

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 5, 2006

GSBCA 16819-RELO

In the Matter of SHANE DOUTHITT

Shane Douthitt, Kennewick, WA, Claimant.

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

PARKER, Board Judge.

Background

In connection with his September 2005 transfer from Mead, Washington, to Umatilla, Oregon, Shane Douthitt was authorized a real estate expense allowance. When Mr. Douthitt purchased a home at his new duty station, he filed a claim that included, among other items, a request for reimbursement of an “underwriting fee” of \$395 charged by the lender. His employer, the Army Corps of Engineers, denied that portion of the claim on the basis that the fee was an unallowable finance charge. Mr. Douthitt has asked the Board to review the agency’s decision, pointing out that the lender did not charge a loan origination fee, but instead charged the underwriting fee.

Discussion

Although the Federal Travel Regulation (FTR) provides for reimbursement of certain real estate-related expenses incurred by a transferred employee, the regulation specifically prohibits reimbursement for interest on loans, points, and mortgage discounts, as well as any fee, cost, charge, or expense determined to be a part of the finance charge under the Truth

in Lending Act and Regulation Z issued by the Board of Governors of the Federal Reserve System. 41 CFR 302-11.202(d), (g) (2005). The Department of Defense's Joint Travel Regulations (JTR) are to the same effect. JTR C14002-A(4)(b)(2), (5).

An exception to the general rule prohibiting reimbursement of finance charges allows the agency to reimburse:

loan origination fees and similar charges such as loan assumption fees, loan transfer fees or other similar charges not to exceed 1 percent of the loan amount without itemization of the lender's administrative charges . . . if the charges are assessed in lieu of a loan origination fee and reflects charges for services similar to those covered by a loan origination fee[.]

41 CFR 302-11.200(f)(2); *see* JTR C14000-A(4)(a)(2). A loan origination fee is a finance charge paid by the borrower to compensate the lender for administrative-type expenses incurred in originating and processing a loan. *Michael L. Rivera*, GSBCA 16488-RELO, 05-1 BCA ¶ 32,817 (2004).

The Board, following a long line of decisions by the Comptroller General, has held repeatedly that an underwriting fee is considered to be part of the finance charge and, consequently, not reimbursable. *E.g.*, *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722; *Craig A. Czuchna*, GSBCA 15799-RELO, 02-2 BCA ¶ 31,898. Moreover, such a fee, which is "generally charged by a lender to cover the cost of having a loan underwritten," *Czuchna*, has traditionally been treated as a charge which is neither similar to, nor an element of, a loan origination fee. *See Lockett; Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625. Accordingly, under the FTR, an underwriting fee may not be reimbursed in lieu of a loan origination fee.

ROBERT W. PARKER
Board Judge