

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

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January 24, 2002

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GSBCA 15730-RELO

In the Matter of LARRY W. POOLE

Larry W. Poole, Fort Detrick, MD, Claimant.

G. F. Dawson, Travel Systems and Procedures Office, Defense Finance and Accounting Service, Kansas City, MO, appearing for Department of Defense.

**DANIELS**, Board Judge (Chairman).

Two Government offices disagree as to whether Larry W. Poole should be reimbursed for certain expenses he incurred in selling his home in Onslow County, North Carolina, in conjunction with his December 1999 transfer to a new duty station in Maryland. The Civilian Human Resources Office at Camp Lejeune, North Carolina, denied reimbursement of some expenses on the ground that those expenses "are not customarily paid by the seller in the residence locality." It denied reimbursement of other expenses because it thought those expenses were not reimbursable. When Mr. Poole objected, the Camp Lejeune office told him that he could ask this Board to review its determination, but requested that he submit his claim through the Kansas City Center of the Defense Finance and Accounting Service (DFAS). DFAS believes that Mr. Poole has proved that all the contested expenses are customarily paid by sellers in Onslow County and that he should therefore be reimbursed for those expenses. DFAS has asked us to resolve this dispute.

With minor exceptions, we agree with DFAS that the Government must reimburse Mr. Poole for the expenses in question.

The first group of expenses – as to which Camp Lejeune denied reimbursement because they are allegedly "not customarily paid by the seller in the residence locality" – consists of fees paid for loan origination, preparation of a credit report, title examination, title insurance, recording of records, and a survey of the property. All of these expenses are reimbursable if they meet two tests. First, they must be "customarily paid by the seller of a residence in the locality of the old official station." Second, they must be in amounts which do not exceed (a) limitations which are stated in regulation, or (b), if no such limitations are stated, amounts customarily paid in the locality of the residence. 41 CFR 302-6.2(c)(1) (title examination), -6.2(c)(2) (title insurance, recording, survey), -6.2(d)(1)(ii) (loan origination

fee), -6.2(d)(1)(iii) (credit report), -6.2(d)(1)(ix) (title insurance) (1999).<sup>1</sup> No question of limitation of amount has been raised here; we focus only on whether the fees were customarily paid by the seller in Onslow County, North Carolina, in December 1999.

The burden is on the claimant to persuade us that the test of customariness is met. Monika J. Dey, GSBCA 15662-RELO (Dec. 20, 2001) (and cases cited therein). Mr. Poole has told us that he "consulted with several real estate agents and one appraiser in Onslow County and all have stated that the expenses [in question] are items that are indeed customarily paid by the seller." He has also provided us with an electronic mail message from one of the agents which states:

[I]n the Camp Lejeune area it is the custom that the seller pay all closing costs and prepaids over \$500 and it's been that way since the 60's. The loan origination fee, appraisal fee, credit report, prepaids, recording fees, title insurance, flood certification, survey, and all that stuff that is required to get the loan done, and the house out of your name are customarily paid by the seller.

The Civilian Human Resources Office at Camp Lejeune has provided no evidence in response. The statements provided by Mr. Poole are persuasive. We conclude that he has met his burden of proof. Consequently, he must be reimbursed for the expenses in question.

Camp Lejeune also denied reimbursement for four expenses – appraisal fee, tax service fee, overnight fee, and document preparation fee – on the ground that these expenses are not reimbursable.

As to one of these expenses – the tax service fee – Camp Lejeune is correct. No finance charge is reimbursable unless it is of a variety specifically made reimbursable by the Federal Travel Regulation (FTR). 41 CFR 302-6.2(d)(2)(v). A tax service fee is not denominated as a finance charge, but it is paid incident to and as a prerequisite to the extension of credit, so it is considered to be a finance charge. The FTR does not specifically make a tax service fee reimbursable. Consequently, the agency cannot reimburse Mr. Poole for his payment of this fee. Pamela R. Harris, GSBCA 15645-RELO, 01-2 BCA ¶ 31,640 (and cases cited therein).

A document preparation fee is also a finance charge. It is, however, reimbursable, because it is a kind of loan origination fee, and a loan origination fee is one of those finance charges which is specifically made reimbursable by the FTR. The regulation contains a limitation on the total amount of loan origination fee which may be repaid, but this limitation does not impact Mr. Poole's reimbursement, since the total fees he paid for loan origination and document preparation do not exceed the limitation. 41 CFR 302-6.2(d)(1)(ii); Harris.

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<sup>1</sup>With regard to these and other matters discussed in this opinion, the Department of Defense's Joint Travel Regulations (JTR) contain similar provisions at JTR C14002.

Appraisal fees are plainly made reimbursable by the FTR. 41 CFR 302-6.2(b); Kenneth E. Ley, GSBCA 15529-RELO (Nov. 30, 2001). The agency must repay Mr. Poole's appraisal fee.

An overnight fee – an amount paid for speedy delivery of documents by a courier – is reimbursable if meets two tests: It must have been incurred for services procured by the employee or someone working with him (rather than the lender, so as to avoid the finance charge characterization). Further, the services must have been necessary for the sale of the residence (rather than having been secured merely for personal convenience). Daniel H. Coney, GSBCA 15506-RELO (Aug. 15, 2001). There is no evidence in our record as to these matters. If Mr. Poole can produce it, and the agency finds it convincing, he should be reimbursed for this expense; if not, he must absorb the cost.

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STEPHEN M. DANIELS  
Board Judge