



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 19, 2007

CBCA 667-RELO

In the Matter of ROBERT WEISBERG

Robert Weisberg, Dulles, VA, Claimant.

Jeremy Weinberg, Office of the Legal Adviser, Department of State, Washington, DC, appearing for Department of State.

WALTERS, Board Judge.

Robert Weisberg, the United States Ambassador to the Republic of the Congo, has requested that the Board review the decision of the Department of State to assess charges against him in the amount of \$3331.02 for shipping and storing household effects (HHE) in excess of the allowable weight limit in connection with his August 2005 transfer from Helsinki, Finland, to Brazzaville, Republic of the Congo. For the reasons explained below, we affirm the agency's decision.

Background

In August 2005, Ambassador Weisberg transferred from Helsinki to Brazzaville, following training in Washington, D.C. At that time, a total of 8580 pounds of HHE was shipped on his behalf by the United States Embassy in Helsinki. This total includes 4653 pounds shipped from Helsinki to Brazzaville and 3927 pounds shipped from Helsinki to the State Department's European Logistical Support Office (ELSO) storage facility in Antwerp, Belgium. The agency also shipped to Brazzaville on Ambassador Weisberg's behalf 900 pounds of his previously stored HHE from the facility of a State Department storage provider, Victory Van Corporation (Victory), located in Washington, D.C. Thus, it appears that a total of 9480 pounds of HHE was shipped and stored for the Ambassador in connection with his transfer from Helsinki to Brazzaville.

Prior to the shipments being made, Ambassador Weisberg states, he spoke with Mr. Seppo Juurikkala of the Helsinki embassy's shipping section and "very specifically" requested that Mr. Juurikkala advise him "if he anticipated any overweight problems" in connection with the shipments. Ambassador Weisberg explains that he was concerned about avoiding such problems, because another embassy employee had earlier in the summer of 2005 experienced an "overweight issue" about which that employee was "extremely unhappy." Neither Mr. Juurikkala nor any other embassy employee alerted Ambassador Weisberg to an "overweight" problem in advance of the shipments from Helsinki to ELSO and Brazzaville.

In this case, the 9480 pounds of HHE shipped and stored in connection with the August 2005 embassy transfer did not even approach the statutory limit of 18,000 pounds for the combined shipment and storage of a federal employee's HHE. Nevertheless, because, at the time, Ambassador Weisberg already had in storage (both at the Washington, D.C., Victory storage facility and at a State Department storage facility in Hagerstown, Maryland) substantial amounts of HHE in connection with other, earlier transfers, the overall total of his HHE exceeded the 18,000 pound limit as a result of the August 2005 shipments. The agency initially determined the excess to be 2355 pounds (based on 7760 pounds in storage at Victory and 3115 pounds in storage at Hagerstown). Subsequently, the agency revised its determination of excess weight downward to 1617 pounds, and assessed Ambassador Weisberg for that excess in the amount of \$3331.02, to cover "the costs of the excess shipping and packing from Helsinki to ELSO."

Ambassador Weisberg sought to have the assessment waived, but that request for relief was denied by the agency, by letter dated March 5, 2007. Thereafter, by memorandum dated March 7, 2007, to this Board, Ambassador Weisberg asked the Board to review the agency's denial.

Discussion

The question here is whether the overweight charges were properly imposed. In this regard, the State Department's Foreign Affairs Manual (FAM) clearly mandates that the Government is responsible for the costs of transporting and storing not more than 18,000 pounds net weight of a State Department employee's HHE. 14 FAM 613.1. As our predecessor, the General Services Board of Contract Appeals (GSBCA) frequently noted in conjunction with the statutory requirement for federal civilian employees under 5 U.S.C. § 5724, if the total shipped and stored exceeds 18,000 pounds, the employee must pay for the cost associated with the additional weight. *George W. Currie*, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814; *Robert K. Boggs*, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491.

Ambassador Weisberg, in his March 7, 2007 memorandum to the Board, nevertheless argues that he is entitled to relief from the overweight charges he was assessed, based on the following provision of the FAM:

14 FAM 612.3-3 Overweight and Cost-Constructive HHE/UAB Shipments from Post

a. All shipments are made by authorized weight allowance for each employee, whether for HHE or UAB [unaccompanied air baggage]. *If a shipment is known to be in excess of the allowance, it is not to be forwarded by the originating post until the employee is notified of the excess weight, is informed of the difference to be paid for the cost of shipping, and is told which options may be exercised.*

b. There are two options, listed below. The shipment should be forwarded to the authorized destination, once the employee has exercised either option concerning the excess and has made payment to the post cashier:

(1) The employee must pay the post cashier for the cost of shipping the excess weight; or

(2) *The employee may elect to identify items by inventory number and description for removal and/or placement into HHE or storage shipment. At the employee's expense, shipment can be made to the authorized storage point, unless the employee is being transferred to Washington, D.C. where storage would not be authorized.*

14 FAM 612.3-3 (emphasis added). Ambassador Weisberg, in that memorandum, urges that the Helsinki embassy either knew or should have known of the weight overage and thus should have advised him of it prior to releasing the shipments. Had he been so advised, Ambassador Weisberg states, he “would have either eliminated items from my shipment from Helsinki, or withdrawn items from storage in the US prior to the shipment.”

In its response dated April 9, 2007, the Department contends that: (1) the embassy did not have actual knowledge of a weight overage until August 2006, one year after the shipments had been made; and (2) even if it knew of the overage, any failure to comply with the above-quoted FAM provision, by failure to advise the Ambassador in advance of shipment, would not be remediable in the manner sought by the Ambassador, i.e., by means of a waiver of the overage charges.

In terms of the embassy's actual knowledge, Ambassador Weisberg, in an April 30, 2007, supplemental memorandum (submitted in response to a Board inquiry to the parties dated April 17, 2007), states that records of items in storage for him at Victory and Hagerstown were available electronically to the Department, as they were to him. Ambassador Weisberg appended to his supplemental memorandum a copy of a 2002 telegram as evidence that the embassy had actual knowledge of *some* of his items (weighing 985 kilograms net) having been stored at Hagerstown. The Ambassador did not, however, produce similar documentary evidence to establish the embassy's actual knowledge of items stored at Victory beyond those shipped on his behalf to Brazzaville. Further, Ambassador Weisberg concedes: "I cannot produce any documentary evidence to show I asked Mr. Juurikkala or anyone else in Helsinki to check my total weight or that I informed him that I had additional storage at Victory." As noted above, his recollection was simply of his having asked Mr. Juurikkala to advise him "if he anticipated any overweight problems" in connection with the August 2005 shipments. What Ambassador Weisberg asserts is that the embassy "at no time informed [him] of [his] total weight, as they knew or should have known it."

In response to the Board's inquiries, the agency provided the Board with a supplemental submission dated June 8, 2007. In that submission, the agency asserts that the embassy staff had in its possession (in its shipping folder) an Operations Memorandum that mentioned the HHE previously stored at Hagerstown, i.e., HHE weighing approximately 3115 pounds. This Operations Memorandum still would not have alerted embassy personnel to a potential weight overage, since, when added to the 8580 pounds that were to be shipped for Ambassador Weisberg from Helsinki in August 2005, the total would only have been brought to 11,695 pounds. According to the agency: "Only when that amount [11,695 pounds] was added to the 7,760 pounds in storage at Victory and the 900 pounds that were shipped from Washington, D.C., to Brazzaville, did Ambassador Weisberg exceed his weight allowance." The embassy had no record in its files concerning prior stored HHE for the Ambassador, other than for the HHE stored at Hagerstown.

As noted above, Ambassador Weisberg has conceded that the embassy itself had no record of the HHE stored at the Victory facility, beyond the 900 pounds shipped on his behalf to Brazzaville.

The agency advises that, in April 2006, well after the August 2005 shipments here at issue, "the Department's Transportation Division enabled a global portal, the Integrated Logistics Management System (ILMS), that permits posts and employees worldwide to log in themselves to check shipping weights, storage weights, transit status, and other data on HHE." Nevertheless, as of August 2005, neither the embassy in Helsinki nor Ambassador Weisberg would have had direct online access to his complete HHE weight record. Thus,

it appears that the embassy staff had no actual knowledge of a weight overage in advance of the August 2005 shipments.

In terms of whether the embassy “should have known” about the overage, the agency cites to the FAM, to “locally developed guidance,” and to instructions contained within an employee’s travel orders. Although the agency indicates it is currently considering modifying the FAM to direct or advise embassy staff to ensure that the total overall weight of an employee’s HHE does not exceed the 18,000 pound maximum, at present, the FAM contains no such directive, and no such directive was in effect in August 2005. To the contrary, as the GSBCA observed, the FAM, read as a whole, places the burden of knowing whether a weight overage will occur “squarely on the shoulders of the employee.” *Mark Burnett*, GSBCA 16578-RELO, 05-1 BCA ¶ 32,958. Here, the agency had no greater information about his overall HHE weight than did the Ambassador.

As to “locally developed guidance,” the agency states, the embassy in Helsinki currently has its shipping section “ask all departing employees if they have any items in storage, both at a departure briefing and upon packout scheduling” (and now provides a “Packing Out” sheet that asks specifically: “Do you have anything in storage from earlier shipments?”). Agency Supplemental Memorandum, Exhibit 4. In August 2005, however, that local practice was not in place in Helsinki. Instead, it appears, the embassy staff focused solely on the weight of the HHE shipments to be made for its departing employees.

Though acknowledging that the embassy’s current practice (and the practice that Ambassador Weisberg indicates was in effect at his earlier posts) was a better business practice, the agency urges that “past business process deficiencies can[not] transform the responsibility to comply with weight allowances from a personal obligation [of the employee] into a Department expense.” This result, the agency argues, “would be . . . contrary to the explicit FAM guidance that places the onus to check on weight limits squarely and solely with the employee” The Board agrees.

Finally, the travel orders issued to the Ambassador in July 2005 reminded Ambassador Weisberg of the overall weight limitation and did not indicate that the embassy would assume responsibility for assuring the Ambassador’s shipments would not result in excess weight charges. Those orders state plainly the FAM requirements: “The total combined net weight of all effects shipped and stored may not exceed total allowance of 18,000 pounds or 8,163 kilograms.” Moreover, regardless of whether the agency actually knew of the potential overage here in advance of shipment and failed to notify the Ambassador, in accordance with FAM language, nothing in the FAM or elsewhere authorizes the agency to waive excess weight charges when it so fails. As the agency correctly observes, the remedy being sought simply is not available.

Decision

The agency's decision is affirmed.

RICHARD C. WALTERS
Board Judge