



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 1, 2009

CBCA 1500-RELO

In the Matter of JULIE N. LINDKE

Julie N. Lindke, Marengo, IA, Claimant.

Brian C. Berry, Assistant General Counsel, Department of Defense Education Activity, Arlington, VA, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

In June 2006, Julie N. Lindke returned to the United States from her position with the Department of Defense Education Activity (DoDEA) in Baumholder, Germany, and separated from government service. Her travel orders authorized shipment at government expense of 18,000 pounds of household goods to Marengo, Iowa. Ms. Lindke's goods weighed more than 18,000 pounds, and DoDEA and its agents (the Department of the Air Force's Joint Personal Property Shipping Office - San Antonio and the Defense Finance and Accounting Service) have demanded that the employee pay the portion of the shipping costs attributable to the excess weight. Ms. Lindke has no objection to paying her fair share of the costs, but has been trying for more than two years to get a straight answer from DoDEA and its agents (to whom we refer collectively as "the agency") as to what that amount should be. Some of the issues she has raised were resolved within the Department of Defense, but others remain for our resolution.

Background

As provided in statute and regulation, the Government's responsibility for shipping the household goods of a transferred employee is limited to 18,000 pounds net weight.

5 U.S.C. § 5724(a)(2) (2000); 41 CFR 302-7.2 (2005); JTR C5154-B¹. The goods shipped from Germany to Iowa weighed less than 18,000 pounds, and after a long and tortuous examination, the agency has accepted responsibility for the entire cost of this shipment.

While Ms. Lindke was working for DoDEA in Germany, other goods she owned were stored at Travis Air Force Base (AFB) in Sacramento, California -- her home of record -- at government expense. When she moved to Iowa, these goods were removed from storage and shipped to her. The combined weights of the two lots of goods -- those shipped from Germany and those shipped from California -- exceeded 18,000 pounds. A net weight of 13,810 pounds was attributed to the goods shipped from Germany. (The gross weight of the goods was 23,018 pounds, but the goods were crated, and in accordance with regulation, 41 CFR 302-7.12 and JTR C5170-A, the net weight was deemed to be 60% of that figure.²) Thus, 4190 pounds remained within the 18,000-pound allowance for shipment of the goods from California. The agency maintains that Ms. Lindke is responsible for (a) the costs of shipping 4190 pounds from California to Iowa, less the costs which would have been incurred for delivering that weight of goods to a local address in Sacramento, and (b) the full costs of shipping the remaining weight of stored goods -- allegedly 5470 pounds -- to Iowa. The agency paid the total cost of shipping all the goods from California to Iowa (and inspecting and unpacking them), \$8806.78. According to the agency, the cost of delivering 4190 pounds to a local address in Sacramento would have been \$565.65. The agency contends that Ms. Lindke must reimburse it for the difference between these two amounts, \$8241.13.

Discussion

This case requires the application of two limitations on the Government's liability for transporting the household goods of an employee who returns to the United States from a post of duty abroad, for the purpose of separating from government service. The first limitation is the one cited above which applies broadly to transferred employees: the Government is responsible for shipping only 18,000 pounds net weight of goods. The second limitation is that the Government is responsible for shipping goods only from the employee's

¹ The JTR, or Joint Travel Regulations, apply to civilian employees of the Department of Defense. JTR C1001-A.2. We cite to the version of the JTR which was in effect when Ms. Lindke moved from Germany to Iowa. 41 CFR 302-2.3.

² The regulations contain an exception to this measure of the weight of crated goods: If unusually heavy crating materials are necessarily used, the net weight may be computed at less than 60% of the gross weight. 41 CFR 302-7.12; JTR C5170-A.3. The exception is not claimed to be applicable here.

last post of duty, or the place where his goods were in non-temporary storage, to the place where he lived at the time he was sent abroad. 41 CFR 302-7.6; JTR C5180-C.2.c(1). The goods may be sent to an alternate destination at the employee's request, but if they are, the Government's liability for the cost of shipment is not changed -- it remains limited to the cost of transporting 18,000 pounds net weight of goods to the employee's residence at the time he was sent abroad. 41 CFR 302-7.7; JTR C5180-C.2.c(2). The employee is responsible for any charges attributable to weight in excess of 18,000 pounds and transporting the goods to a location other than the previous residence. JTR C5154-F.2.a, C5180-C.2.c(3).

The agency has taken a reasonable approach in applying the 18,000-pound limitation. It has acted kindly toward Ms. Lindke by allocating all of the weight of goods in excess of this limit to the domestic shipment, rather than assigning it proportionally to both shipments; the latter approach would have increased the employee's share of the costs, since it would have made her responsible for some of the costs of the more expensive overseas shipment. The agency has also taken a reasonable approach in applying the limitation as to movement of goods to an alternate destination. And the agency has properly calculated the weight of the goods moved from Germany. We must still resolve, however, whether the weight of the shipment from California and the costs charged to the employee for transporting those goods were fairly determined.

Ms. Lindke raises two questions regarding the weight: (1) When the goods were placed into non-temporary storage, in 2000, a certified weight certificate showed that the goods weighed 8820 pounds. The cost of the shipment for these items is based on a government bill of lading which shows the weight as 9660 pounds. Why should the charges be based on the higher weight? (2) The goods were crated while in storage, she believes. Shouldn't the weight therefore be assessed at 60% of the identified number (whether 8820 or 9660), rather than 100%?

As to the first of these issues, the agency followed a rule established by one of our predecessors in settling claims involving relocation benefits, the General Accounting Office (GAO). In *Lt. Col. Robert P. Moore, USAF*, B-220877 (June 25, 1986), GAO held:

Evidence of the weight of household effects when placed in nontemporary storage is not determinative of the weight of the goods when taken out of storage. A higher weight upon being taken out of storage and transported to the new duty station may be due to several factors including use of different scales, use of storage materials which are not removed before shipping, moisture absorption while in storage, and heavier containers and packing cases for a transcontinental shipment. The certified weight obtained in connection

with the transportation of the goods, not the weight previously obtained for storage purposes, is the controlling weight.

A year later, in *T. Sgt. Crafton E. Barnett, USAF*, B-222382 (July 10, 1987), GAO reiterated this ruling and added, “The longstanding practice of the government to accept the lesser weight when the same household goods are reweighed does not apply separately to a shipment in storage and to a line-haul shipment so as to relieve the member of his liability for excess weight. The rule applies only to the line-haul shipment.”

We consider GAO’s determinations for their persuasive value; we are not bound by them. Although we have almost without exception found GAO’s reasoning to be sound and have followed it, this particular ruling is not convincing. When an employee’s goods are placed in non-temporary storage at a government facility, the Government assumes responsibility for their custody. If, for whatever reason, their weight is different when they are removed from storage, that change occurred on the Government’s watch, not the employee’s. If the Government’s longstanding practice is to accept the lesser weight when the same household goods are reweighed, the fact that the weight of the stored goods changed while the Government was responsible for them makes application of this practice especially appropriate for these goods. GAO cited no reason for excepting these goods from the general rule, and we can see none. The goods the agency stored for Ms. Lindke at Travis AFB weighed 8820 pounds when they went into storage. If costs for which Ms. Lindke is responsible were incurred in removing the goods from storage, those costs must be calculated on the basis that the goods weighed 8820 pounds.

Ms. Lindke’s second question regarding the weight of the stored goods is answered in the negative. The certified weight certificate on which Ms. Lindke relies in urging a weight of 8820 pounds shows a gross weight of 25,520 pounds and a tare (or container) weight of 16,700 pounds. Similarly, the government bill of lading on which the agency relies in urging a weight of 9660 pounds shows a gross weight of 64,360 pounds and a tare weight of 54,700 pounds. Clearly, both these documents are premised on the belief that the goods were not crated. If they had been crated, and the net weight had been considered to be 60% of the gross weight, using the weight certificate would have resulted in a net weight of 15,312 pounds and using the bill of lading would have resulted in a net weight of 38,616 pounds.

We now turn to the costs of moving the goods out of storage in California and delivering them in Iowa. Here, considering all the information in the record, we must make some adjustments to the agency’s calculations.

The total cost of this endeavor was \$8806.78. (A document in the record showing a lesser amount ignores some components of the actual total.) That charge was based on a weight of 9660 pounds. As we have already explained, Ms. Lindke is responsible only for charges allocable to the weight of the goods when they were placed into storage, 8820 pounds. Each of the components of the total was determined per one hundred pounds, so adjusting the total to what it would have been for 8820 pounds is simple. We multiply \$8806.78 by the fraction 8820 divided by 9660, and thereby conclude that the cost of moving 8820 pounds to Iowa was \$8040.97.

The Government's responsibility for transporting these goods is limited to moving 4190 pounds -- 18,000 less the 13,810 shipped from Germany -- to a local address in Sacramento. According to the Travis AFB travel management office, the cost of this action would have been \$2559.90 for 9660 pounds. (The agency's current assumption that it would have been only \$565.65 has no basis.) The portion of this amount attributable to 4190 pounds -- \$2559.90 multiplied by the fraction 4190 divided by 9660 -- is \$1110.35. Ms. Lindke is responsible for the remainder of the cost for transporting the 8820 pounds -- \$6930.62.

According to the latest pay adjustment authorization form sent by the agency to Ms. Lindke, the Defense Finance and Accounting Service has already collected from the employee, in this matter, \$4983.32. Ms. Lindke is obligated to pay to the agency the difference between the total charge assigned to her for the transportation of her goods from California to Iowa, \$6930.62, and what she has already paid, \$4983.32. She owes the agency \$1947.30.

In coming to this conclusion, we recognize that Ms. Lindke was advised by DoDEA travel office personnel that at least as to the goods sent from Germany to Iowa, shipment to Iowa rather than her home of record in Sacramento, California, would not entail additional costs. Even if this advice applied to the shipment from California to Iowa as well, however, it cannot change the result. Allowing an agency to make a payment for a purpose not authorized by statute or regulation would violate the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 ("No money shall be drawn from the Treasury, but in consequence of Appropriations made by Law.") The Supreme Court consequently has made clear that an executive branch employee's promise that the Government will make an "extrastatutory" payment is not binding. Where relevant statute and regulations do not provide for payment for a particular purpose, an agency may not make such payment. *Bruce Hidaka-Gordon*, GSBICA 16811-RELO, 06-1 BCA ¶ 33,255; *Alexander S. Button*, GSBICA

16138-RELO, 04-1 BCA ¶ 32,452 (2003); *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900 (all citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)).

STEPHEN M. DANIELS
Board Judge