



**UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS**

June 24, 2013

CBCA 3293-RELO

In the Matter of RICHARD ROSA

Richard Rosa, Lorton, VA, Claimant.

James E. Hicks, Senior Attorney, Office of Chief Counsel, Drug Enforcement Administration, Springfield, VA, appearing for Department of Justice.

DRUMMOND, Board Judge.

In August 2012, the Department of Justice's Drug Enforcement Administration (agency) transferred Richard Rosa (claimant) from Texas to Washington, D.C. The agency authorized transportation and storage of claimant's household goods and personal effects, not to exceed 18,000 pounds. The weight of claimant's shipment and storage was 22,420 pounds. The agency has required claimant to reimburse it for the costs incurred for the excess weight. The agency has denied claimant's request to reduce or waive the debt. Because the agency has correctly determined and calculated claimant's indebtedness, the Board denies the claim. Claimant's explanations and reasons for relief do not alter the required result.

Statute specifies that an agency shall pay from Government funds "the expenses of transporting, packing, crating, temporarily storing, . . . and unpacking [a transferred employee's] household goods and personal effects not in excess of 18,000 pounds net weight[.]" 5 U.S.C. § 5724(a)(2) (2006). Implementing regulations state that the Government may not pay for expenses associated with excessive weight; an employee is liable for such expenses. 41 CFR 302-7.2 (2011). The statutory and regulatory dictates are consistently applied in case law. *E.g.*, *Ernesto Granillo, Jr.*, CBCA 2088-RELO, 10-2 BCA ¶ 34,569; *David K. Walterscheid*, CBCA 1360-RELO, 09-1 BCA ¶ 34,044 (2008). An

agency's determination concerning the net weight of a claimant's household goods will not be disturbed in the absence of clear and substantial evidence of error or fraud. *Susan L. White*, CBCA 1227-RELO, 09-1 BCA ¶ 34,021 (2008). The burden of proving error or fraud is exceedingly heavy. *Id.* Here, the agency correctly calculated the excess weight and claimant's share of expenses incurred and appropriately has declined to reduce or waive claimant's liability.

Claimant asserts that the moving company, North American Van Lines, engaged in unethical business practices to charge the agency more by withholding information and falsifying documents. Claimant's argument that the moving company purposely interchanged the trucks to produce a higher weight fails for lack of proof. Claimant alleges that a difference in the tractor number on the two weight certificates serves as proof of the moving company's attempt of fraud, but in reality this difference can be attributed to nothing more than a clerical error as the rest of the information on the tickets is accurate. Furthermore, the fact that claimant was not present for the weigh-in does not relieve him from paying the excess weight charge. Claimant had the opportunity to attend the weigh-in of his household goods, but failed to comply with the carrier's requirement that he notify the carrier of his desire to attend five business days prior to the weigh-in. The weight established by the weight certificates prevails in the absence of clear and substantial evidence of error or fraud. *George C. Hlosek*, CBCA 756-RELO, 08-1 BCA ¶ 33,774 (citing *Jaime V. Mercado*, GSBCA 16313-RELO, 04-1 BCA ¶ 32,583).

We do not have authority to waive his debt. The authority to waive repayment of the debt is solely vested with the head of the agency. *Evan F. Meltzer*, CBCA 1536-RELO, 09-2 BCA ¶ 34,272. The Board denies the claim.

JEROME M. DRUMMOND
Board Judge