



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 8, 2009

CBCA 1309-RELO

In the Matter of SAM HANKINS

Sam Hankins, Morrison, OK, Claimant.

Robin Kelley, Fiscal Team Leader, Natural Resources Conservation Service, Washington, DC, appearing for Department of Agriculture.

HYATT, Board Judge.

Claimant, Sam Hankins, an employee of the Natural Resources Conservation Service (NRCS) of the Department of Agriculture, was relocated from Arizona to Oklahoma in 2007. He has asked the Board to review the excess weight charges assessed in connection with the transportation of his household goods and the agency's denial of his request for a waiver of repayment.

Background

In conjunction with his permanent change of station (PCS) move from Arizona to Oklahoma, claimant's household goods were transported under a government bill of lading. The amount of household goods moved exceeded the maximum 18,000 pounds that the Government is authorized to pay. NRCS billed Mr. Hankins for the amount of \$2952.79, which was calculated to be the cost attributable to the extra weight. After receiving the bill for the excess weight, Mr. Hankins requested that NRCS waive the overage, as it had done for his previous PCS move from Iowa to Arizona in 2003.

Prior to packing and loading claimant's household goods, a representative of the moving company visited claimant's residence to evaluate the household items intended to be shipped and to estimate the likely weight of the items to be transported. The carrier's

representative assessed the weight of the items to be moved at approximately 20,000 pounds, and advised claimant and his spouse that they could reduce the weight if they moved some of the items included in the estimate themselves.

Mr. Hankins, relying on that information and his experience in prior moves with the Government, made arrangements to move a considerable amount of his household goods himself so as to avoid being charged for excess weight. He believes that, based on the estimate, he reduced the weight of the items to be transported by the moving company to well below 20,000 pounds. He states that on the day of the move, the driver of the van verbally estimated the load to be between 12,000 and 13,000 pounds.

The carrier left claimant's Arizona residence and proceeded to obtain a certified weight. After having the load weighed, the driver called Mr. Hankins to report on the weight. Mr. Hankins asked the driver to wait for him or to return to his house so the excess could be unloaded, but the driver could not accommodate that request because he needed to pick up an additional load in Tucson later that day.

Claimant's household goods were delivered to the new residence in Oklahoma. Subsequently, the carrier presented weight tickets showing the weight to have been originally certified at 23,240 pounds and 26,560 pounds when reweighed at destination. Under the moving company's arrangement with the General Services Administration (GSA), regardless of the actual weight of the load, the carrier was limited to payment for an additional fifteen percent of the preliminary survey weight of 20,000 pounds, or 23,000 pounds. This weight was lower than either of the certified weights produced by the carrier. The agency charged Mr. Hankins for the pro rata cost of the weight in excess of 18,000 pounds using this lower number.

Claimant questions his liability for the overage, although he concedes he cannot challenge the documented weights. He notes that in the prior move from Iowa to Arizona, the weight of his household goods, which occupied one full and one partially loaded truck, came in under 18,000 pounds. He thus questions how the same household goods, loaded into a single truck, with room for another load, could have weighed so much.

In addition, claimant points out that the carrier planned to pick up another load for delivery and suggests that the certified weights included household goods of the second customer. He notes that the company delivered a decorated stepping stone to him that did not belong to him. The likelihood that the initial weight included both loads, however, is belied by claimant's admission that the driver called on the same day, after having obtained a certified weight, and before proceeding to pick up the second load, to notify him that the load exceeded 18,000 pounds.

Mr. Hankins adds that the workers who loaded his household goods did not speak English very well and did not comply with his spouse's instructions on what should be packed and/or loaded and what should not. As a result, items that claimant had planned to move themselves were loaded on the truck.

Finally, Mr. Hankins states that it is his understanding that he and his spouse had a right to be present at the weighing of the truck both when his household goods were picked up and when they were delivered. He was not afforded this opportunity in either Arizona or Oklahoma.

Discussion

Claimant has asked us to review the agency's determination that he owes the amount of \$2952.79 for the transportation of household goods in excess of 18,000 pounds and the agency's denial of his request for a waiver. The Board has the authority to settle claims involving expenses incurred by civilian employees for relocation expenses, so we can review the agency's decision to hold Mr. Hankins responsible for the charges associated with moving and storing more than 18,000 pounds of household goods. 31 U.S.C. § 3702 (2006). We do not have the authority, however, to waive his debt or to review the agency's decision to deny his request for a waiver. The authority to waive a debt belongs to the head of the agency from which the debt arose, and not to us. *Helene Mikes*, GSBCA 15374-RELO, 00-2 BCA ¶ 31,138; *Michael J. Kunk*, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998).

Statute authorizes an agency to pay for the transportation of (and related activities involving) household goods and personal effects not in excess of 18,000 pounds net weight. 5 U.S.C. § 5724(a)(2). The statutory limitation is implemented in the Federal Travel Regulation (FTR), which applies to all civilian employees of the Federal Government. 41 CFR 302-7.2 (2007). When the Government arranges the move, the employee is responsible for expenses associated the transportation of any weight in excess of 18,000 pounds. 41 CFR 302-7.200. There is no room for compromise -- the cost of transporting any additional goods moved for the employee must be paid by the employee. *E.g.*, *Steven P. Shafran*, CBCA 656-RELO, 07-2 BCA ¶ 33,603; *Charles E. Pixley*, GSBCA 16484-RELO, 05-1 BCA ¶ 32,887.

Here, the agency has produced the certified weights for the load in question. Certified weight tickets are a common and accepted means of proving the weight of a shipment of household goods. *E.g.*, *Steven W. Anderson*, GSBCA 16744-RELO, 06-1 BCA ¶ 33,199; *Jaime V. Mercado*, GSBCA 16313-RELO, 04-1 BCA ¶ 32,583. Moreover, "[t]he 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 where a claimant can show clear and substantial evidence of error or fraud.” *Alan Poleszak*, GSBCA 16693-RELO, 05-2 BCA ¶ 33,066 (quoting *Robert G. Gindhart*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997)). Mere suspicion and speculation is not sufficient. It has proven difficult for claimants to successfully meet the burden of proof needed to negate the validity of certified weights. *E.g.*, *Susan L. White*, CBCA 1227-RELO, 09-1 BCA ¶ 34,021 (2008); *Poleszak*; *Michael V. Torretta*, GSBCA 16560-RELO, 05-1 BCA ¶ 32,928.

Mr. Hankins raises objections to a number of deficiencies with the moving process, beginning with the apparent inaccuracy of the estimate provided by the carrier prior to the move. On the day of the move, the loaders did not speak English well and items that he did not want transported by the carrier were loaded on the truck apparently because of misunderstandings on the part of the loading crew. The driver left Mr. Hankins’ house and obtained a certified weight. He telephoned claimant to inform him of the certified weight, but Mr. Hankins was not afforded an opportunity to observe the weighing process, nor was he given the opportunity to remove articles before the furnishings were transported to Oklahoma, because the driver needed to proceed promptly to Tucson to pick up another load.¹ Finally, he urges that on a prior move, he moved more furnishings and the weight was under 18,000 pounds. He also notes that in a prior move, the agency did waive the requirement to pay for excess weight.

Although claimant’s frustration with the moving process is understandable, none of the points he makes constitute the clear and substantial evidence of error or fraud that would be needed to set aside the agency’s determination as to the weight of claimant’s household goods. Weight estimates made by drivers, packers, inspectors, or owners are not sufficient to rebut the presumption that the recorded weight is correct. The Government is not bound by erroneous estimates by third parties, and these estimates do not alter the Government’s obligations and authority under the statute and regulation. *David K. Walterscheid*, CBCA 1360-RELO, 09-1 BCA ¶ 34,044 (2008); *White*, CBCA 1227-RELO, 09-1 BCA ¶ 34,021 (2008); *Keith D. Weverstad*, GSBCA 14366-RELO, 98-1 BCA ¶ 29,438 (1997). In addition, even if a few stray items from the second shipment of household goods were included in the certified weight recorded at destination, the fact remains that claimant was not charged for the higher weight. There is no basis to dispute that claimant’s household goods weighed at least 23,246 pounds (the lower of the two certified weights), and the formula agreed to by the Government and the moving company limited the weight charged

¹ Although not relevant to this claim, Mr. Hankins also notes that significant damages were sustained to his household goods.

by the shipper to 23,000 pounds. The agency appropriately charged for the weight in excess of 18,000 pounds.

Decision

The Board has no basis for rejecting the documented certified weights in this matter. NRCS properly determined that claimant should pay for the moving cost attributable to the weight of household items in excess of 18,000 pounds up to 23,000 pounds. The authority to waive repayment of the debt is solely vested with the head of the agency. The claim is denied.

CATHERINE B. HYATT
Board Judge