



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 23, 2009

CBCA 1560-RELO

In the Matter of GERARD PAUL HUSSON

Gerard Paul Husson, Martinsburg, WV, Claimant.

Lisa D. Ferguson, Program Manager, Household Goods, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

GOODMAN, Board Judge.

Claimant is an employee of the Department of Veterans Affairs. He has requested that this Board review the agency's decision assessing him excess costs to ship his household goods (HHG) pursuant to a permanent change of station move.

Factual Background

Claimant was transferred from Oak Hill, West Virginia, to Martinsburg, West Virginia. His travel orders authorized shipment of HHG up to 18,000 pounds. The agency has issued a bill of collection to claimant in the amount of \$1814.28 because the agency alleges that the weight of his shipped HHG exceeded the 18,000 pound limit by 1560 pounds. Claimant questions the agency's determination that his shipment exceeded 18,000 pounds.

Claimant states that before shipment an estimator for the moving company came to his residence at his old duty station and calculated an estimate of 22,700 pounds. He asserts that the estimate included items that were not intended for shipment, including a convertible sofa, a full size bed with box spring and mattress, twenty-five packages of laminate flooring, a second riding mower, and a motorcycle. Claimant questioned the estimate by stating that his family had moved eight times prior to this move and had never exceeded 18,000 pounds,

even when he had three children living at home.¹ Since the family was now only claimant and his wife, he doubted the weight of his HHG would exceed 18,000 pounds. Claimant states that since it was only an estimate, he knew that the shipment was required to be weighed when the move occurred.

The agency states that on February 21, 2008, claimant was verbally informed by the moving company, Relocation Management Worldwide (RMW), that he would be receiving an overweight warning letter. Apparently this was based upon the estimate, as the HHG had not been picked up or weighed. According to the agency, the claimant replied that he would “wait and see on the weight overages.”

The pick-up at claimant’s residence at his old duty station was accomplished on February 27-28, 2008, in two trucks for which the agency has submitted weight tickets. Claimant states that when the driver and helpers arrived, they reviewed the items to be shipped and remarked that the estimator as usual had over estimated and they therefore had loaded an excessive amount of packing supplies in one of their trucks. These supplies were off-loaded in claimant’s garage and reloaded on one of the trucks after his HHG were loaded.

A letter dated March 11, 2008,² from RMW to claimant informed him that his HHG had arrived in storage and further stated: “It is important to direct any concerns you have regarding the possibility of your shipment exceeding any of the government allotted entitlements to me so I can assist you with an explanation of costs which would be c.o.d. prior to the delivery of your household goods and personal effects.” Claimant alleges this referred to any excess weight charges. The agency asserts that this is only with regard to excess storage charges.

Claimant’s HHG were delivered to his residence at his new duty station on May 5, 2008, by a single truck. The documentation tendered to claimant upon delivery had no indication of the weight of the shipment. At this time claimant had received no information as to any calculated excess weight.

On February 25, 2009, the agency issued a bill of collection in the amount of \$1814.28 for alleged excess weight of the delivery shipment, calculated as follows:

¹ The estimate of 22,700 pounds exceeded the agency’s alleged actual weight of the shipment - 19,560 pounds - by 3140 pounds.

² There is no indication in the record if this is the “overweight warning letter” that the agency states that claimant was told on February 21, 2008, that he would receive. There is no indication in the letter of any calculated overages.

Total Weight	19,560	\$22,748.27
Less Allowable	18,000	<u>\$20,933.99</u>
		\$ 1,814.28

The calculation of the weight and overage charges was based upon weight tickets of the two trucks that had picked up the HHG. The weight ticket for the first truck, which claimant states held the majority of his HHG, indicates a weight of 12,540. The weight ticket for the second truck indicates a weight of 7020 pounds. Claimant notes that the second truck had as part of its contents all of the excess packing supplies - "stack upon stack of unused boxes that would have been included in the weight of this truck."

The 19,560 pounds total weight from which the bill of collection is calculated is the total of these two weight tickets (12,540 pounds + 7020 pounds). After receipt of this bill of collection, claimant made repeated requests to the agency for a weight ticket for the truck that delivered his HHG but did not receive it.

After this case was filed with this Board, the Board issued the following inquiry to the agency on June 23, 2009:

- 1) Does the agency have certified weight tickets for the delivery of claimant's household goods to his residence by the single truck on the date of delivery?
- 2) If the agency has the tickets, the agency is directed to supplement the record with those tickets. If not, the agency should explain why it does not have the tickets.

The following day the agency responded to the Board's inquiry by submitting, without explanation, copies of the two weight tickets upon which the calculation in the bill of collection was based. The Board issued another inquiry on June 24, 2009, which stated:

The information you transmitted in response to the Board's June 23, 2009 letter was not responsive to the Board's request. The tickets you transmitted are already in the record and are the tickets for the two trucks that picked up claimant's household goods at his residence at his old duty station on 2/27/08.

The request was for the weight tickets for the single truck which delivered the household goods to claimant's residence at his new duty station on 5/05/08.

The request directed you to provide these tickets or an explanation as to why you are unable to do so.

The agency responded by stating: “As previously stated, the driver failed to get a reweigh at destination so a weight reconstruction was performed.”³ Attached to the agency’s response were two documents. There was no explanation as to who created the documents, the methodology used, the data upon which the documents were based, or the time period when the documents were created.

The first document is entitled “RMW Weight Reconstruction, Shipper Gerald Husson 2/17/09” (with the title and date typed), and contains a list of articles by quantity, description, cubic feet, and total cubic feet. The total cubic feet are multiplied by a weight factor of seven pounds/cubic foot and resulted in an apparent total weight of 20,971.3 pounds.

The second document is entitled “RMW Weight Reconstruction, Shipper Gerald Husson 3/17/09” (with the title typed and the date handwritten), and contains a list of articles substantially similar to that in the first document by quantity, description, cubic feet, and total cubic feet. The total cubic feet are multiplied by a weight factor of seven pounds/cubic foot and resulted in an apparent total weight of 20,022.1 pounds.

Apparently these documents were an attempt to estimate the weight of claimant’s HHG. Upon receipt of this information, the Board requested that claimant review the documents and offer comments. Claimant raised the issue as to why the agency never admitted to him that the mover did not reweigh the HHG before delivery and why the agency did not send him this information despite his requests. He commented further:

As for the reconstruction documents I find several inconsistencies, to name a few, that concern me greatly and they are as follows:

1. The assumption that any size box or unit weighs 7 lbs per cubic foot when in some instances a box included only a lamp shade, a silk flower arrangement, a few pillows, a child’s toy or some other very light object such as the eight white bucket-tools which were actually old five gallon plastic buckets I use for storage, most of which were empty.

³ There is no evidence in the record that the agency had previously stated that a reweigh had not been performed or that a reconstruction had been performed.

2. The change in cubic foot listed on some items from one [reconstruction] to another raises the question that perhaps adjustments were being made to bring the reconstruction more in line with the weight associated with the Bill of Collection weight. This downward adjustment equates to 949.2 lbs. however it too includes a questionable weight for the golf cart.

3. The weight of the . . . golf cart was based on 71 cubic foot at 7 lbs per [cubit foot] for a total of 497 lbs. When in fact this is a two wheel aluminum golf bag cart that does not weigh more than 20 lbs.

Discussion

Congress has required an agency which transfers an employee to a new duty station in the interest of the Government to pay “the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking [the employee’s] 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 faithfully implements this law’s limitation on the Government’s liability: “The maximum weight allowance of [household goods] that may be shipped or stored at Government expense is 18,000 pounds net weight.” 41 CFR 302-7.2 (2007). The 18,000-pound limitation is thus established by statute and regulation, so it leaves no room for compromise. When an overcharge is based upon certified weight tickets, the weights recorded are deemed to be accurate, unless there is proven error or fraud. Mere suspicion is not sufficient. *Charles E. Pixley*, GSBCA 16484-RELO, 05-1 BCA ¶ 32,887, at 162,933-34; *Robert K. Boggs*, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491, at 150,604. When there is proven error, an employee is not obligated to pay for alleged overcharges. *Vincent A. LeDuc*, CBCA 1166-RELO, 08-2 BCA ¶ 33,997.

In this case, there is proven error in the carrier’s weight calculations. The agency’s information upon which it bases its weight calculations of claimant’s HHG cannot sustain a finding that the agency’s calculations were accurate.

Claimant was first notified of alleged overcharges for excess weight by the bill of collection received nine months after delivery. The calculation of the overcharges was based upon the weight tickets for the two trucks that picked up claimant’s HHG at his old duty station. However, one truck held an excessive amount of packing materials, and there is no indication of the weight of these materials or that the weight of the materials was deducted from the calculation. Claimant assumes that the truck with the greater weight according to the weight tickets was the one that held the majority of his HHG and the one with the lesser weight was the one that held the remainder of his HHG and the excess packing materials. We cannot make that assumption.

Even if we could determine which is the weight ticket of the truck that did not contain the excess packing materials and deem that ticket accurate, the weight of the HHG in the truck that contained the excess packing materials cannot be ascertained accurately. Accordingly, the agency's total weight determination of claimant's HHG based upon the weight tickets of the two trucks that picked up the HHG cannot be the actual representation of the weight of the HHG and we cannot determine if that weight actually exceeded 18,000 pounds.

Likewise, the agency's information about the shipment of the HHG after leaving the storage facility for delivery fails to establish excess weight. The shipping documentation tendered to claimant on the date of delivery did not indicate the weight of the HHG. The agency admits that it did not weigh claimant's shipment of HHG when it left the storage facility for delivery. Instead, in response to the Board's inquiry, the agency has offered two "weight reconstructions" in which it apparently assigned a weight of seven pounds/cubic foot to an itemized list which purports to be claimant's HHG.

There is no explanation as to why these two reconstructions were performed. The agency offers no explanation or information to authenticate these documents. These two reconstructions, one dated before and one dated after the bill of collection, with different calculations on each, both resulting in weights in excess of the alleged weight of the shipment, are neither credible nor persuasive evidence. As claimant has noted, to the extent that the methodology of the reconstructions can be ascertained, the assumption that each cubic foot of his HHG would weigh seven pounds is not credible. Claimant offers examples of silk flower arrangements, children's toys, and a twenty-pound golf cart that were assigned weights far in excess of their possible actual weights. Additionally, both reconstructions calculate weights for the HHG in excess of the total weight indicated in the bill of collection, thereby raising additional questions as to the accuracy of the reconstructions and the weight tickets upon which the charges in the bill of collection are based. We cannot find that the agency has made an accurate assertion of the weight of the HHG based upon these "weight reconstructions."

Based upon the information the agency has offered as to the weight of claimant's HHG after pickup at the old duty station and before delivery at the new duty station, we cannot find that the agency has made an accurate determination of the weight of claimant's HHG. There is therefore no basis upon which to calculate an overcharge.

Decision

The claim is granted. Claimant is not obligated to pay the bill of collection.

ALLAN H. GOODMAN
Board Judge