



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 21, 2008

CBCA 1227-RELO

In the Matter of SUSAN L. WHITE

Susan L. White, Kailua, HI, Claimant.

George Keller, Chief, Division of Financial Management, Fish and Wildlife Service, Department of the Interior, Arlington, VA, appearing for Department of the Interior.

DRUMMOND, Board Judge.

Susan L. White, an employee of the Department of the Interior, Fish and Wildlife Service (FWS), changed duty stations in 2007. The agency authorized reimbursement of expenses incurred for the shipment of household goods weighing up to 18,000 pounds. Mrs. White's goods were shipped to her new duty station by Crown United (Crown) under a Government bill of lading (GBL) managed by the agency's third party representative, Relocation Management Worldwide (RMW). Her shipped goods weighed 23,220 pounds, instead of 18,600 pounds as estimated by Crown. Crown's estimate was based in part upon the claimant's verbal description. The agency has assessed Mrs. White \$11,669.06 for the excess weight. Mrs. White has filed a claim seeking a refund of \$9232.42 of the \$11,669.06 she paid the agency. She asserts that the weight overage is attributable to gross errors by the carrier who provided the estimate, such that she should not be responsible for the charge.

Crown weighed Mrs. White's household goods at the time of shipment and again at the final destination. The total net weight of her goods at the time of shipment was 23,220 pounds. The total net weight of her goods at the final destination was 25,380 pounds. RMW has a weight variance policy. If the actual weight of the shipped goods is more than 115% of the pre-move survey weight, then the agreed weight of the shipment will be 115% of the pre-move survey weight, unless the weight variance is reasonably explained by the participant and

waived by the agency's third party representative. If waived, the transportation charges will be calculated based on the lowest net weight tickets. Since the actual weight of the goods exceeded the estimated weight by 115%, Crown was required to justify the weight variance between pre-move inspection and shipment. Crown explained that the shipment went overweight because "74 more pieces were sent than were surveyed. There were a lot of tools on this shipment. There were also some large/heavy items like Drill press, Generator, Work shop table, several tool boxes (5), press, work benches" RMW accepted Crown's justification. The actual weight of the goods was measured at 23,220 pounds.

The agency billed Mrs. White for the shipment, storage, and delivery of 5200 pounds (23,220 - 18,000) of household goods. The charge assessed was \$11,669.06. The charge for the excess weight was computed as follows:

Actual Weight	23,220 lbs
<u>Gov. Allowed Weight</u>	<u>18,000 lbs</u>
Weight Overage	5,200 lbs

Weight Overage 5,200 lbs/Actual weight 23,220 lbs = 0.224806

Cost Per Pound 0.224806 x invoice amount \$51,907 = Employee's Responsibility
\$11,669.06

Statute authorizes an agency to pay for the transportation of (and related activities involving) household goods and personal effects not in excess of 18,000 pounds net weight. 5 U.S.C. § 5724(a)(2) (2000). The statutory limitation is implemented in the Federal Travel Regulation, which applies to all civilian employees of the Federal Government. 41 CFR 302-7.2 (2006). If the employee's goods and effects weigh more than 18,000 pounds, the employee is responsible for expenses associated with the additional weight. 41 CFR 302-7.200.

The agency's determination regarding the weight of Mrs. White's household goods is based on the lowest total net weight tickets. Agency determinations concerning the net weight of an employee's household good shipments will not be disturbed in the absence of clear and substantial evidence of error or fraud. *Richard D. Grulich*, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891. The burden of proving error or fraud is exceedingly heavy. *Jaime A. Norris*, GSBCA 13663-RELO, 97-2 BCA ¶ 29,049.

Mrs. White asserts that she relied on the estimate prepared by Crown. The record reveals that the estimate was based, in part, upon the claimant's recital of the amount and types of property in a trailer and not upon a visual inspection. Crown states that Mrs. White's husband packed and loaded a trailer believing that he could eliminate the need for two containers. The record does not contain a descriptive inventory as to the contents of the trailer. Rather, Crown noted that the Whites said "[t]he trailer was full of tools surrounding the bike." Although Mrs. White asserts that the trailer was unlocked at all relevant times, there is no persuasive evidence suggesting that the agency participant actually inspected the contents of the trailer.

Mrs. White claims that she further reduced the estimated weight by 2000 pounds when she removed two heavy workbenches before the move. Mrs. White, however, does not offer evidence that demonstrates an error regarding the weight of goods shipped. The estimate is not critical here given the actual weight.

We do not find clear and substantial evidence of error or fraud as would be needed in order to set aside the agency's determination as to the weight of Mrs. White's household goods. Weight estimates made by drivers, packers, inspectors, or owners are not sufficient to rebut the presumption that the recorded weight is correct. Moreover, even when a carrier erroneously estimates the weight of an employee's goods to be shipped, the Government is not bound by these estimates. Erroneous estimates by third parties do not alter the Government's obligations and authority under the statute and regulation. *Keith D. Weverstad*, GSBKA 14366-RELO, 98-1 BCA ¶ 29,438 (1997).

Mrs. White calls our attention to various provisions in the Household Goods Tender of Service (HTOS).¹ She notes that according to the HTOS, a pre-move estimate is to be based on a visual inspection. She also asserts that while the 115% weight variance may be waived, Crown has not provided an acceptable justification to warrant a waiver. These provisions, however, do not help her case. The matters that she raised do not relieve her of the charges for excess weight where the amount of excess is established by weight certificates and not overcome by clear and substantial evidence of error or fraud. *Jaime V. Mercado*, GSBKA 16313-RELO, 04-1 BCA ¶ 32,583.

¹ The HTOS, a publication of the General Services Administration, provides guidance to transportation service providers. It addresses the performance requirements for transportation service providers and basic program requirements.

Accordingly, Mrs. White has failed to show that the determination made by FWS was erroneous. Accordingly, we deny the claim.

JEROME M. DRUMMOND
Board Judge