



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 19, 2007

CBCA 823-RELO

In the Matter of FRANK B. CHISARI

Frank B. Chisari, Longwood, FL, Claimant.

James E. Hicks, Administrative Law Section, Office of Chief Counsel, Drug Enforcement Administration, Alexandria, VA, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

Frank B. Chisari contests the determination of the Drug Enforcement Administration (DEA) to collect from him \$2941 in costs of transporting excess weight of household goods pursuant to a transfer of official station. We hold that because DEA was responsible for some of the excess weight, it must bear some of those costs.

According to DEA's Permanent Change of Station Handbook, when an employee is transferred to or from a foreign location where furnished or partly furnished quarters are provided by the agency, the agency will pay for shipping only 7200 pounds of household goods. DEA stationed Mr. Chisari in Bridgetown, Barbados, from 2003 to 2005. The agency and the employee agree that DEA provided quarters to Mr. Chisari while he was in Barbados, so the 7200-pound limit applies to the agency's liability for the costs of shipping the employee's goods to and from that country.

DEA transferred Mr. Chisari from Barbados to Orlando, Florida, in October 2005. Weight tickets show that the goods which the agency shipped to Orlando for the employee weighed 8651 pounds. Because the weight in excess of 7200 pounds (1451 pounds) constituted 16.77% of the total weight shipped, DEA decided that Mr. Chisari must pay 16.77% of the total cost of transporting the goods. That total cost was \$17,535.91, and 16.77% of this amount is \$2941.

DEA has already collected \$1276.94 from Mr. Chisari. It maintains that it is entitled to the remainder of the amount it has identified, or \$1664.06. Mr. Chisari believes that because of errors made by DEA's moving company in transporting his goods in 2003, when the agency transferred him from the United States to Barbados, he should not have to pay any amount; instead, DEA should return the \$1276.94 it has already collected from him.

The moving company selected by DEA transported to Barbados in 2003 several items which Mr. Chisari had told the company to put into storage in the United States while he was posted abroad. The total weight of these items was 983 pounds. Although the total weight of the household goods shipped for the employee was more than 7200 pounds, the agency waived collection from the employee of the portion of the transportation costs attributable to the excess weight. It did this in recognition of the fact that but for the mistaken shipment of the 983 pounds, the total weight of Mr. Chisari's goods would have been less than 7200 pounds. Mr. Chisari explains that the quarters DEA provided to him in Barbados did not have room for the extra furniture, so he stored the furniture in his garage while he was in that country.

In our view, the position DEA has taken in this case is inconsistent with the position it correctly took in 2003. Mr. Chisari had to ship back to the United States in 2005 983 pounds of goods which he had in Barbados only because the moving company chosen by DEA had erroneously transported those items to Barbados in 2003. The total weight of goods which were transported back to the United States in 2005 for which the employee was responsible was not the entire weight of the shipment (8651 pounds). Rather, it was 8651 less 983 pounds, or 7668 pounds. Although this figure is greater than the 7200 pounds whose transportation costs DEA is obligated to pay, the excess is much smaller than what the agency suggests.

Mr. Chisari is responsible for the cost of shipping 5.41% of his household goods -- 468 pounds divided by 7668 pounds -- from Barbados to the Orlando in 2005. He is

consequently required to pay only \$948.69 of the total cost of \$17,535.91. Instead of collecting \$1664.06 from Mr. Chisari, DEA must reimburse him in the amount of \$328.25 -- the \$1276.94 it previously collected less the \$948.69 he fairly owes.¹

STEPHEN M. DANIELS
Board Judge

¹ DEA assessed interest on the \$1276.94 it collected because Mr. Chisari did not pay as promptly as the agency demanded. We leave to the agency the proper adjustment of payment to account for interest.