



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 10, 2009

CBCA 1534-RELO

In the Matter of THOMAS KUPRIS

Thomas Kupris, Long Beach, CA, Claimant.

Lisa D. Ferguson, Program Manager, Travel Section, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

BORWICK, Board Judge.

In this matter, claimant, Thomas Kupris, challenges the Department of Veterans Affairs (agency's) charge to claimant for an alleged overweight shipment of claimant's household goods (HHG) resulting from claimant's permanent change of station (PCS) to Long Beach, California. Claimant maintains he is not liable for any charge because the weighing process was flawed. We grant the claim in part. Claimant has not met his burden of establishing by clear and convincing evidence that the weighing process was tainted by clear error or fraud. However, the agency erroneously based its charge on an alleged excess weight of 2060 pounds; the agency should have used the re-weigh excess weight of 1360 pounds to calculate the amount claimant owed.

Background

In October 2006, the agency authorized claimant a PCS transfer from Pensacola, Florida, to Las Vegas, Nevada, and authorized claimant to ship a maximum 18,000 pounds of HHG.

In September 2008, the agency authorized claimant a second PCS transfer from Las Vegas, Nevada, to Long Beach, California, and again authorized claimant to ship a maximum of 18,000 pounds of HHG. At the time of claimant's second transfer, because most of claimant's HHG were still in Florida, claimant's move involved shipping the HHG from Pensacola, Florida, to Long Beach, California. On September 19, 2008, the agency's relocation contractor advised claimant that it had estimated the weight of

claimant's proposed HHG shipment to be 28,000 pounds. The relocation contractor reminded claimant that the Government would only pay for shipping 18,000 pounds and that the charges for shipping the estimated excess 10,000 pounds would be \$8997.43, which would be paid by the Government but eventually billed to claimant. Claimant disputed the accuracy of the estimate.

Before the move, claimant asked that his HHG first be shipped to Las Vegas so that he would have the opportunity of removing goods to avoid any overweight charges upon eventual shipment of the HHG to Long Beach.

The goods were not moved to Las Vegas as claimant had requested, but were moved directly from Pensacola to Long Beach. When the HHG were moved, the mover's certified weight ticket in Florida established the HHG weight of 20,060 pounds. The movers conducted a re-weigh of the HHG at Upland, California, and the re-weigh established the certified weight of 19,360 pounds.

On November 13, 2008, after claimant had relocated to Long Beach, the agency billed claimant for \$1909.82 for the "excess weight ratio" of his shipment plus \$264.48 for the added cost of the move to Long Beach instead of Las Vegas. In its submission to the Board, the agency explains that its charge was based upon 2060 pounds of excess weight as determined by the certified weight ticket at origin. The agency also explains that "the time remaining on his [earlier] travel authority would allow him to conduct an HHG move from Pensacola, Florida, to Las Vegas or elsewhere to complete that relocation." The agency ultimately withdrew the charge to claimant of \$264.48.

Discussion

Statute provides:

Under regulations prescribed under section 5738 of this title and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds --

....

the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight.

5 U.S.C. § 5724(a)(2) (2006). The Federal Travel Regulation (FTR) echoes this statutory ceiling on the net weight of HHG for which the Government will pay. 41 CFR 302-7.2 (2006). The employee is responsible for reimbursing the Government for any excess charges due to an overweight shipment. 41 CFR 302-7.200.

An employee who is authorized a PCS has two years from the effective date of his or her transfer to complete all aspects of the relocation. 41 CFR 302-2.8. Here the agency allowed claimant to apply the benefits authorized for his PCS to Las Vegas to his PCS to Long Beach. The agency's action in this regard has not been put in dispute, so we do not consider whether it was correct. The sole issue in this case is whether the agency properly calculated the overweight charge.

Claimant challenges the accuracy of the weights recorded by the movers. Claimant disputes the validity of the California re-weigh because: (1) on his last move, his HHG weighed 17,000 pounds; (2) he was not offered an opportunity to view the re-weigh; (3) the re-weigh certificate in California was illegible to him; (4) of the alleged difference between the loaded and unloaded weights as measured in Florida and California; and (5) of the amount of fuel that claimant speculates must have been used by the truck in California, as opposed to the amount of fuel used by the truck in Florida, which might have affected the re-weigh.

When an overcharge is based upon certified weight tickets, the weights recorded are deemed to be accurate, unless a claimant can establish by clear and substantial evidence that the weighing process is tainted by proven error or fraud. Mere suspicion or speculation is simply not enough. *Charles E. Pixley*, GSBCA 16484-RELO, 05-1 BCA ¶ 32,887 (citing *Michael J. Kunk*, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1988)). In disputing the agency's use of certified weight ticket to establish the charge, claimant here offers only speculation and hypotheticals, not the clear and substantial evidence the law requires.

That does not end the case, however. The agency based its overcharge on the earlier alleged excess weight of 2060 pounds. However, the re-weigh in California established the excess weight at 1360 pounds (19,360-18,000). A claimant is entitled to be charged based upon the lesser weight as shown by a re-weigh. See *Julie N. Lindke*, CBCA 1500-RELO (May 1, 2009). Consequently, the agency should have based its overcharge on that lesser weight established by the re-weigh. The Board therefore grants the claim in part and returns the matter to the agency for calculation of the overcharge based upon the proven overweight of 1360 pounds.

ANTHONY S. BORWICK
Board Judge