

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 7, 2006

GSBCA 16764-RELO

In the Matter of ANDREW PEREZ

Andrew Perez, New Orleans, LA, Claimant.

Yvonne Barbier, Acting Chief, Local Sponsor and Inleasing Acquisition Branch,
United States Army Corps of Engineers, Department of the Army, New Orleans LA,
appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Mr. Andrew Perez, is a civilian employee of the Army Corps of Engineers. He asks that we review his agency's denial of certain costs he incurred in conjunction with the purchase of a residence at his new permanent duty station (PDS) in New Orleans, Louisiana. For the reasons set out below, we conclude that two of the costs claimed are allowable. As to whether the third cost claimed is reimbursable, this will depend on Mr. Perez's plan for utilizing his new residence.

Background

On May 3, 2005, Mr. Perez went to settlement on his new residence in New Orleans. The real estate transaction expenses on which he and his agency remain in disagreement are: an appraisal fee of \$450, title insurance in the amount of \$497, and courier fees amounting to \$60.

With regard to Mr. Perez's claim for reimbursement of the \$450 appraisal fee, the agency has awarded him no more than \$225. The agency bases its denial of the remaining portion of the \$450 fee on section C14000-F.2.a of the Department of Defense Joint Travel Regulations (JTR), to which Mr. Perez is subject as a civilian employee of the Department.

This provision of the JTR states that if the employee's residence is a duplex or another type of multiple occupancy dwelling which is occupied only partially by the employee, expenses shall be reimbursed on a pro rata basis.

As to the second item still in dispute, the agency has advised Mr. Perez that it will reimburse him no more than \$30 for the cost of the lender's title insurance. Its reason for limiting reimbursement to this amount is that the settlement sheet itself states that Mr. Perez paid \$30 for lender's title insurance coverage and \$804 for owner's coverage. Since JTR C14002-A.4.a(8) provides for reimbursement only of the cost of title insurance purchased by the employee for the protection of the lender, the agency has concluded that reimbursement of the cost of the title insurance cannot go beyond the \$30 shown on the settlement sheet as the cost of that insurance.

Finally, the agency denied Mr. Perez's claim of \$60 for courier services on the ground that the claimant failed to demonstrate that these services were actually required at the time -- as opposed to their being used merely for reasons of personal convenience.

Discussion

With regard to the appraisal fee of \$450, Mr. Perez concedes that the residence he has purchased at his new PDS is a duplex, but he believes that he should be reimbursed at least the amount of what an appraisal of a single family dwelling would have cost. In support of his position, Mr. Perez has submitted a letter from his lender stating that the appraiser who completed the appraisal of Mr. Perez's home typically charges \$300 for an appraisal of a single-family home. This amount is said to be the minimum fee for a residential appraisal and is not based upon the value of the home. His request for reimbursement of the appraisal fee does not go beyond this amount.

Neither the agency nor the claimant has addressed what we consider to be the key factor in applying JTR C14000-F.2.a. This limitation of reimbursement of an appraisal fee to the claimant's pro rata share applies only to situations where the dwelling is only partially occupied by the claimant. Because the dwelling is a duplex, the agency understandably has assumed that the building will be occupied only partially by Mr. Perez. Although Mr. Perez apparently believes that his duplex should be treated as a single family dwelling, he, nevertheless, has not explicitly addressed the issue of whether he plans to occupy it in whole or in part.

Conceivably Mr. Perez, as other owners of a duplex do on occasion, plans to remove walls and partitions in the building with the intent of turning it into a single family unit. If Mr. Perez can reasonably demonstrate that the duplex which he has purchased is to be used

as a single family dwelling, then the \$300 he seeks should be paid to him. If this is not his intention, the agency has acted correctly in limiting reimbursement, pursuant to JTR C14000-F.2.a, to what it assumes to be Mr. Perez's pro rata share. If the agency's assumption that the pro rata share is fifty percent is incorrect -- which it would be, for example, if one of the units is significantly larger than the other -- then it is incumbent on Mr. Perez to provide credible evidence of what his pro rata share actually is.

The agency's determined adherence to the figures shown on the settlement sheet as the costs of owner's and lender's title insurance is not in keeping with previous decisions of this Board dealing with similar facts. In reviewing the costs listed for title insurance, it is obvious to us that the cost of the title insurance purchased for the lender has been deeply discounted when compared to the cost of the title insurance purchased by the new owner to protect his own interest. We have in the past had occasion to comment on situations such as this. Typically, the transferred employee elects to take advantage of an insurer's offer to sell two title insurance policies, one covering the lender's interest and another covering the employee's interest. At settlement, the employee finds that, in pricing the two policies, the insurer has shifted a disproportionate number of the costs associated with the two policies from the lender's policy to the owner's policy.

When this occurs, the transferred employee stands to lose much of his or her relocation benefit if reimbursement for the cost of lender's title insurance is held to the amount of the discounted price shown on the settlement sheet. Of course this result can be avoided if the employee simply declines the insurer's offer to provide a second policy covering the employee's interest. As we have previously pointed out, however, this is hardly a practice to be encouraged. The purchase of owner's title insurance could well be in the transferred employee's interest, and the decision to purchase it should not result in the partial forfeiture of a benefit to which the employee would otherwise be entitled.

The solution to this problem used by the General Accounting Office (now the Government Accountability Office), our predecessor in settling travel and relocation claims of government employees, was to approve reimbursement of the expense up to, but not in excess of, the cost of the lender's title insurance *if the coverage had been purchased separately* -- regardless of how the cost of the policies might be apportioned on the settlement sheet. We have concluded that this approach is both practical and sensible and have adopted it as our own. *Nadab O. Bynum*, GSBCA 16715-RELO, 05-2 BCA ¶ 33,100; *Thomas Gene Gallogly*, GSBCA 15891-RELO, 03-1 BCA ¶ 32,091 (2002).

In support of his claim for reimbursement for the cost of the lender's title insurance, Mr. Perez has provided a letter from the settlement agent who presided at the closing on Mr. Perez's new residence. The agent writes that, had Mr. Perez purchased title insurance for

the lender alone, the charge would have been \$497. In keeping with our earlier decisions, we find this sufficient support for Mr. Perez's claim for reimbursement of that amount.

In response to the agency's denial of his claim for reimbursement of courier fees in the amount of \$60, Mr. Perez explains that these charges were incurred to meet a requirement of his lenders. The settlement sheet shows that, to fund the purchase of his new home, Mr. Perez secured two mortgages. The costs associated with each mortgage are shown on separate pages of the settlement sheet, and on each page, a courier fee of \$30 is listed as an additional expense. Mr. Perez explains that these charges covered the cost of overnight transmission of settlement documentation to each of the lenders in accordance with their requirement that this documentation be provided to them within twenty-four hours of closing. A letter in the record from one of the lenders confirms this fact. We find this information sufficient to conclude that the charges in question were not incurred by the lender but, rather, by someone working on behalf of the claimant and for a reason other than the personal convenience of the claimant. They are, therefore, reimbursable. *See Martha V. Hooks*, GSBCA 16754-RELO (Jan. 19, 2006); *Douglas Tastad*, GSBCA 16543-RELO, 05-1 BCA ¶ 39,957; *Kathy D. Peter*, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003) (and cases cited therein).

Decision

Mr. Perez's claims for reimbursement of the cost of lender's title insurance in the amount of \$497 and of courier fees in the amount of \$60 are granted. As to his claim for reimbursement of an appraisal fee, this is allowable only to the extent that he can demonstrate to the agency that its assumption that he will occupy no more than fifty percent of the duplex he has purchased is, in fact, incorrect.

EDWIN B. NEILL
Board Judge