



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 21, 2008

CBCA 1109-TRAV

In the Matter of KATHLEEN A. KERN

Kathleen A. Kern, APO Area Europe, Claimant.

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

STERN, Board Judge.

Kathleen A. Kern (claimant) is an employee of the United States Army Corps of Engineers (the Corps) stationed in Spain. On August 28, 2007, the Corps issued travel orders authorizing Nicolle Kern, claimant's daughter, educational travel from Wiesbaden, Germany, to Philadelphia, Pennsylvania. The travel orders authorized Nicolle Kern to ship up to 350 pounds of baggage, in accordance with the Joint Travel Regulations (JTR), which permit a student dependent performing educational travel to ship up to 350 pounds of unaccompanied baggage to or from school. JTR C2306. Baggage was shipped by the International Transport Organisation and Paragon Van Lines, Inc. The record contains a weight certificate and a certified invoice stating that 435 gross pounds were shipped. Both documents also list a tare weight of 30 pounds and a net weight of 405 pounds. The certified invoice also sets forth a handling charge of \$60.90. Using the net weight of the baggage, Ms. Kern was billed \$80.30 for fifty-five pounds of baggage that exceeded the authorized 350 pound limit.

Ms. Kern claims that the shipment actually weighed 315 pounds and that the voucher from the mover listing the tare weight of thirty pounds was low. Ms. Kern states the actual weight for the two cartons, including packing materials, was fifty-three pounds. Ms. Kern argues that this weight should be subtracted from the total weight. Ms. Kern also claims that a charge that she was assessed for warehouse handling (\$60.90) is unfair.

Discussion

The JTR in effect at the time of shipment of the baggage provided for a 350 pound net weight limit for the unaccompanied baggage shipment for a student dependent performing educational travel. The JTR specifically states that the employee is financially responsible for any overweight baggage that is shipped. JTR C2306. The Corps of Engineers authorized Ms. Kern to ship this limited amount.

Ms. Kern claims that the tare weight of thirty pounds listed on the certified invoice and weight certificate is incorrect. As we have previously stated, unless a claimant shows clear and substantial evidence of fraud or error, the determination by an agency of net weight will not be set aside. *Robert G. Gindhart*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997), and cases cited therein; *see also George C. Hlosek*, CBCA 756-RELO, 08-1 BCA ¶ 33,774; *Michael V. Torretta*, GSBCA 16560-RELO, 05-1 BCA ¶ 32,928. Here, the agency has entered the weight certificate and certified invoice into the record. Ms. Kern has made only assertions that the tare weight listed on those documents is incorrect. Ms. Kern has not carried her burden and rebutted the evidence in the record.

Ms. Kern also claims that a separate charge of \$60.90 for warehouse handling is unfair. A review of the record indicates that Ms. Kern was actually only assessed approximately \$8.27 of this charge, representing the percentage of excess weight above 350 pounds.

The record does not indicate that the warehouse handling charge was based upon the weight of the shipment. If it was not, there is nothing in the regulations that would make Ms. Kern responsible for this charge as it would be part of the charge associated with the shipment of the unaccompanied baggage, regardless of weight.

Based on this record, Ms. Kern does not have to pay this \$8.27.

Decision

Ms. Kern is obligated to pay the Corps of Engineers \$72.03.

JAMES L. STERN
Board Judge