to rebut any of it. She has undoubtedly met her burden in this case. She may and should be reimbursed the cost of the owner's title insurance which she was required to pay at closing.

EDWIN B. NEILL
Board Judge