



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 13, 2015

CBCA 4880-RELO

In the Matter of BRIAN D. CRAWFORD

Brian D. Crawford, Manassas, VA, Claimant.

Scott A. Tiedt, Director, Transportation and Travel Management, Department of State, Washington, DC, appearing for Department of State.

LESTER, Board Judge.

Claimant, Brian D. Crawford, requests reimbursement of \$4068.30 that the Department of State required him to pay to cover costs attributable to the shipment of household effects (HHE) exceeding a 7200-pound limit. The agency acknowledges that, because a lower HHE weight was found when the HHE was reweighed at its destination than when it was originally weighed overseas, Mr. Crawford is entitled to reimbursement of some of the costs that he paid, but the agency otherwise requests that we deny Mr. Crawford's claim. For the reasons set forth below, we grant Mr. Crawford's claim in the amount that the agency has conceded is appropriate, but otherwise deny the claim.

Background

In November 2010, Mr. Crawford was assigned to a post as a diplomatic courier in Frankfurt, Germany, a post that provides quarters containing household furnishings, major kitchen appliances, and other household items. He arrived with his family in late 2010 with HHE weighing 5932 net pounds. His assignment was originally scheduled to end in or around June 2015.

In January 2014, at the agency's request, Mr. Crawford voluntarily curtailed his assignment, with a revised end date of June 2014. Nevertheless, on March 24, 2014, the agency involuntarily curtailed Mr. Crawford's post, apparently effective immediately, and his packout began on April 7, 2014. When the packout was complete, his HHE was recorded as weighing 9343 net pounds, a figure that exceeded the permissible 7200-pound shipping allowance limit by 2143 pounds. Mr. Crawford was informed that he would be responsible for costs of more than \$4000 to ship HHE in excess of the allotted shipping weight.

As permitted by section 514 of the volume of the Foreign Affairs Manual (FAM) dealing with logistics management, 14 FAM 514, Mr. Crawford requested that the Committee on Exceptions to the Foreign Service Travel Regulations (Exceptions Committee) review the demand that he pay for the excess HHE weight. In support of his request for an exception, Mr. Crawford asserted that, while in Frankfurt, he and his family had purchased various items of furniture, including a sectional couch and several smaller couches, but had always intended to dispose of those items before moving to another post. Mr. Crawford attempted to dispose of the excess-weight HHE after being informed of the involuntary curtailment, but the sudden nature of the involuntary curtailment, he asserts, provided him and his family with insufficient time to do so effectively.

On July 2, 2014, the Exceptions Committee denied Mr. Crawford's request for an exception, stating that, "even though sympathetic to [his] personal circumstances, . . . the overweight situation was created by acquiring excess furnishings and effects while at post and not by the circumstances surrounding departure from the post" and that "the sum of the activities at post did not conclusively demonstrate that the excess occurred 'through no fault of the employee.'" Respondent's Response, Attachment 7 (quoting 14 FAM 514.2(a)). The committee requested that, if he chose to ship the previously weighed HHE to its destination, he pay the excess costs due prior to shipment. It also indicated that, as an alternative, he could remove items from his HHE.

On July 10, 2014, Mr. Crawford paid \$4068.30 for the cost attributable to the excess HHE weight.

Mr. Crawford subsequently requested that his HHE shipment be reweighed at its destination in the Washington, D.C., area, as permitted by 14 FAM 612.2-2(a). When the HHE was reweighed in Washington, the weight was found to be 8618 pounds, which, although 1418 pounds over the applicable shipping allowance, was 725 pounds less than the HHE weight found when weighed in Frankfurt.

Mr. Crawford subsequently submitted his claim to the Board, seeking reimbursement of the entirety of his \$4068.30 payment.

Discussion

Section 901 of the Foreign Service Act of 1980, which is codified at 22 U.S.C. § 4081 (2012), “grants the Secretary of State the authority to pay the travel-related expenses of members of the Foreign Service and their families.” *Raymond Daniel Toma, Jr.*, CBCA 1499-RELO, 09-2 BCA ¶ 34,152, at 168,822. “Under the [FAM],” which implements that statutory authority as it applies to “relocation entitlements of Foreign Service members who are transferred overseas with the State Department, the weight allowance for shipment of items overseas (or back to the United States from an overseas location) is limited to 7200 pounds when adequate furnishings are provided at the overseas post.” *Timothy W. O’Brien*, CBCA 517-RELO, 07-2 BCA ¶ 33,604, at 166,426; *see* 14 FAM 613.1(a)(2). The FAM further provides that “employees relocating under official travel authorizations are responsible for any transportation . . . or other costs incurred by them, their eligible family members, or agents which are not authorized by laws and regulations governing the shipment and/or storage at U.S. Government expense of personal effects,” including HHE. 14 FAM 612.3(a). Employees transferring between posts must “[e]nsure that personal effects do not exceed the shipping . . . entitlements prescribed in the FAM” and must “[a]ccept their personal and sole responsibility to pay the excess costs from personal funds of any excess charges incurred for overweight . . . shipments.” *Id.* 612.3(b). “Employees must know their personal effects shipping weight entitlements and limitations.” *Id.* 612.3-1(a).

“The combined effect of these provisions of the FAM is to put squarely on the employee the responsibility of ensuring that a shipment of HHE meets the applicable weight limitations.” *Toma*, 09-2 BCA at 168,822 (citing *Mark Burnett*, GSBCA 16578-RELO, 05-1 BCA ¶ 32,958, at 163,281). Here, when Mr. Crawford’s goods were weighed prior to shipment from Frankfurt, the net weight recorded was 9343 pounds, which was 2143 pounds above the permissible 7200-pound shipping allotment. When (at Mr. Crawford’s request) the goods were reweighed at their destination, the recorded net weight was 8618 pounds, or 1418 pounds over the shipping allotment. Although the State Department originally declined to reimburse Mr. Crawford the \$4068.30 that he had been required to pay for the 2143-pound overweight cost, it has subsequently informed us that it intends to base its excess cost calculation on the lower 1418-pound excess weight figure identified during the reweighing process rather than the original 2143-pound excess weight and that it is processing a reimbursement to Mr. Crawford of \$1376.49. The Government’s longstanding policy is that, when personal effects are weighed before they are shipped and then reweighed upon arrival at their destination, the Government will accept the lesser of the two weights for purposes of calculating the shipping costs due. *Julie N. Lindke*, CBCA 1500-RELO, 09-2 BCA ¶ 34,141, at 168,783-84; *see* 14 FAM 612.2-2. Mr. Crawford is entitled to have the excess weight calculated on the basis of the lower 1418-pound figure.

Apart from this recalculation, we can find no basis upon which further to reduce Mr. Crawford's excess weight charges. Mr. Crawford asserts that there are extenuating circumstances that justify forgiveness of the excess weight. It is true that, "although employees are generally responsible for strict compliance with the regulations governing shipment of household effects, there are circumstances when excess costs could not have reasonably been avoided and the shipping restrictions may justifiably be increased to accommodate the employee." *O'Brien*, 07-2 BCA at 166,426. The FAM identifies those circumstances as potentially including occasions "when an employee has need of professional materials related to official responsibilities and/or career specialization that are not otherwise available at the post," when there is a marital separation or divorce, or when emergency storage is necessary. 14 FAM 514.1(b). The State Department has created the Exceptions Committee to review requests for relief in circumstances such as Mr. Crawford's, *see id.* 514.2, 3(a), 4(a), an avenue of review that Mr. Crawford sought here. "The intent" of the Exceptions Committee "is to consider providing relief where the incurrence of excess costs was unavoidable and not attributable to any action of the employee." *O'Brien*, 07-2 BCA at 166,426. That committee "has considerable discretion in determining whether to excuse repayment of excess shipping expenses incurred by Foreign Service members," *id.* at 166,427, although, under the FAM, it is to grant requests of exceptions only "if the circumstances of individual cases are truly 'exceptional'" and "beyond the employee's control." 14 FAM 514.2(b). We will overturn an Exceptions Committee decision denying relief only upon finding an abuse of discretion. *O'Brien*, 07-2 BCA at 166,427.

Here, the Exceptions Committee determined that the overweight situation was created through Mr. Crawford's acquisition of excess furnishings and effects while at post and not by the circumstances surrounding his departure from the post. The agency has indicated that the Frankfurt post came furnished and that, rather than requesting additional or different furniture from the agency, Mr. Crawford and his family apparently bought furniture that caused the HHE weight issue. Although Mr. Crawford may have had little time to dispose of the furniture following the curtailment notice, he had the option of leaving it behind. He chose to keep at least some of the overweight HHE. In any event, we cannot find any abuse of discretion in the Executive Committee's determination.

Mr. Crawford has indicated a concern that, given its ultimate decision, the Exceptions Committee may not have been "impartial and objective" in reviewing his request, as required by 14 FAM 514.2(b). Yet, it is a long-standing "principle that government officials are presumed to discharge their duties in good faith." *Road & Highway Builders, LLC v. United States*, 702 F.3d 1365, 1368 (Fed. Cir. 2012). That presumption applies to charges of bias against Government officials. *Diggin v. United States*, 661 F.2d 174, 178 (Ct. Cl. 1981). A challenger seeking to overcome the presumption of good faith bears a high burden that is not met by supposition and conjecture. *Id.*; *Schaefer v. United States*, 633 F.2d 945, 948-49 (Ct.

Cl. 1980). We can identify no basis in the record before us for finding a lack of impartiality in the committee's decision.

Decision

For the foregoing reasons, we grant Mr. Crawford's unopposed request for reimbursement of \$1376.49, but otherwise deny his claim.

HAROLD D. LESTER, JR.
Board Judge