

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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July 21, 2005

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GSBCA 16648-RELO

In the Matter of FLOYD C. FREEMAN

Floyd C. Freeman, Salida, CO, Claimant.

Kathleen W. San Salvador, Certifying Officer, Office of the Chief Financial Officer, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

**GOODMAN**, Board Judge.

Claimant, Floyd C. Freeman, is an employee of the United States Department of Agriculture. He has requested that this Board review the agency's decision to deny reimbursement of certain costs he incurred during a permanent change of station (PCS) move from Salem, Oregon, to Morrison, Colorado. He reported to duty at his new duty station on November 17, 2003.

## Courier Fee (\$20)

An amount paid for the expedited delivery of documents is reimbursable provided two requirements are met. First, the cost must have been incurred for services procured by the employee or someone working with the employee (rather than the lender, so as to avoid characterization of the cost as a finance charge). Second, the service must have been necessary for the sale of the residence (rather than having been secured merely for personal convenience). *Rodney D. Hatleib*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004); *Kathy D. Peter*, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003). In the absence of a showing that these requirements were met, the agency denied this item.

Claimant has supplied a letter from the title company that handled the settlement of his home at the new duty station, stating that the overnight courier was required by the title company and not by the lender. Claimant was in temporary quarters awaiting the settlement on his home, and the sellers had already moved out of the area. The courier was used to expedite the settlement by communicating with the sellers and resulted in the claimant spending less time in temporary quarters. We have previously allowed reimbursement of courier fees to expedite a settlement and reduce an employee's time in temporary quarters. *See, e.g., Kathy D. Peter*. Claimant has met his burden and is entitled to reimbursement for the courier fee.

#### Radon Inspection Fee (\$90)

Reimbursement of a radon inspection fee is governed by the Federal Travel Regulation (FTR). That regulation, at 41 CFR 302-11.200(f)(11) (2003), provides that “[e]xpenses in connection with environmental testing and property inspection are reimbursable only when they meet all three of the following tests: the fees must be (a) customarily paid by the purchaser of a residence in the locality in question, (b) in an amount no greater than is customarily paid in that locality, and (c) required by federal, state, or local law, or by the lender as a precondition to the purchase.” Claimant has supplied letters from the lender indicating that all three tests were met. Claimant is entitled to reimbursement of this fee.

#### Mortgage Broker Fee (\$300)

The mortgage broker fee was incurred by claimant when he purchased a home at his new duty station. The agency denied reimbursement, erroneously relying upon the provision in the FTR which states that the agency will not pay “[b]roker fees or commissions paid in connection with the purchase of a home at the new official station.” 41 CFR 302-11.202(b). This provision refers to real estate broker fees, not mortgage broker fees.

Claimant has submitted a letter from the mortgage broker indicating that this fee is a processing fee. A processing fee is a major component of a loan origination fee. *See, e.g., Timothy R. DeFoggi*, GSBCA 16496-RELO, 05-1 BCA ¶ 32,907.

The FTR does not specifically authorize reimbursement of fees paid to a mortgage broker. We have held that such fees, under certain circumstances, should be considered as part of the reimbursable loan origination fee. *Michael L. Rivera*, GSBCA 16488-RELO, 05-1 BCA ¶ 32,817. While the regulations contemplate that ordinarily the loan origination fee will be charged by the lender, if it is clear that the administrative services for which such a fee is reimbursable are performed wholly or partially by another party, such as a mortgage

broker (as in this case) the employee may be reimbursed for the other party's charge for such services.

The general rules otherwise applicable to reimbursement for loan origination fees are applicable to such fees charged by the brokers or a combination of fees charged by a broker and lending institution. *Philip R. Merkel*, GSBCA 14668-RELO, 98-2 BCA ¶ 30,094. An employee may be reimbursed for loan origination fees and similar charges in an amount not in excess of one percent of the loan amount. 41 CFR 302-11.200(f)(2).

Claimant has submitted a letter stating that he had a loan amount of \$229,900 to accomplish closing on the new residence, consisting of two mortgages in the amounts of \$145,200 and \$84,700. Documentation from the settlement indicates claimant was to pay a loan origination fee of \$1452 to the lender and the \$300 processing fee to the mortgage broker. It appears that claimant was reimbursed \$1452 for the loan origination fee charged by the lender. As the total of the loan origination fee charged by the lender and the processing fee charged by the mortgage broker is less than one per cent of the loan amount, claimant is also entitled to reimbursement of the mortgage broker's fee.

#### Banking Fee (\$380)

The agency denied reimbursement of a banking fee imposed by the lender, as it interpreted this fee to be a finance charge. The FTR, at 41 CFR 302-11.202 (g), states that the agency will not pay "[a]ny fee, cost, charge or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, as amended, and Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR part 226), unless specifically authorized in 41 CFR 302-11.200."

In *Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625, we held that a finance charge includes any charge imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. This banking fee is such a charge, as a letter from the lender submitted from claimant indicates that this charge was for final review of the loan documents. Claimant is not entitled to reimbursement of this fee.

Decision

Claimant is entitled to reimbursement of the courier fee of \$20, the radon inspection fee of \$90, and the mortgage broker fee of \$300.

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ALLAN H. GOODMAN  
Board Judge