

Putnam



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dr. Hoyle Leigh

File: B-239343

Date: October 11, 1990

DECISION

A decision has been requested as to whether Dr. Hoyle Leigh, an employee of the Department of Veterans Affairs (VA), may be reimbursed an additional 1 percent loan origination fee (1 percent has been reimbursed by VA) incurred in the purchase of a residence incident to his transfer from West Haven, Connecticut, to Fresno, California, on June 12, 1989.^{1/}

In a recent decision, Wayne Pfeffer, B-234288, Feb. 8, 1990, 69 Comp. Gen. _____, we held that in order for an employee to be reimbursed for a loan origination fee in excess of 1 percent of the amount of the mortgage loan, he must show by clear and convincing evidence, including an itemization of the lender's administrative charges, that the higher rate does not include prepaid interest, points, or a mortgage discount. In addition, we stated that the higher rate must be shown to be a rate customarily charged in the locality of the residence.^{2/}

Dr. Leigh has submitted a letter from the lender dated February 5, 1990, which itemizes the 2 percent loan origination fee of \$3,200 charged as follows:

"Production Personal Expense	\$1,129.60
Management Expense	464.00
Clerical Expense	614.40
Premises Expense	128.00
Other Miscellaneous Expenses Directly Related to loan production	864.00*
Total	\$3,200.00

* Does not include points or interest."

^{1/} The request, along with Dr. Leigh's reclaim travel voucher, has been submitted by Mr. Frank D. Derville, Deputy Assistant Secretary for Financial Management, Department of Veterans Affairs.

^{2/} See section 302-6.2(d)(1)(ii)(A) and (B), Federal Travel Regulation, effective May 10, 1989.

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The lender also states that the 2 percent loan origination fee assessed in May 1989 is the rate customarily charged in the Fresno area. We have held that a lender's statement, standing alone, is insufficient to establish the accuracy of that rate.^{3/} In any event, the customary rate for loan origination fees in the locality of the residence is irrelevant unless there is clear and convincing evidence of the lender's administrative costs.

In Pfeffer, cited above, we stated that clear and convincing evidence generally exists when there is no serious or substantial doubt as to the correctness of an allegation or conclusion and that agencies should apply this standard in reviewing evidence supporting claims for loan origination fees higher than 1 percent.

In this case, Dr. Leigh has furnished a statement of the lender itemizing the expenses included in the 2 percent fee. However, the VA notes that the lender's itemization is not a list of actual expenses incurred, but rather a proration of the charges to total 2 percent of the amount of the mortgage loan. The agency also notes that it is not clear what services were performed for "production personal expense" of \$1,129.60, and "other miscellaneous expenses directly related to loan production" of \$864.

Thus, the VA found that this itemization was subject to substantial doubt as to the identity of the itemized expenses and it determined that the employee's evidence was not clear and convincing as to the lender's administrative costs. We find no basis to disagree with the this determination.

Accordingly, based on the present record, Dr. Leigh has not met his burden of proof and may not be reimbursed the additional 1 percent loan origination fee charged him by the lender. The disallowance of the claim by the VA is sustained.


James F. Hinchman
General Counsel

^{3/} Gary A. Clark, B-213740, Feb. 15, 1984.