



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 11, 2014

CBCA 3888-RELO

In the Matter of JOSEPH J. MOYER

Joseph J. Moyer, Gore, VA, Claimant.

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

DANIELS, Board Judge (Chairman).

Joseph J. Moyer contends that his employer, the Department of the Army, has overcharged him for moving his household goods pursuant to a change in his permanent duty station. We agree with Mr. Moyer, reducing the amount of his debt to the Army.

Background

The Army transferred Mr. Moyer from Massachusetts to Virginia in April 2012. A moving company engaged by the agency packed and transported his household goods, some to his temporary residence in Virginia and most to a storage facility. According to the Army, the total weight of the goods was 29,680 pounds – 7240 moved to Virginia and 22,440 placed in storage. The agency deducted 2000 pounds from this total as a packing allowance, making the net weight 27,680 pounds. The charge from the moving company was \$17,673.09. Of this, the agency accepted 65.03% (18,000 divided by 27,680), or \$11,492.62, as its responsibility and charged Mr. Moyer 34.97% (9680 divided by 27,680), or \$6180.47. The agency also maintains that Mr. Moyer must reimburse it for charges on goods placed in storage – charges attributable to weight in excess of 18,000 pounds through the first 150 days the goods were in storage and all charges for succeeding days.

Mr. Moyer understands that the Army's calculations are accurate. He disputes, however, the bases for those calculations. In particular, he makes the following allegations:

- The packing charge of \$7641.38 seems excessive, particularly because the packers sent by the moving company did not complete their task, forcing Mr. Moyer and his wife to purchase some packing materials and do some of the packing.
- Although weight tickets were provided for the two trucks that transported his goods to Virginia, there is no proof that the trucks whose weight was measured with goods were the same trucks whose weight was measured when empty. Further, one of the trucks contained someone else's belongings, as well as his own.
- The goods which were placed into storage were weighed twice, once at 22,440 pounds and once at 21,740 pounds. The agency used the higher weight, not the lower one, when calculating charges due from the employee.
- The moving company did not perform a pre-move survey. The movers damaged his real property and a neighbor's when driving their trucks into his driveway. The movers also damaged many of his household goods. Additionally, the movers were rude to his wife and made lewd gestures toward her and his children.

The Army has not contested any of these assertions. Instead, it has maintained that because its calculations are correct, its conclusions must be as well.

Discussion

As provided in statute and regulation, the Government's responsibility for shipping the household goods of a transferred employee is limited to goods which weigh no more than 18,000 pounds. 5 U.S.C. § 5724(a)(2) (2012); 41 CFR 302-7.2 (2011); JTR (the Defense Department's Joint Travel Regulations) C5154-B. The weight of shipped goods is most appropriately demonstrated by certified weight tickets. We have held that the burden of proving that such weights 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." *Gregory W. Slayton*, CBCA 3208-RELO, 13 BCA ¶ 35,303 (quoting *Evan F. Meltzer*, CBCA 1536-RELO, 09-2 BCA ¶ 34,272).

Mr. Moyer has met his burden to a great extent. For the two reasons he cites, the weight tickets for the goods transported to his temporary residence in Virginia cannot be relied on. The truck weights when empty and full cannot be compared, since there is no proof that the trucks being weighed were the same on both occasions. Additionally, the

weight when full did not necessarily measure Mr. Moyer's goods alone. *Slayton*; *Mark Gmitro*, CBCA 1321-RELO, 09-1 BCA ¶ 34,064; *Vincent A. LeDuc*, CBCA 1166-RELO, 08-2 BCA ¶ 33,997; *Michael V. Torretta*, GSBGA 16560-RELO, 05-1 BCA ¶ 32,928.

The weight of the goods placed into temporary storage was measured twice, and the agency used the higher weight when determining charges to be allocated to Mr. Moyer. The agency has not shown that the higher weight was the one accurately measured. Consequently, using that weight was error, for the Government's longstanding practice is to accept the lesser weight when household goods are reweighed. *Thomas Kupris*, CBCA 1534-RELO, 09-2 BCA ¶ 34,192; *Julie N. Lindke*, CBCA 1500-RELO, 09-2 BCA ¶ 34,141, *aff'd on reconsideration*, 09-2 BCA ¶ 34,191. The only weight on which the agency can rely in assessing charges is the lesser of the two measurements for these goods, 21,740 pounds.

To the extent that the agency responds to Mr. Moyer's position regarding the appropriate packing charge, it is through an e-mail message sent to him recently by a shipment management branch chief. The message says that regardless of the extent to which an employee packs his own goods, if the moving company packs any goods, it is entitled to be paid for packing all of them. The Government should pay movers only for services rendered. *See* 48 CFR 43.205(a)(5), 52.243-1 (Alt. IV) (2011). The agency has not made clear what it contracted for here. If it agreed to pay a flat fee for the packing, the branch chief's explanation may be reasonable. The agency has not rebutted Mr. Moyer's assertion, however, that by failing to complete their task on time, the packers were overpaid for the work that they did. Based on the record in this case, we conclude that for the purpose of determining the portion of moving company charges which should be allocated to Mr. Moyer, the packing charges should be reduced by \$1000.

Mr. Moyer's complaints about the lack of a pre-move survey, property damage done by the movers, and discourtesy shown by the movers toward his family members are not matters we may address in considering this case. Claims for loss or damage to a government employee's personal property incident to a transfer of assignment, for example, are resolved under the Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. § 3721, and that statute vests settlement authority for such claims in the head of the agency involved, not this Board. *Slayton*. We note, however, that the agency appears to have taken into consideration the matters raised by Mr. Moyer by suspending the moving company from performing further work.

In conclusion, we hold that the agency may collect from Mr. Moyer only the following amounts: (a) 8.81%¹ of the costs of packing and moving his household goods into storage and ultimately out of storage; (b) 8.81% of the costs of storing those goods for the first 150 days² the goods were in storage; and (c) all of the costs of storing those goods for additional days. Because there is no way of knowing the weight of the goods delivered to Mr. Moyer's temporary residence, the agency may not assess against him any charges associated with the shipment of those goods. We note that Mr. Moyer has already paid some of the money claimed by the agency. If his payments have exceeded the amounts properly collectible, the agency shall refund the overpayments.

STEPHEN M. DANIELS
Board Judge

¹ We derive the figure 8.81% in the following way: The only goods for which we have credible proof of weight are those which were put into temporary storage. These goods weighed (at the lesser of two weights) 21,740 pounds. As the agency determined, a 2000 pound allowance is subtracted from this amount to account for packing materials. 41 CFR 302-7.2(a); JTR C5154-B, C5170-B. The net weight of the shipment was therefore 19,740 pounds. The employee is responsible for charges on all weight over 18,000 pounds, so he is responsible for charges on 1740 pounds. 1740 is 8.81% of 19,740.

² The agency authorized payment for the costs of storing Mr. Moyer's goods for the maximum amount of time permissible under regulation, 150 days. *See* 41 CFR 302-7.9(a); JTR C5190-B.