

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 19, 2006

GSBCA 16754-RELO

In the Matter of MARTHA V. HOOKS

Martha V. Hooks, Hampton, Virginia, Claimant.

Colonel R. Eric Rissling, Office of Staff Judge Advocate, Headquarters 1st Fighter Wing, Department of the Air Force, Langley Air Force Base, Virginia, appearing for Department of Defense.

DeGRAFF, Board Judge.

In June 2005, the Department of Defense (DoD) transferred Martha V. Hooks from one permanent duty station to another and authorized her to incur reimbursable real estate transaction expenses. Ms. Hooks purchased a house near her new duty station and submitted a claim to DoD for some of the transaction expenses she incurred. DoD decided not to reimburse Ms. Hooks for an overnight courier fee (\$25), a tax service fee (\$70), the cost of owner's title insurance (\$623.12), and several days of interest on her loan (\$279.65). It decided to reimburse her in part for a recording fee (\$78), state tax stamps (\$1458), county/city tax stamps (\$485.80), the cost of lender's title insurance (\$808.80), and a closing fee (\$195) paid to Shaheen Law Group. Ms. Hooks asks us to review DoD's decision.

Discussion

When an agency transfers an employee from one permanent duty station to another within the United States and the transfer is in the agency's interest, federal law requires the agency to pay the employee's real estate purchase transaction expenses. 5 U.S.C. § 5724a(d) (2000). The extent of the agency's obligation is set out in the Federal Travel Regulation (FTR), which applies to all civilian employees, and the Joint Travel Regulations (JTR),

which apply to civilian employees of DoD. A review of the regulations in effect when Ms. Hooks transferred shows DoD's decision was not entirely correct.

DoD should reimburse Ms. Hooks for the overnight courier fee. The regulations say agencies will reimburse employees for expenses incurred for required services so long as the expenses are customarily paid and do not exceed amounts customarily charged in the locality. 41 CFR 302-11.200(f)(12) (2004); JTR C14002-A.6. These regulations allow an agency to reimburse an amount paid for courier service if it is not a finance charge imposed by a lender and if the use of a courier service was truly required and not merely a matter of personal convenience. *Rodney D. Hartleib*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004). Shaheen Law Group explained it used an overnight courier in order to send paperwork to Ms. Hooks's lender. The firm said it used its account with the courier to pay for the service and did so in order to meet a requirement imposed by the lender, which was to deliver the paperwork overnight. Ms. Hooks's real estate agent said Shaheen Law Group does most of the relocations in the area and also said the fees Ms. Hooks paid at closing were the same as those paid by other purchasers. In addition, the real estate agent said the overnight fee is a standard fee charged by every closing office. Ms. Hooks contacted two title companies, one of which said the charge for an overnight fee would be approximately \$25 and the other of which said the charge would be \$20. The information provided by the law firm, the real estate agent, and the two title companies shows the expense Ms. Hooks incurred for the overnight courier fee was for a required service, was customarily paid, and does not exceed the amount customarily charged in the area. Thus, according to the regulations, DoD should reimburse Ms. Hooks for the overnight courier fee.

DoD correctly decided not to reimburse Ms. Hooks for the tax service fee, the cost of owner's title insurance, and interest. The tax service fee is part of the finance charge, and such charges are not reimbursable. *Hartleib*; 41 CFR 302-11.202(g); JTR C14002-A.4.b(5). The cost of owner's title insurance is not reimbursable except in circumstances not present here. 41 CFR 302-11.200(f)(9), -11.202(c); JTR C14002-A.4.a(9), -A.4.b(1). Amounts paid for interest on loans are also not reimbursable. 41 CFR 302-11.202(d); JTR C14002-A.4.b(2).

DoD denied reimbursement in full for the recording fee, state tax stamps, county/city tax stamps, the cost of lender's title insurance, and the closing fee paid to Shaheen Law Group because DoD concluded the amounts Ms. Hooks paid were more than the amounts customarily paid by purchasers in the area. In its submission to us, DoD said it contacted three independent sources in order to establish ranges of amounts customarily paid in the area. DoD said it found the amounts paid by Ms. Hooks fell outside the ranges of amounts customarily paid, so it did not fully reimburse her for the amounts she paid.

Ms. Hooks said she believes the ranges DoD used to evaluate her claim are approximately eight years old. DoD did not refute her statement and did not say when it contacted its three sources or when it developed its ranges. Ms. Hooks contacted DoD's three independent sources and one of them responded to her request for information regarding fees charged in the area. This source told Ms. Hooks the amounts she paid were in line with the normal range of charges in the area. In fact, the source said, the costs she paid were either standard or below normal. In addition, Ms. Hooks contacted three other sources of information regarding closing costs in her area. According to these three sources, the closing fee Ms. Hooks paid was below average in her area, while the recording and tax stamp fees she paid were almost precisely the same as anyone else would have paid. The amount Ms. Hooks paid for lender's title insurance fell between the highest and the lowest of the three sources' estimates. As Shaheen Law Group pointed out, the recording fee and the tax stamp fees are set by the Commonwealth of Virginia, which means the amount charged to Ms. Hooks was the amount customarily charged in the area to purchasers of similar homes. Shaheen Law Group said its closing fee was below the amount customarily charged in the area and also said the amount Ms. Hooks paid for title insurance was within the range set by insurance industry regulators for such insurance. Ms. Hooks's real estate agent confirmed that the closing fee was very low, that the recording fees are charged by the government, and that all of the amounts Ms. Hooks paid at closing were not out of line in any way with amounts charged to other purchasers in the area.

DoD should reimburse Ms. Hooks in full for the recording fee, state tax stamps, county/city tax stamps, the cost of lender's title insurance, and the closing fee paid to Shaheen Law Group. Such expenses are reimbursable, provided the amounts paid by an employee do not exceed amounts customarily charged in the area. 41 CFR 302-11.200, JTR C14002. The evidence put forward by the agency regarding customary charges in the area is greatly outweighed by the evidence put forward by Ms. Hooks. Thus, according to the regulations, DoD should reimburse Ms. Hooks in full for these costs.

The claim is granted in part. DoD should reimburse Ms. Hooks for the overnight courier fee (\$25), the recording fee (\$78), state tax stamps (\$1458), county/city tax stamps (\$485.80), the cost of lender's title insurance (\$808.80), and a closing fee (\$195) paid to Shaheen Law Group. It should not reimburse her for the tax service fee (\$70), the cost of owner's title insurance (\$623.12), and several days of interest on her loan (\$279.65).

MARTHA H. DeGRAFF
Board Judge