



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 1, 2013

CBCA 2864-RELO

In the Matter of ROBERT L. LEWIS, JR.

Robert L. Lewis, Jr., Goldendale, WA, Claimant.

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

McCANN, Board Judge.

Claimant, Robert L. Lewis, is a civilian employee of the United States Army Corps of Engineers (USACE). He claims entitlement to storage in transit (SIT) of household goods (HHG) in excess of the 180 days allowed by the Joint Travel Regulations (JTR). For the reasons stated below, the claim is denied.

Background

In 2011, claimant was transferred under permanent change of station (PCS) orders from Clifton, Texas, to Rufus, Oregon. Pursuant to his change of station orders, the Army's Joint Personal Property Shipping Office (JPPSO) contracted with Bekins Moving and Storage Company (Bekins) to ship and store claimant's HHG. The HHG were shipped to an intermediate destination (Yakima, Washington) for final delivery to claimant. The shipment arrived August 15, 2011, and was held in storage by Bekins.

Initially, claimant was informed that he was entitled to SIT of ninety days. Then, on December 8, 2011, the USACE allowed SIT for an additional ninety days and informed claimant that the SIT authorization would expire on February 12, 2012. In an email message

to Charlie Turner at Cartwright International¹ dated December 14, 2011, claimant acknowledged that he was only entitled to 180 days of SIT.

Claimant did not retrieve or make arrangements to pay for his HHG after February 12, 2012, and the goods remained in storage until March 12, 2012. Only then did claimant enter into an agreement with Bekins to pay for subsequent storage for the price of \$454.80 per month. The first that the record indicates that claimant was informed that his SIT would expire on March 12 was by email message from the shipment manager dated March 7, 2012, only five days before the March 12 expiration.

For unknown reasons, the JPPSO contracted with Bekins to store claimant's HHG until March 12, 2012, instead of February 12, 2012, a period of 209 days.² The cost of the storage according to the USACE finance center was \$933.86 for the first day and \$9617.33 for the following 208 days, or \$46.24 per day. For the twenty-nine days of additional SIT, the finance center charged claimant a total of \$1340.90 (although $29 \times \$46.24 = \1340.96).

Claimant asserts that he should not have to repay the USACE the \$1340.96 it claims for SIT, as he had nothing to do with arranging the contract with Bekins for transportation and storage of his HHG. He claims that the JPPSO made an error in contracting for SIT after February 12, 2012, and asserts that he should not have to pay the price for its error. He offers to pay the Army \$454.80 for the storage of his HHG from February 12 to March 12, 2012. Claimant contends that \$454.80 is a fair price to pay for the additional twenty-nine days.

Claimant further asserts that he did everything right and should not have to pay, because he inquired about the time that his SIT would expire from Bekins and the agency. He says he was told that Bekins would send him an invoice when SIT funding was exhausted. He contends that when he received the notice he made arrangements with Bekins for subsequent storage. Claimant, however, does not state when he made the inquiry and there is no documentation in the record substantiating any of these communications.

¹ Cartwright International was the carrier.

² The USACE finance center has not been able to obtain any information about the contract. All of its information comes from the Powertrack system. The Powertrack system is owned by the bank that acts as a third party to pay vendors on HHG moves by Department of Defense employees. Information is put into the Powertrack system by various parties, such as the moving company for its charges.

The finance center claims that the USACE had to pay for the entire 209 days of storage. It asserts that since claimant is only entitled to reimbursement for 180 days under JTR C5191, claimant must pay the cost for the additional twenty-nine days. The finance center asserts that the proportional amount of \$46.24 per day for twenty-nine days, for a total of \$1340.90, is the correct and proper amount to pay.

Discussion

The USACE is correct. Claimant's orders authorize only 180 days of SIT, and JTR C5191 limits reimbursement for SIT to 180 days. The SIT spanned 209 days, or twenty-nine days over the 180 day limit. The payment of this additional twenty-nine days of SIT constituted an overpayment by the Government to claimant in the amount of \$1340.96.

Contrary to his assertions, claimant was aware that he was entitled to only 180 days of SIT, which expired on February 12, 2012. He could have made arrangements with Bekins to take responsibility for his HHG after February 12, as he did after March 12, 2012, but he did not. Consequently, the USACE erroneously paid for the storage of his goods for the additional twenty-nine days.

The amount claimed by the finance center is appropriate. It is a pro-rated amount based upon what it paid for the final 208 days of the contract. Claimant's argument that he should only have to repay \$454.80 lacks merit. We do not doubt that claimant likely could have negotiated a lesser amount than \$1340.96 for the twenty-nine days, had he attempted to do so prior to February 12, 2012. However, he chose not to try. He is obligated to repay the proportional amount of the USACE's payment as calculated by the finance center for the extra twenty-nine days, or \$1340.90.

The USACE's payment for the additional twenty-nine days constitutes an erroneous payment to claimant. "The Government can by appropriate action recover funds which its agents have wrongfully, illegally or erroneously paid." *United States v. Wurts*, 303 U.S. 414, 415 (1938).

Decision

The claim is denied.

R. ANTHONY McCANN
Board Judge