



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 14, 2023

CBCA 7644-RELO

In the Matter of MICHAEL M.

Michael M., Claimant.

Nancy L. Caldwell, Chief, Travel Section, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

O'ROURKE, Board Judge.

Claimant challenges the agency's determination that his household goods (HHG) weighed in excess of the statutory and regulatory limitations, resulting in a charge to claimant of \$4655.62. Because claimant has not established that the agency's determination was erroneous, we find claimant liable for the assessed amount. Claimant's additional assertion—that the shipping costs should be further reduced based on the moving company's deficient performance—is also denied since it is outside the scope of the Board's review authority.

Background

Claimant is an employee of Customs and Border Protection (CBP). In June 2021, CBP transferred claimant from Maryland to a new duty station in Washington State. Claimant's travel authorization provided that he was authorized to ship 20,000 pounds of HHG to his new duty station at the agency's expense. The agency hired a moving company to transport claimant's HHG. Before transport, the moving company performed a virtual survey and weight estimate of claimant's HHG. During that process, the moving company determined that claimant's HHG exceeded the 20,000-pound limit. After several rounds of removing items from the inventory, the company's final estimated weight was 19,820

pounds. Claimant was informed that this was an estimate and that his HHG would be weighed prior to transport.

When the HHG were weighed at a certified automated truck (CAT) scale, they weighed 28,440 pounds. Since that weight exceeded 20,000 pounds, the HHG were required to be re-weighed. The second weight was 27,960 pounds. Upon arrival in Washington, they were weighed a third time, which resulted in a weight of 26,151 pounds. The moving company invoiced CBP \$42,982.76, which was based on the lowest of the three scale weights (26,151 pounds). After CBP paid the moving company's charges, CBP informed claimant of the overage weight and the associated charges. Claimant's HHG were 6151 pounds over the limit, which resulted in a charge to claimant of \$10,008.41.

Claimant contested CBP's weight determination and argued that the invoice should be based on the moving company's initial pre-move estimate of 19,820 pounds since all of the weight measurements were different and one of the CAT scale tickets was missing. In response, CBP reduced the weight to 22,793 pounds, a constructive weight estimate which CBP calculated based on the pre-move estimate of 19,820 pounds, multiplied by 115%.¹ Based on this weight, CBP reduced the amount of the invoice to \$38,005.05 and calculated the revised overage to be 2793 pounds, rather than the previous figure of 6151 pounds. CBP then charged claimant based on the modified overage weight, which came to \$4655.62.²

Though pleased with the reduction, claimant maintains that the original moving company estimate of 19,820 pounds should be used. He claims that one of the CAT scale tickets, which contained the empty truck weight, is missing, and that this potentially indicates a mistaken weight. He also points to the discrepancy between the moving company's pre-move weight estimate and the CAT scale weights. CBP, on the other hand, attributes the difference in weights to the fact that the pre-move weight estimate was based on 573 items, whereas the scale weights were based on 894 items.

¹ Supplement 1 at section 5.4.3 of the General Services Administration (GSA) Household Goods Tender of Service (HTOS) program states: "In the event the [transportation service provider (TSP)] fails to adequately justify the difference between the actual and pre-move survey weights, the TSP stipulates that the constructive weight of the shipment shall be 115% of the pre-move survey weight. The agreed constructive weight shall take precedence over the actual weight for the assessment of . . . charges when based on weight." GSA HTOS, Supp. 1 at 62 (May 1, 2021) (available at <https://www.gsa.gov/system/files/2020%20Household%20Goods%20Package%20Accessible-updated%2002-22-2022.pdf>).

² The revised calculation was as follows: 2793 (overage) / 22,793 (total weight) = 12.25% (percent overage); 12.25% x \$38,005.05 (invoice amount) = \$4655.62.

Claimant also argues that his charge should be reduced because the movers failed to fully perform the move in a timely fashion. More specifically, claimant states that the moving company did not unpack all of the boxes or assemble the furniture as required nor did it remove the trash. CBP contends that the moving company ultimately returned to claimant's home to complete the work and compensated claimant in the amount of \$1415 for damaged items.

Claimant asks the Board to review the agency's determination of the weight of his HHG and the import of his complaints about the moving company.

Discussion

CBP's Calculation of the Weight

When an agency transfers an employee from one permanent duty station to another in the interest of the Government, the Government is responsible for the costs of transporting and storing not more than 18,000 pounds net weight of the employee's HHG. 5 U.S.C. § 5724(a)(2) (2018). This statutory limitation is implemented in Federal Travel Regulation (FTR) 302-7.2(a) (41 CFR 302-7.2(a) (2021)), which adds an additional 2000-pound allowance for uncrated shipments. Because the Government cannot pay for moving any more than 20,000 pounds of HHG, the employee whose goods are moved is responsible for reimbursing the Government for the costs attributable to any weight in excess of 20,000 pounds. *Id.*

The agency's initial invoice to claimant was based upon the lowest of three different scale measurements contained in the record. However, since this weight exceeded the pre-move estimate by 115%, CBP revised the calculation and arrived at a *constructive* weight of 22,793 pounds, rather than the lowest *scale* weight of 26,151 pounds. The reduction in weight of claimant's HHG resulted in a corresponding reduction in the overage charge to claimant. However, claimant seeks to further reduce the amount he owes by using the lowest pre-move estimate.

The case law on this issue is well established. In order to set aside the agency's determination, claimant must show clear and substantial evidence of error or fraud. *Ira A. C. Peets*, GSBCA 15294-RELO, 00-2 BCA ¶ 31,058, at 153,352; *Douglas V. Smith*, GSBCA 14655-RELO, 99-1 BCA ¶ 30,171, at 149,298 (1998); *Robert G. Gindhardt*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405, at 146,101 (1997); *Jayme A. Norris*, GSBCA 13663-RELO, 97-2 BCA ¶ 29,049, at 144,607-08. Claimant argues that we should doubt the reliability of the CAT scale tickets because they do not match the moving company's pre-move weight estimate and because one of the scale tickets is missing. He also suggests that the higher weights could be attributed to another family's HHG that were loaded onto the

moving truck after his HHG were loaded. While we understand claimant's frustration with the varying weights, claimant's arguments fall short of what is required to set the agency's determination aside. Based on information in the record, several of the pre-move estimates, and *all* of the scale weights, exceeded the 20,000-pound limit. The agency's final determination of 22,793 pounds was less than all of the scale weights and nearly matched one of the pre-move estimates of 22,740 pounds.

The agency's decision to use a constructive weight rather than the lowest scale weight was in response to the concerns claimant raised about the varying weights. We see no reason to disregard the agency's decision, especially in light of the final item count. Indeed, when comparing the pre-move survey with the packing inventory, there is a substantial discrepancy in the number of items between them. The fact that the pre-move survey was done virtually in May 2021 due to COVID may account for the difference. Regardless of the reason, however, we find that the agency gave claimant the benefit of any doubt as to the reliability of documents and reduced the overage amount as much as possible in light of the applicable statutory and regulatory limits. Moreover, the pre-move weight of 19,820 pounds was merely an estimate, whereas the scaled weights were actual weights. *See Helene Mikes*, GSBKA 15374-RELO, 00-2 BCA ¶ 31,138, at 153,784 (finding that, in the absence of clear and substantial evidence of error or fraud, the actual weight of the shipment on the bill of lading establishes the weight of the shipment, not an approximation or rough calculation of weight).

As to the missing ticket, we do not agree that a missing ticket clearly and substantially proves error or fraud. Claimant stated that the missing ticket was for the weight of the truck when empty. He also stated that one of the tickets already recorded that weight and could be used to substantiate the weight of the empty truck. The argument that the weight of another family's HHG was improperly combined with the weight of claimant's HHG was not supported by clear and substantial evidence. The allegation is based on a conversation that claimant had with the driver, but claimant did not ask the driver whether the two weights would be combined, and the evidence included with the claim does not prove this theory. For these reasons, we find that claimant has failed in his burden to show clear and substantial evidence of error or fraud and is liable for the overage amount.

The Moving Company's Poor Performance

It is a general rule that the Board cannot address or resolve allegations about improper and unethical behavior by the transportation companies hired by the agency for relocation of federal employees. *John C.*, CBCA 6905-RELO, 21-1 BCA ¶ 37,753, at 183,264 (2020). As this Board stated in *Robert P. Kropik*, CBCA 2435-RELO, 11-2 BCA ¶ 34,852:

[Claimant's] assertions raise questions about the business practices of the mover that shipped his goods. The Department of Defense may wish to investigate these assertions as it considers whether to continue to do business with the mover. The Board will not do so, however. We settle claims by federal civilian employees for relocation expenses incident to transfers of official duty station; we do not conduct management reviews of agencies' relocation activities and contracts.

Id. at 171,446. Claimant presented various other arguments in support of his position. We have considered them all and find that they have no merit.

Decision

The claim is denied.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge