



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 6, 2020

CBCA 6695-RELO

In the Matter of MICHAEL R. TUCHOLSKI

Michael R. Tucholski, Winchester, VA, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**SHERIDAN**, Board Judge.

Claimant, Michael R. Tucholski, has asked the Board to review the Army Corps of Engineers (USACE or agency) conclusion that he should pay \$1000.80 for 720 pounds of excessive weight associated with the shipment of household goods (HHG).

Background

In 2019 claimant was issued permanent change of station (PCS) orders to relocate to Winchester, Virginia. The travel orders stipulated that the net weight authorized for the shipment of HHG was 18,000 pounds. Claimant received a billing statement on October 8, 2019, for \$1000.80, representing the cost of the excess storage weight of 720 pounds. Claimant asserts that the USACE Finance Center miscalculated the total excess storage by 700 pounds.<sup>1</sup>

Mr. Tucholski contends that his HHG were reweighed at his permanent duty station destination, resulting in the weight of 20,020 pounds:

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<sup>1</sup> Claimant concedes that his HHG were twenty pounds overweight.

Weight is recorded in DPS [Defense Personal Property System] for GBL [general bill of lading] KKFA071397 as NET 20,020 pounds. Per DTR [Defense Transportation Regulation] and JTR [Joint Travel Regulation], an allowance of 2,000 pounds is granted for packing materials. Less allowance amount, total weight is 18,020 pounds. Less authorized weight, total weight is 20 pounds. I acknowledge my HHG as being 20 pounds over the authorized and packing allowance weights.

As proof of his contention, claimant provided the agency with two certified automated truck scale weight tickets, 65920058 and 65920105, dated September 18, 2019, showing that his HHG weighed 20,020 pounds. This weight, less the 2000 pounds granted for packing materials, made the weight of claimant's HHG 18,020 pounds.

Notwithstanding this evidence that was provided to the Finance Center several months ago, the USACE continues to assert it should be able to collect on the incorrectly calculated excess weight of 720 pounds. The agency responds:

When processing travel charges, the agency serves as the last step in the process. Generally, the third party vendor posts charges for shipping and storage in the Defense Personal Property System. Those charges are reviewed by the transportation office and either approved or disapproved. Any charges approved by the transportation office are reimbursed to the third party vendor by U.S. Bank. The agency is then required to reimburse U.S. Bank. The method that U.S. Bank uses to charge the agency is called Powertrack. The information setting the cost of the shipment and storage is determined by the vendor.

The information entered into Powertrack shows that the actual net weight of the HHG shipment on the delivery date of 19 September 2019 (the day after the re-weigh submitted by claimant) was 20,720 pounds. (A total of 2,000 pounds is automatically attributed to packaging materials and does not count against the authorized weight.) Additionally, the Powertrack documentation indicates that the billed weight to the agency was also 20,720.

The agency does not have the ability to change the amount charged in Powertrack, as that is information that was originally submitted by the vendor and which has already been reimbursed to the vendor by U.S. Bank. The agency relies upon this information to calculate what is owed by any individual employee.

### Discussion

Statute limits the Government's payment of an employee's moving expenses to 18,000 pounds net weight. 5 U.S.C. § 5724(a)(2) (2012). 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 (2019) (FTR 302-7.2). "We have consistently held that the weight limit is firm and cannot be relaxed." *Robert M Valek*, CBCA 2957-RELO, 13 BCA ¶ 35,192, at 172,675 (2012). "The employee is responsible for reimbursing the Government for any excess charges due to an overweight shipment." *Charles H. Noonan*, CBCA 2557-RELO, 12-1 BCA ¶ 34,929; see *Susan L. White*, CBCA 1227-RELO, 09-1 BCA ¶ 34,021 (2008). "In the absence of clear and convincing evidence of error or fraud, the agency determination of weight is binding and may not be overturned." *Valek*, 13 BCA at 172,675 (citing *Sam Hankins*, CBCA 1309-RELO, 09-1 BCA ¶ 34,124).

Here, claimant has provided evidence that the weight the agency used to calculate the overage was wrong. We are at a loss to understand why the USACE Finance Center seems powerless to correct this clear error without resorting to a decision from the Board. The circumstances clearly show that claimant's HHG were only twenty pounds overweight.

### Decision

The claim is granted.

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN

Board Judge