



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 9, 2009

CBCA 1701-RELO

In the Matter of DANA GAO KAY

Dana Gao Kay, Scottsdale, AZ, Claimant.

Patrick J. Cunningham, Director, Indianapolis Transportation Payment Operations, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

BORWICK, Board Judge.

Claimant, Dana Gao Kay, contests the Department of Defense's (agency) assessment of a debt for a shipment of household goods (HHG) exceeding the 18,000 pounds statutory and regulatory shipping allowance associated with her permanent change of station (PCS) transfer. Because the agency correctly applied the applicable statute and regulations, we deny the claim.

Background

On September 28, 2007, the agency authorized claimant's PCS move from King of Prussia, Pennsylvania, to Scottsdale, Arizona, and granted claimant shipment of HHG by government bill of lading (GBL), not to exceed 18,000 pounds. Claimant's HHG were picked up on or about December 21, 2007, at the residence at her old duty station.

On December 5, 2007, well before the move, the movers conducted an inventory of claimant's HHG and reported that the shipment would contain seventeen crates, one for a fifty-six inch plasma television and others for a chandelier, a platform bed, a ten piece wall unit, and a grand piano for which the mover would need a third party service. The mover estimated the weight at 32,400 pounds. After the move, the mover reported that shipped items that eventually needed extra packing and crating materials were: eight glass tabletops, two oil paintings, one marble tabletop, and one chandelier.

The HHG shipment in fact weighed 28,480 pounds, an excess weight of 10,480 pounds over the 18,000 pound allowance stated in the travel authorization. The weight of the shipment is confirmed by certified weight tickets. Claimant does not dispute the accuracy of the weight. The agency paid the movers \$28,020.84 charged in the GBL and assessed claimant an excess weight debt of \$10,311.04, which represented the cost of shipping 10,480 pounds.

By letter of August 19, 2009, the agency notified claimant of the debt assessed due to the overweight shipment. Appellant submitted a claim to this Board disputing the agency's determination.

Discussion

Statute provides:

Under regulations prescribed under section 5738 of this title and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds —

.....

the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight.

5 U.S.C. § 5724(a)(2) (2006). The Federal Travel Regulation (FTR) echoes this statutory ceiling on the net weight of HHG for which the Government will pay. 41 CFR 302-7.2 (2007). The employee is responsible for reimbursing the Government for any excess charges due to an overweight shipment. *Id.*; *Steven P. Shafran*, CBCA 656-RELO, 07-2 BCA ¶ 33,603. The Joint Travel Regulations (JTR) are to the same effect. *See* JTR C5154-B, C5175-A.2. In the absence of clear and convincing evidence of error or fraud, the agency determination of weight is binding and may not be overturned. *Sam Hankins*, CBCA 1309-RELO, 09-1 BCA ¶ 34,124.

Claimant says that, in researching whether to move by GBL or to self-move, she was informed--she does not say by whom--that the GBL rate was \$.55 per pound, while the private company rate was \$.52 per pound. Claimant argues she was misled by the erroneous estimate to use the GBL method of shipping her HHG. Such estimates however, cannot bind the Government to spend money in violation of statute or regulation. *Hankins*; *Marina A.*

Galindo, GSBCA 15501-RELO, 02-1 BCA ¶ 31,775; *Robert K. Boggs*, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491 *Keith D. Weverstad*, GSBCA 14366-RELO, 98-1 BCA ¶ 29,438 (2007), *reconsideration denied*, 98-2 BCA ¶ 30,052; *Donald G. Fullmer*, GSBCA 14123-RELO, 97-2 BCA ¶ 29,291. The same is true of any agency failure to advise claimant of potential overweight on a shipment of HHG. *Galindo*.

Claimant also argues that the movers used excessive packing in preparing her shipment. Claimant has not shown that the packing was excessive in light of the heavy, and in some cases delicate, items she shipped. In any event, under the FTR and JTR, packing materials are included in the net weight of HHG shipments. 41 CFR 302-7.12(a), -7.100; JTR C5170-B.2. When an employee ships by GBL, it is not the prerogative of the employee to substitute his or her judgment as to what services should be paid for if the move is performed. *Shafran*; *Wendy J. Hankins*, GSBCA 16324-RELO, 04-2 BCA ¶ 32,686.

The Board denies the claim.

ANTHONY S. BORWICK
Board Judge