

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-214757

DATE: September 5, 1984

MATTER OF: Mark W. Spaulding

DIGEST:

- (1) In connection with his purchase of a house at his new duty station a transferred employee was charged a loan application fee of \$200 plus a loan origination fee of 3 percent of the loan amount, half of which was paid at the time the lending institution committed itself to loan this money and the other half at settlement. The agency reimbursed the \$200 fee plus 1/2 of the loan origination fee. That settlement is sustained since in the circumstances of this case any additional payment would amount to reimbursement for a cost in the nature of a loan discount or points.
- (2) The Federal Travel Regulations require that in order to qualify for expense reimbursement occupancy of temporary quarters must begin not later than 30 days after the employee reports to his new duty station or not later than 30 days from the date the family vacates the residence at the old duty station. A transferred employee who stayed with friends for more than 30 days after he and his family traveled to the new station may not be reimbursed for temporary quarters and subsistence expenses incurred when they stayed in a motel after time to qualify had expired.

An employee paid a \$200 loan application fee plus a 3 percent loan origination fee, half of which was paid at the time the lending institution agreed to make the loan and the other half at time of settlement. The agency disallowed reimbursement of 1/2 of the loan origination fee because it considered that amount to be a finance charge. We concur in the agency finding that additional reimbursement for the loan origination fee in this case should not be allowed since it is obviously

a mortgage discount or points and not a charge for administrative costs. Also the employee is not entitled to reimbursement of costs he incurred while occupying temporary quarters since he did not begin to occupy those quarters within the time limits prescribed in the Federal Travel Regulations.¹

LOAN ORIGATION FEE

Mr. Mark W. Spaulding, an employee of the Department of Agriculture, was transferred from Washington, D.C., to New York, New York, under a travel authorization dated February 10, 1983. He purchased a residence at his new duty station and claimed reimbursement of a loan application fee of \$200 and a 3 percent loan origination fee of \$2,610. One half of this amount, or \$1,305, was paid as required by his bank at the time its commitment letter was issued. The remainder was paid at settlement. The agency has reimbursed Mr. Spaulding the loan application fee and that part of the loan origination fee which was paid at settlement but disallowed that part paid when the loan was approved on the grounds that it was a finance charge under the Truth and Lending Act. The agency apparently based its disallowance on our holding in Richard W. Jones, B-191040, November 29, 1978. That case held that where an employee paid a lump-sum loan origination fee, part of which was a commitment fee, the fee was a finance charge under Regulation Z and not reimbursable.

The employee contends that the \$1,305 paid when the mortgage was approved was not a commitment fee but one-half the loan origination fee which is reimbursable under para. 2-6.2d(1)(b) of the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1983). Therefore, he has reclaimed that part of the fee, \$1,305, originally disallowed by the agency. The agency requests our determination in view of recent changes to the Federal Travel Regulations regarding reimbursement of these types of expenses.

¹ W. D. Moorman, a certifying officer with the National Finance Center, Department of Agriculture, presented the question concerning reimbursement of the loan origination fee. Mr. Spaulding, the employee involved, presented his claim for temporary quarters and subsistence expenses directly.

We have recently considered the amendment to the Federal Travel Regulations which included loan origination fees as allowable items of cost in light of the fact that in certain cases those fees amounted to as much as 5 percent of the loan amount and were identified also as mortgage discounts or points. Roger J. Salem, B-214018, June 28, 1984, 62 Comp. Gen. _____. We concluded that to the extent loan origination fees represented points or a mortgage discount they were not a reimbursable cost. This decision was predicated on the expressed intent of the General Services Administration when they authorized reimbursement of loan origination fees which was to allow reimbursement of the lending institution's charge for administrative costs involved in extending credit. The General Services Administration did not intend to authorize reimbursement of mortgage discounts or buyer's points and retained the prohibition against reimbursement of these charges.

Thus, a charge which is identified as a loan origination fee but is actually a mortgage discount or points is not reimbursable.

Under the reasoning of that decision Mr. Spaulding would be entitled to reimbursement of the \$200 loan application fee but probably not the 3 percent loan origination fee since it appears that the application fee was charged to cover administration costs while the 3 percent charge was in the nature of a mortgage discount or points. However, since it is not entirely clear from the facts presented just what part of the 3 percent charge was a mortgage discount and in view of the lack of clear guidelines with regard to the reimbursement of loan origination fees, we will not object to the settlement by the agency which allowed \$200 plus 1-1/2 percent loan origination or similar fees. Reimbursement of an additional amount must be denied because it clearly represents mortgage discount or points.

TEMPORARY QUARTERS SUBSISTENCE EXPENSES

The Department of Agriculture also disallowed Mr. Spaulding's claim for temporary quarters and subsistence expenses in the amount of \$2,158.74. The basis for this was FTR para. 2-5.1e.

Mr. Spaulding reported to his new duty station in April 1983. His family remained at the old duty station until

their residence was sold in July 1983. From April 1983 until October 1983 he, and later his family, stayed with an acquaintance incurring little in temporary lodging expenses. However, the new house which they had purchased was not completed until November 1983 and from October 17 until November 16, 1983, they stayed in a motel. It is this period for which he has claimed temporary quarters expenses. He states that he was unaware of the provisions of FTR para. 2-5.2(e) and that the agency granted an extension of the time for occupying temporary quarters from 20 to 30 days on October 20, 1983.

Payment of subsistence expenses of an employee and his immediate family while occupying temporary quarters in connection with a permanent change of station is authorized by 5 U.S.C. § 5724a(a)(3), as implemented by Chapter 2, FTR. FTR para. 2.5.2(e) requires occupancy of temporary quarters to begin not later than 30 days from the date the employee reports to his new duty station or, if not begun during this period, not later than 30 days from the date the family vacates the residence at the old duty station.

Accordingly, where occupancy of temporary quarters commences more than 30 days after the employee and his family have vacated the residence at the former duty station, as was the situation in Mr. Spaulding's case, the claim for temporary quarters expenses may not be allowed. B-180286(2), July 2, 1975.

Mr. Spaulding states that he was unaware of the provisions of FTR para. 2-5.2(e) and that his agency misled him by granting an extension of the time limit to occupy temporary quarters from 20 to 30 days on October 20, 1983, after the period of eligibility had expired. While it is unfortunate that Mr. Spaulding was not aware of the specific requirements of this regulation, those requirements are clearly stated. Further, the regulation does not authorize exceptions to be granted. An allowance may be paid only as authorized by law and regulation. The fact that the employee was unaware of a restriction on payment does not permit reimbursement which is not otherwise authorized and erroneous orders issued by a Government agent which appear to authorize a reimbursement not allowed by law and regulation cannot bind the Government. Dr. Frank A. Peach, 60 Comp. Gen. 71 (1980).

Accordingly, Mr. Spaulding may not be reimbursed any additional amount on account of the loan origination fee

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he paid incident to his purchase of a house at his new official station, and he does not qualify for reimbursement of temporary quarters subsistence in connection with his transfer.

for Milton J. Jacobson
Comptroller General
of the United States