



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 16, 2009

CBCA 1321-RELO

In the Matter of MARK GMITRO

Mark Gmitro, Flower Mound, TX, Claimant.

Anne Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

SOMERS, Board Judge.

_____The Army Corps of Engineers (the Corps or the Government) transferred Mark Gmitro from one permanent duty station to another during 2007. Sometime in April or May 2007, a representative of the carrier selected by the Corps to move Mr. Gmitro's goods inspected the goods at the employee's home and estimated the weight of his belongings to be approximately 12,500 pounds. Mr. Gmitro alleges that when the movers arrived to pick up Mr. Gmitro's household goods, the moving truck arrived partially loaded with someone else's household goods. Mr. Gmitro requested a copy of the weight ticket showing the partial load, but the driver refused to provide him with the weight ticket. Mr. Gmitro contacted his agency, which sent an inspector to his house during the loading of the household goods. Mr. Gmitro states that the inspector promised to request a re-weighing of his household goods prior to delivery to his house at his new permanent duty station.

When Mr. Gmitro's household goods were delivered to his new residence, the delivery included a crate filled with someone else's goods, which included a portable cement mixer, bags of cement, boxes of books, and other items. In addition, upon unloading the crates, Mr. Gmitro discovered that twenty-two boxes of his household goods were missing. These boxes have never been located.

In June 2008, the Corps sent Mr. Gmitro a bill in the amount of \$1180.31, apparently intending to reflect the portion of the shipping charges relating to the weight in excess of

18,000 pounds. Mr. Gmitro objects to payment of these charges, asserting that the charges did not accurately reflect the weight of his household goods. Mr. Gmitro believes that the moving company improperly included the weight of someone else's household goods, either that preexisting load on the moving truck or the goods improperly delivered to his new home or both. In addition, the moving company lost twenty-two boxes of his household goods, the weight of which should not have been included in the final tally of the household weight. Finally, despite his best efforts, he has never been able to obtain a copy of the actual government bill of lading to establish the errors.

In response, the Corps stated that regulations require it to pay the total cost of transporting an employee's household goods and then to seek reimbursement from the employee for excess weight that exceeds the employee's maximum weight allowance. It explained that it does not arrange for or complete the receiving report for the receipt of services relating to the shipment of household goods. Rather, this service is provided by the Joint Personal Property Shipping Office (JPPSO) at Fort Belvoir, Virginia. An automated billing service called Powertrack bills the JPPSO when the move is completed. JPPSO forwards the bill to the Corps, which pays the bill. The Corps did not address Mr. Gmitro's allegations that errors were made in the calculation of the shipping weight of his household goods.

Discussion

An agency may pay for transporting only 18,000 pounds of an employee's household goods when the employee is transferred to a new duty station. When agencies rely on certified net weights of the goods, we have rarely found for the employee. "The burden of proving that certified weights for the movement of household goods are incorrect is exceedingly heavy and rests on the claimant. Agency determinations of net weight will be set aside only where a claimant can show clear and substantial evidence of error or fraud." *Michael V. Torretta*, GSBICA 16560-RELO, 05-1 BCA ¶ 32,928 (quoting *Robert G. Gindhart*, GSBICA 14288-RELO, 98-1 BCA ¶ 29,405 (1997)). The beginning step in this analysis, however, requires the agency to establish that it has properly calculated the net weight of the claimant's household goods. The agency provided nothing to support the validity of its calculation.

Specifically, Mr. Gmitro has alleged that the certified net weight may have included household goods that had been in the moving van that picked up his goods, that it may have included the goods that had been misdelivered to his new residence, and that it may have included twenty-two boxes of his goods that ultimately went missing. The agency failed to rebut these allegations. In addition, although Mr. Gmitro indicated that the goods arrived in shipping crates, we cannot determine from the record whether the weight of the shipping

crates had been improperly included in the final net weight determination.¹ Despite the agency's promise to re-weigh Mr. Gmitro's household goods upon their arrival at his new duty station, the record does not contain any documentation to show that the household goods had been re-weighed. Without a justification to support the calculation of the weight of the household goods, the agency has no grounds for collecting any money from the employee. *See, e.g., Michael L. Rivera, GSBCA 16350-RELO, 04-1 BCA ¶ 32,615* (the agency is required to produce a justification in response to claimant's factual challenge to the calculation of the weight of the household goods).

Decision

We find the claimant has shown clear evidence of error, which has gone unrebutted by the agency. Accordingly, on this record, we hold that the agency may not collect any money from the claimant in connection with the transportation of his household goods.

JERI KAYLENE SOMERS
Board Judge

¹ The net weight of a shipment of household goods does not include the weight of crating material. 41 CFR 302- 7.12 (2006).