UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 6, 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).

On May 1, 2009, the Board settled a claim by Julie N. Lindke, a former employee of the Department of Defense Education Activity (DoDEA) in Germany, regarding the costs of shipping household goods to her residence in the United States upon the occasion of her separation from government service. Ms. Lindke's goods weighed more than 18,000 pounds, the greatest amount for which the Government may pay shipping costs. The case required us to determine how much of the shipping costs should be allocated to the claimant and how much to the agency.

DoDEA asks that we reconsider two aspects of our decision. The agency focuses primarily on our conclusion that when the weight of goods stored at government expense is greater upon removal from storage than it was upon entry into storage, the lesser weight should be used in calculating payment due from the employee. The agency also questions our statement that the record contains no basis for the agency's estimate of the cost which would have been incurred to deliver Ms. Lindke's goods from storage in California to a local address, instead of to the address in Iowa to which the goods were actually delivered.

Faced with inconsistent weights of the stored goods, the agency used the greater of the two. In so doing, the agency was following a rule established in decisions of the General

Accounting Office (GAO -- now the Government Accountability Office), one of our predecessors in settling claims involving relocation expenses. The agency also notes that it made payment to a carrier based on the higher weight and expected the employee to pay her share of the amount charged by the carrier.

We cannot fault the agency for following the GAO rulings. Nevertheless, as we explained in our previous decision, we do not find these rulings persuasive and hold that they should not be followed in the future. We see no reason to deviate, with regard to stored goods, from the general rule that when transported goods are weighed twice, the lower weight is to be used when determining the employee's share of the costs. Contrary to the agency's argument, this conclusion is not inconsistent with our holdings that certified weight tickets are an accepted means of proving the weight of a shipment of household goods. Here the problem is that two certified weight tickets exist, each with a different weight. One must be selected for computation of the charges to be paid by the employee, and we believe that using the one with lesser weight is more equitable, since it had been used for several years while the goods were in storage. While using the lesser weight may result in this instance in the Government paying for shipment on the basis of a greater weight than may be used in determining the employee's share of the charges, the predicament is not unique. *See, e.g., Robert G. Gindhart*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997) (carrier had allowed goods to become waterlogged), *Jerry Jolly*, GSBCA 14158-RELO, 98-1 BCA ¶ 29,518 (1997) (documentation of weight unreliable), *Michael V. Torretta*, GSBCA 16560-RELO, 05-1 BCA ¶ 32,928 (documentation of weight untrustworthy), and *Vincent A. LeDuc*, CBCA 1166-RELO, 08-2 BCA ¶ 33,997 (weight tickets inconsistent with each other).

As to the constructed cost of delivering the goods from storage to a local address, the agency is correct in pointing out that the estimate it used has some basis in the record. The record contains two different estimates. Each was provided by an office at Travis Air Force Base, where the goods were stored. We find the estimate on which we relied to be more comprehensive and credible than the one the agency used in defending the claim.

For the reasons stated, on reconsideration, we affirm our earlier decision in this case.

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STEPHEN M. DANIELS
Board Judge