

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

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August 4, 2004  
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GSBCA 16386-RELO

In the Matter of JEFFREY W. ROSE, II

Jeffrey W. Rose, II, Ankeny, IA, Claimant.

Shirley Lee Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**HYATT**, Board Judge.

In general, when an employee has already been reimbursed the maximum loan origination fee of one percent of the loan amount, additional fees assessed by the lender for administrative expenses are not recoverable.

Background

In December 2002, claimant, Jeffrey W. Rose, II, was transferred by the Army Corps of Engineers. His old duty station was at Clarks Hill, South Carolina, within the Savannah District. His new duty station is in Johnston, Iowa, part of the Rock Island District. In connection with this transfer, he was authorized relocation benefits. He purchased a home in Iowa and submitted a voucher for the expenses incurred, for which he was reimbursed. Subsequently, an audit was performed and the agency determined that certain items that were reimbursed should not have been paid. Mr. Rose disputes only one of the items disallowed by the audit -- he has challenged the Corps' determination that a closing cost denominated as a "loan commitment fee" in the amount of \$600 is not reimbursable.

Claimant contends that the loan commitment fee charged by Wells Fargo in connection with his home purchase is a normal and customary processing fee charged by that bank. He has submitted a letter from Wells Fargo, confirming that the "commitment fee of \$600 is a normal and customary cost for processing a mortgage loan with Wells Fargo in Iowa." The letter further states that the fee "covers the costs to process the application since we cannot charge an application fee in Iowa." In response to the Board's inquiry as to whether this fee is paid by all applicants for a mortgage, whether credit is extended or not, claimant has provided a second letter from Wells Fargo stating that "the commitment fee on mortgages . . . is part of our normal closing costs that are charged on every closing [and is] charged to cover the costs of processing the loan."

The agency maintains that a loan commitment fee is a type of finance charge and is not reimbursable under the applicable regulations. Although the agency disallowed the loan commitment

fee charged by Wells Fargo, it did authorize the payment of a loan origination fee in the amount of \$1600, which represented one percent of the loan amount.

#### Discussion

In general, real estate transaction charges which are paid incident to and as a prerequisite to the extension of credit are considered to be finance charges under the Federal Travel Regulation (FTR), the fundamental regulation governing benefits for federal civilian employees who are transferred from one permanent duty station to another. Finance charges are not reimbursable except to the limited extent provided under the FTR. 41 CFR 302-11.200(f)(2)(v) (2002); Verna Pope, GSBCA 15718-RELO, 02-1 BCA ¶ 31,822. The Joint Travel Regulations (JTR), which supplement the FTR and apply to civilian employees of the Defense Department, contain similar limitations. JTR 14002-4.a(2). The major exception to this rule is the payment of a loan origination fee when charged by the lender for administrative expenses, such as costs of originating the loan, processing documents, and related work of processing the mortgage loan. In general, a loan origination fee of up to one percent of the mortgage amount may be reimbursed under the regulations. 41 CFR 302-11.200(f)(2)(v); Virginia Wensley Koch, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625; Pope. An application fee that is charged by the lender to all applicants for credit, without regard to whether credit is ultimately extended, is also reimbursable. Cindy L. Luciano, GSBCA 16403-RELO (July 15, 2004); Jeffrey B. Hicks, GSBCA 15860-RELO, 03-1 BCA ¶ 32,083 (2002).

Ordinarily, an item termed a "loan commitment fee" would denote a charge to hold a loan at an agreed rate, which would be regarded as a charge imposed incident to the extension of credit. David P. Brockelman, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971. Here, both claimant and the mortgage company, Wells Fargo, maintain that the charge is in the nature of an administrative fee for the processing of the paperwork attendant to the loan. Although the lender originally described this fee as an "application fee," it apparently does not charge this fee to all who apply for credit, without regard to whether the loan is ultimately made. Given the statements made by Wells Fargo, the fee appears to be the type of administrative charge that is defined in the regulations to constitute part of the loan origination fee. Mr. Rose has already been compensated for a loan origination fee in the maximum amount of \$1600. Thus, the additional fee would only be payable if claimant could satisfactorily show that the higher rate (1) does not include prepaid interest, points, or a mortgage discount, and (2) was customarily charged in the locality where the residence is located. 41 CFR 302-11.201. The record before us does not establish this. Claimant has shown merely that the additional fee is customarily charged by one particular lender in the locality where the residence is located.

Once the agency has reimbursed the maximum allowable loan origination fee, the employee cannot be further compensated for added fees that serve the same purpose, however denominated by the lender. Koch; Gary C. Duell, GSBCA 15812-RELO, 02-2 BCA ¶ 32,034; Daniel H. Coney, GSBCA 15506-RELO, 01-2 BCA ¶ 31,610; Jakie A. Lowery, GSBCA 15538-RELO, 01-2 BCA ¶ 31,603. Accordingly, the Corps properly disallowed the \$600 loan commitment fee assessed by Wells Fargo.

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CATHERINE B. HYATT  
Board Judge