



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 30, 2016

CBCA 5075-RELO

In the Matter of HEDELIZA S. BALISI

Hedeliza S. Balisi, DPO Area Pacific, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

ZISCHKAU, Board Judge.

Hedeliza S. Balisi, the claimant, an employee of the Drug Enforcement Administration (DEA) of the Department of Justice, transferred from Virginia to Germany in May 2009 pursuant to permanent change of station (PCS) orders. In June 2009, she had some of her household goods (HHG) shipped to Germany and some placed in non-temporary storage in Virginia. In May 2014, the DEA notified Ms. Balisi for the first time that the weight of her household goods shipped to Germany in 2009 exceeded the 18,000 pound government weight allowance by 3360 pounds and that she owed the agency \$7381 for the overweight HHG shipped to Germany. Ms. Balisi challenged the DEA's determination that her HHG exceeded the weight allowance. During proceedings before the Board, the agency determined that it had overstated the excess weight by 1243 pounds due to commingled HHG that had been placed in the same location of the non-temporary storage facility arising from her 2009 PCS move as well as a later PCS move from Germany to the Philippines. We find the total net weight of all of Ms. Balisi's HHG equals 18,475 pounds. Since this amount is slightly more than the statutory allowance of 18,000 pounds, Ms. Balisi is liable for only a small portion of the excess weight charges assessed – \$1042.

Background

On August 21, 2008, Ms. Balisi was selected for transfer from her post in Dulles, Virginia, to Frankfurt, Germany. Her PCS orders show a reporting date of May 31, 2009. Ms. Balisi's authorized travel expense form provided for transfer of a maximum weight of

18,000 pounds of HHG, unaccompanied air baggage (UAB), non-temporary storage, and professional books, papers, and equipment (PBP&E) in connection with her move.

It appears from the bills of lading that the agency's contracted transportation service provider, Arpin International Group, Inc., contracted with Joe Moholland Moving, Inc., which picked up the UAB on June 15, 2009, the HHG to be transported to Germany on June 16, 2009, and the HHG going into non-temporary storage in Virginia on June 18, 2009. Ms. Balisi confirmed that there was no PBP&E shipped as part of her HHG.

Ms. Balisi and her husband observed the packing and loading of the HHG, both the HHG being shipped to Germany and the HHG going into non-temporary storage in Virginia. The Balisis state that the HHG items were loaded into liftvans (large wood containers whose outside dimensions measured approximately 86" x 45" x 87"). For the HHG being shipped to Germany, a number of pieces of furniture were wrapped in padding and placed directly into the liftvans and not in shipping boxes. The other HHG items were packed by the contractor in contractor-provided new HHG shipping boxes which were then loaded into the liftvans. After the trucks were loaded on the pickup days, the loaded trucks departed the Balisi home. Ms. Balisi states that she did not know where the trucks went. It appears from the record that the trucks traveled approximately sixty-eight miles to have their loads weighed at the Joe Moholland Moving Warehouse in Woodbridge, Virginia.

HHG shipped to Germany

For the HHG shipped to Germany, the record contains a "weight list" prepared by Joe Moholland Moving. The weight form identifies twelve shipping containers, the type of container used, contents, the gross weight, the tare weight (standard empty weight of the shipping container), net weight (gross weight minus tare weight), and the cubic feet of storage for the container. For example, container 1 is shown to be a liftvan, containing "personal effects," with a gross weight of 1350 pounds, a tare weight of 350 pounds, a net weight of 1000 pounds, and 190 cubic feet of storage space. Containers 2-10 on the list are also liftvans having identical tare weights of 350 pounds each, but varying gross weights and thus varying net weights. The last two containers are simply identified by their dimensions, have different tare weights, and are not labeled as liftvans. The tare weight amounts shown for the ten liftvans did not include padding. The total gross weight of all containers is listed as 14,680 pounds, the total tare weight is 3945 pounds, and the net weight is the difference between the gross and tare weights, namely 10,735 pounds. At the bottom of the weight list, there is a certification of the listed weights with a signature (but no printed name) and dated June 17, 2009 (one day after the HHG pickup date).

UAB shipped to Germany

For the UAB that was shipped to Germany, there is in the record a weight list in the same format as the weight list prepared for the HHG shipped to Germany. The UAB weight list identifies four shipping containers, the type of container used, contents, the gross weight, the tare weight, the net weight, and the cubic feet of storage for the container. For example, container 1 is shown as a container measuring 37" x 23" x 31", containing personal effects, with a gross weight of 135 pounds, a tare weight of 18 pounds, a net weight of 117 pounds, and 15 cubic feet of storage space. The total gross weight of all the UAB containers was 645 pounds, the total tare weight was 72 pounds, and the net weight was 573 pounds.

Non-temporary storage HHG shipped to Woodbridge, Virginia

For the HHG going into non-temporary storage in Woodbridge, Virginia, the record indicates that a different weighing procedure was used initially. The weight certificate appears different as well. The form, entitled "Certificate of Weights" and dated June 18, 2009, shows the name of the carrier (the moving contractor), a tractor number (the trailer number is not filled in), two typewritten weights listed but not labeled – 38940 lbs and 48920 lbs – and a handwritten number – "9980 #" – presumably meaning 9980 pounds, to represent the difference between the two typewritten numbers. To the right of these numbers appears a notation indicating that the tare weight was measured with the driver off the truck during weighing. There is no itemized weight list for the non-temporary storage HHG similar to those provided for the HHG and UAB shipped to Germany. The agency assumes that the "38940 lbs" notation represents the weight of the truck without the cargo, plus the weight of the empty shipping containers, and the "48920 lbs" notation refers to the gross weight of the vehicle and all cargo. The form itself gives no indication concerning what the 38940 pound weight represents. When Ms. Balisi asked for a clearer copy of this weight certificate, the agency responded that it could not obtain a clearer image of the weight certificate and that the storage firm confirmed that the original weight ticket was "slightly cut off." According to the agency, eight "storage vaults" (larger containers than the liftvans) were loaded with the non-temporary storage HHG at the Balisi residence and transported to Virginia for storage.

On May 13, 2014, the agency directed Arpin (which in turn directed Moholland) to reweigh Ms. Balisi's 2009 non-temporary storage HHG. On May 22, 2014, Moholland furnished an itemized weight list, listing by container number, type of container, contents, gross weight, tare weight of the container, net weight, and cubes. The weight list shows a signature but is not dated. The list contains information for three liftvans measuring 87" x 45" x 87", eight storage vaults, a love seat, and a sofa. The agency now recognizes that the three liftvans relate to a subsequent PCS by Ms. Balisi from Germany to her current duty station in the Philippines and should not be included in the weight totals at issue here. The

gross weight of the eight storage vaults, the love seat, and the sofa total 12,490 pounds, and the tare weight totals 3400 pounds (eight storage vaults times 425 pounds each), for a total net weight of 9090 pounds. The fact that this first re-weigh indicates a discrepancy in Ms. Balisi's favor of 890 pounds net weight – when compared to the 9980 net weight claimed by the agency in the original certified weight – might have suggested to the agency personnel responsible for billing Ms. Balisi that the agency should have revised its May 6, 2014 claim (issued only sixteen days before this first re-weigh) and recalculated the excess weight claim to account for this reduction. The agency did not do so. Indeed, this weight certificate was submitted into the record only recently, after the Board directed the agency to determine if there was a re-weigh in May 2014 as some email messages suggested. (Agency counsel also was not aware of this May 2014 re-weigh until recently.)

A second re-weigh of the non-temporary storage HHG took place on January 28, 2016, during the pendency of this case. The itemized weight list identifies the eight storage vaults, the love seat, and the sofa. The gross weight of the ten items totals 12,340 pounds, and the tare weight totals 3600 pounds (eight storage vaults times 450 pounds each), for a net weight of 8740 pounds. When comparing the gross weights of the storage vaults found in the first re-weigh and the second re-weigh, unexplained differences are noted. There is no explanation for the standard tare weight of the empty storage vault being 450 pounds rather than the earlier used figure of 425 pounds. Rather than rejecting all three “certified” weight lists proffered by the agency, we will compute the weight of the non-temporary storage HHG using the gross and tare weights most favorable to Ms. Balisi on a container-by-container basis. *See Joseph J. Moyer*, CBCA 3888-RELO, 14-1 BCA ¶ 35,697; *Julie N. Lindke*, CBCA 1500-RELO, 09-2 BCA ¶ 34,141, *aff'd on reconsideration*, 09-2 BCA ¶ 34,191. Doing so, we have determined a net weight of non-temporary storage HHG of 8705 pounds.

The agency's excess weight charge claim against Ms. Balisi

In a letter of May 6, 2014, the agency informed Ms. Balisi that she was responsible for paying excess weight charges of \$7381 because her 2009 HHG shipment from Virginia to Germany was 3360 pounds above the authorized weight allowance. The excess weight was calculated by using the statutory allowance of 18,000 pounds, subtracting the UAB gross weight of 645 pounds and the non-temporary storage HHG net weight of 9980 pounds for a remaining HHG allowance of 7375 pounds. Subtracting the 7375 pound allowance from the 10,735 pound net weight of the HHG shipped to Germany yields an excess weight of 3360 pounds. The 3360 pounds excess weight is 31.30% of the 10,735 pounds. The agency then multiplied the 31.30% times the total cost of shipping the HHG to Germany (\$23,581) to calculate the excess weight charges sought from Ms. Balisi. The agency explains that it did not realize the excess weight issue associated with Ms. Balisi's 2009 PCS move until 2014 when Ms. Balisi had completed her assignment in Germany and was

transferred by another PCS order from Germany to the Philippines. The record does not contain the 2014 records documenting the agency's discovery of the 2009 excess weight issue.

On May 8, 2014, Ms. Balisi sent an email message to the agency stating that she was preparing to dispute the excess weight claim but wanted to receive a weight certificate of the non-temporary storage HHG showing the itemized gross, tare, and net weights similar to the weight tickets for the shipped HHG and UAB. By letter of May 15, 2014, Ms. Balisi challenged the claimed excess weight and charge, and requested that the agency produce a complete legible copy of the weight certificate showing the itemized gross, tare, and net weights for the shipping containers containing the non-temporary storage HHG. As noted above, the agency responded that it could not obtain a clearer image of the weight certificate and that the storage firm confirmed that the original weight ticket was "slightly cut off." In response to the May 8 request, the agency asked the carrier for a re-weigh, which led to the first re-weigh. The agency states the re-weigh took place on May 13, 2014.

From the record provided by the agency, it appears that the agency did not respond to Ms. Balisi's May 15, 2014 letter until October 21, 2015. The October 2015 letter begins by stating that "[a]fter a long, extensive, careful review and consideration of the information you provided in your appeal, I regret to inform you that I have determined the excess weight debt still stands." Addressing the non-temporary storage HHG, the agency stated that the net weight did not include the weight of the storage vault containers and that no percentage reduction to the weight was appropriate. Strikingly missing from the October 2015 agency letter is any reference to the itemized weight certificate from the first re-weigh (that the agency clearly received by no later than May 22, 2014) indicating a net weight of 9090 pounds, which is 890 pounds less than the original weight certificate used by the agency in calculating the 3360 pound excess weight claim against Ms. Balisi.

By letter of November 16, 2015, Ms. Balisi objected that the agency's October 21, 2015 letter failed to address her arguments, including that the non-temporary storage HHG original weight certificate (it is clear she did not know of the re-weighing) failed to include the weight of the storage vaults in the tare weight, and that the shipped HHG should have had a fifteen percent deduction since these were containerized shipments. In a letter of November 17, 2015, the agency stated that Ms. Balisi's arguments were "noted" but that "unfortunately, your debt for excess weight still remains at \$7,381.00." Again, there is no mention of the May 2014 first re-weigh and weight certificate showing that a reduction in net weight of 890 pounds was called for. The record also indicates that the agency representative responsible for the October 21 and November 17, 2015 letters to Ms. Balisi had exchanges by email with the carrier about the non-temporary storage weight issues and had received the May 2014 email message regarding the first re-weigh. It is possible that the representative had forgotten about the first re-weigh, because he advised the carrier on

October 13, 2015, that “I need to request a reweigh for all pieces involved,” to which the carrier replied on October 14, 2015, that “I pulled the file and located the attached e-mail from last year. Please advise if you are seeking another reweigh.” In any event, the agency never adjusted the weight calculations based on the first re-weigh in May 2014.

The total net weight of all the itemized pieces on the January 2016 weight list is 11,280 pounds. The moving contractor advised the agency in the October 14, 2015 email message that 2543 pounds were added to storage on April 2, 2014. After a further exchange by email, it became clear that the 2543 pounds were added from Ms. Balisi’s subsequent PCS move from Germany to the Philippines in 2014, and that the liftvan items on the 2016 weight list related to that later PCS move, not the 2009 PCS from Virginia to Germany. In light of this new information, the agency has subtracted 2543 pounds from the non-temporary HHG second re-weighing total of 11,280 pounds for a new net weight of non-temporary storage HHG for the 2009 PCS move of 8737 pounds, 1243 pounds less than initially claimed. Because the agency reduced Ms. Balisi’s non-temporary storage HHG total, the agency therefore determined that the new excess weight is 2117 pounds, rather than 3360 pounds. The agency now calculates the amount Ms. Balisi must pay the agency by dividing the new excess weight (2117 pounds) by the total weight of the HHG shipped to Germany (10,735 pounds), which yields 19.72%. That percentage figure is then multiplied by the total cost to ship the HHG (\$23,581), for a revised debt amount of \$4650, rather than the initially billed amount of \$7381.

Discussion

When a federal employee is transferred in the interest of the Government to a new official duty station through a PCS order, statute authorizes the agency to pay “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 statute is implemented through the Federal Travel Regulation (FTR), which provides in 41 CFR 302-7.2 (2009) (FTR 302-7.2) that the “maximum weight allowance of HHG that may be shipped or stored at Government expense is 18,000 pounds net weight.” FTR 302-7.200 adds that “[i]f the shipment exceeds the maximum weight prescribed in § 302-7.2, the Government will pay the total charges and the employee will reimburse the Government for the cost of transportation and other charges applicable to the excess weight.”

Weight determinations in connection with shipping HHG are defined in FTR 302-7.12 (now set forth in FTR 302-7.13 (2016)):

What are the various methods of shipping HHG and how is the weight determined for each type of shipment?

HHG should be shipped by the most economical method available. The various methods of shipment and weight calculations include the following:

....

(c) Containerized shipments (Special containers designed, e.g., lift vans, CONEX transporters, HHG shipping boxes, for repeated use).

When the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the container, the net weight will be 85 percent of the gross weight less the weight of the container. If the known tare weight includes such material, so that the net weight is the same as it would be for uncrated shipments in interstate commerce, the net weight will not be subject to reduction.

The tariff regulations used by carriers, the GSA Household Goods Tender of Service (HTOS), provides that the “net weight of shipments transported in liftvans will be the difference between the tare weight of the empty liftvan and the gross weight of the packed liftvan.” HTOS 5.3.15. Further, in determining the “net weight of containerized shipments, TSPs [transportation service providers] will include in the tare weight all padding material, e.g., paper pads, cloth blankets or any wrapping material used as a substitute for cloth blankets and blocking and bracing material used for a TSP’s convenience to protect and secure a shipment.” HTOS 5.4.1.2.

As stated in our case law, “[t]he point of these rules is that in determining how much the Government and the employee should each pay for a shipment, the employee’s share must be based on the weight of his own goods alone.” *Robert G. Gindhart*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997). Padding and special containers may not be properly considered as part of the net weight of the employee’s goods. *Id.*

Applying these principles to the case at hand, the net weight of the liftvans for the HHG shipped to Germany will be “85 percent of the gross weight less the weight of the container” because the padding and special HHG shipping containers used here clearly were not included in the standard tare weight figures listed on the itemized weight list. The gross weight of the containers totaled 14,680 pounds, and the weight of the liftvans was 3945 pounds, leaving a difference of 10,735 pounds. Multiplying 10,735 pounds by 85% equals 9125 pounds, which is the calculated total net weight of the shipped HHG. *See David M. Selner*, 61 Comp. Gen. 452 (1982).

The record indicates that there was no padding or interior bracing for the non-temporary storage HHG, so there is no adjustment for calculating the net weight of this portion of Ms. Balisi's HHG. We determined above that the net weight of the non-temporary storage HHG was 8705 pounds. There is no dispute regarding the weight of 645 pounds for the UAB, since gross weight is used for UAB.

Adding the net weights listed above, the total net weight of the HHG shipped to Germany, the non-temporary storage HHG, and the UAB equals 18,475 pounds (9125+8705+645). Ms. Balisi is liable for only a fraction of the excess weight charge assessed by the agency. The excess weight is 475 (rather than 2117) pounds. Dividing 475 pounds by the shipped HHG weight of 10,735 pounds equals 4.42%. Multiplying the 4.42% by the total cost to ship the HHG to Germany (\$23,581) equals \$1042, the excess weight charge for which Ms. Balisi is liable.

JONATHAN D. ZISCHKAU
Board Judge