



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 21, 2008

CBCA 1007-TRAV

In the Matter of KATHLEEN A. KERN

Kathleen A. Kern, APO Area Europe, Claimant.

Shirley Lee Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appear for Department of the Army.

STERN, Board Judge.

Kathleen A. Kern (claimant) is an employee of the United States Army Corps of Engineers (the Corps) stationed in Spain. On November 7, 2006, the Corps issued travel orders authorizing travel for the purpose of education, for Ms. Kern's daughter from St. Louis University in Madrid, Spain, to Wiesbaden, Germany. The orders also authorized the shipment and storage of 350 pounds of unaccompanied baggage.

Pursuant to these orders unaccompanied baggage was shipped on April 27, 2007, by a third party hired by the Corps. The weight ticket from the shipping firm and a certified invoice for the shipment indicates a shipping weight of 515 pounds. The Corps paid for the shipment and billed Ms. Kern \$1109.05 for the charges attributable to the weight of the shipment that exceeded the 350 pound allowance authorized by the Corps. Ms. Kern claims that the shipment could not have weighed more than 350 pounds. Ms. Kern alleges the following:

- Her daughter, with the use of a bathroom scale, estimated the shipment at 305 pounds.

- Given the size of the shipment, a weight of 515 pounds would equate to a high density that would represent furniture, not the books and clothing that were actually shipped.
- The paperwork regarding the shipment contains errors. For example, Ms. Kern claims that the invoice sets forth two different shipping weights. She also argues that the weight certification is missing on another form.
- The identical items “with a small addition of shoes and clothing” were packed for a later shipment to Philadelphia and only weighed 315 pounds.
- The amount of the charge (\$1109.05) for the 165 pound overage is unreasonable and does not satisfy the Corps’ requirement to ship at the most economical means possible.

Discussion

The Joint Travel Regulations (JTR) in effect at the time of shipment of the baggage provided for a 350 pound net weight limit for the unaccompanied baggage shipment for a student dependent performing education travel. JTR C2306. The JTR specifically states that the employee is financially responsible for any overweight baggage that is shipped. The Corps of Engineers authorized Ms. Kern to ship this limited amount of baggage.

Ms. Kern challenges the consistency in the paperwork regarding this shipment. The International Transport Organisation invoice contains a certification that 515 pounds net weight was shipped. Ms. Kern claims that the numbers on the shipper’s invoice are inconsistent. We assume that Ms. Kern refers to the quantities of 415 and 515 listed on that invoice. The shipper has submitted a document to the Board explaining that the 515 figure was the weight of the shipment and the 415 was the mileage involved. Based on the evidence before us, we find no inconsistency in the paperwork substantiating the 515 pound shipment.

Ms. Kern also argues that the shipment weighed less than 515 pounds, based on the density of the items shipped, a later unrelated shipment, and the weight her daughter obtained on a bathroom scale. We must reject this argument for lack of proof. “The burden of proving that certified weights for the movement of household goods are incorrect is exceedingly heavy and rests on the claimant. Agency determinations of net weight will be set aside only when a claimant can show clear and substantial evidence of error or fraud.” *Robert G. Gindhart*, GSBICA 14288-RELO, 98-1 BCA ¶ 29,405 (1997), and cases cited

therein; *see also* *George C. Hlosek*, CBCA 756-RELO, 08-1 BCA ¶ 33,774; *Michael V. Torretta*, GSBCA 16560-RELO, 05-1 BCA ¶ 32,928. Ms. Kern has failed to carry this burden and rebut the weight ticket and certified invoice in the record.

Finally, Ms. Kern claims that the amount of the charge is unreasonable since the shipment could have been shipped by a less costly method. The JTR requires that the shipment be made by the least costly means that meets the needs of the student. JTR C2306. We are unaware of those needs, time constraints, or other factors that may have gone into the Corps' determination regarding the shipment of the baggage. Based on this record, the Board is unable to review the Corps' decision regarding the shipping method for this baggage. For this reason, we must reject Ms. Kern's argument.

Decision

Ms. Kern is obligated to pay the Corps of Engineers the \$1109.05, billed for the excess baggage weight.

JAMES L. STERN
Board Judge