



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 28, 2024

CBCA 8090-RELO

In the Matter of MINDI K.

Mindi K., Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

LESTER, Board Judge.

Claimant challenges a determination by her employer, the Department of Defense (DOD or the agency), that she owes the agency \$6083.03 for the cost of shipping household goods (HHG) in excess of the regulated maximum. Because claimant has not met her burden of proving clear error or fraud in the weighing of her HHG, she has not established her lack of responsibility for excess HHG weight. Nevertheless, a portion of the agency's calculation of the overage is unsupported by any evidence in the record. Accordingly, we limit the amount that DOD may recover from claimant to \$4562.83, which is the amount supported by weight tickets in the record before us.

Background

Claimant is a civilian employee of DOD. In May 2022, the agency issued claimant permanent change of station orders from Louisville, Kentucky, to San Antonio, Texas. The agency authorized claimant to ship a maximum of 18,000 pounds of HHG through a carrier to her new duty station.

On July 7, 2022, the day that claimant's HHG was picked up, the carrier's truck was weighed twice in Memphis, Indiana, at a "Certified Automatic Truck (CAT) Scale" location.

The truck was first weighed empty and then weighed a second time loaded with claimant's HHG. One page of the two-page July 7, 2022, weight ticket, time-stamped 08:16 (8:16 a.m.), reflects a steer axle weight of 11,060 pounds, a drive axle weight of 14,280 pounds, a trailer axle weight of 14,260 pounds, and a gross weight of 39,600 pounds for the truck prior to being loaded with claimant's HHG. The word "TARE" is written in ink next to the gross weight on that page of the weight ticket. The other page of the two-page July 7, 2022, weight ticket, time-stamped 20:21 (8:21 p.m.), reflects a steer axle weight of 11,600 pounds, a drive axle weight of 23,800 pounds, a trailer axle weight of 26,480 pounds, and a gross weight of 61,880 pounds after the truck was loaded with claimant's HHG. The word "GROSS" is written in ink next to the gross weight on that page of the weight ticket. Subtracting the "TARE" weight (the weight of the empty truck) of 39,600 pounds from the "GROSS" weight (the weight of the truck including claimant's HHG) of 61,880 pounds results in a net HHG weight of 22,280 pounds.

When claimant's HHG arrived in Texas on July 22, 2024, another carrier reweighed claimant's HHG. This certified reweigh reflected a gross weight of 61,200 pounds, a tare weight of 38,820 pounds, and a net HHG weight of 22,380 pounds. This net weight was 100 pounds more than the net weight taken fifteen days earlier.

On January 23, 2023, claimant received an email from a Defense Property System (DPS) shipment manager email address informing her that DPS "has detected the possibility you may have exceeded your authorized Joint Travel Regulation[s] (JTR) weight allowance of 18000." This email identified the reweigh net weight as 23,160 pounds, a figure higher than that identified on any of the weight tickets in the record here. The DPS email was not accompanied by any supporting documentation.

On August 25, 2023, DOD issued a letter to claimant notifying her of a \$6083.03 debt for overweight HHG. DOD stated in the letter that it had prorated the debt based on the portion of the shipment that was overweight and that the explanation was shown on an enclosed pay adjustment authorization form. That form referenced an attached excess weight "calculation sheet" that broke down the charges based upon the same initial gross weight of 23,160 pounds that DPS had identified in its January 2023 email. On the calculation sheet, DOD subtracted 2000 pounds from the initial 23,160-pound gross weight to establish an adjusted gross weight of 21,160 pounds.¹ DOD then subtracted the allowed HHG weight of 18,000 pounds from the adjusted gross weight of 21,160, which left an excess weight of 3160

¹ We presume that the agency subtracted the 2000 pounds to comply with a regulatory requirement, which we will discuss below, to account for packing materials, although DOD left blank the space on the calculation sheet where a "packaging" input was to be subtracted from the gross weight on line 2.

pounds. The excess weight was then divided by the gross weight (23,160 pounds) and multiplied by the total actual cost (\$44,583.21) to achieve a debt amount of \$6083.03. As with the DPS email from January 23, 2023, no weight tickets reflecting a 23,160-pound initial gross weight accompanied the August 25, 2023, letter.

On April 30, 2024, the Clerk of the Board docketed claimant's challenge to the agency's payment demand. Soon thereafter, on May 2, 2024, a lead financial management analyst from the agency emailed claimant asking for more information so that the agency could better formulate its response to her challenge. Claimant responded by email on May 16, 2024, stating that her shipping company had "listed the weight as 18,983 lbs on a printed form from their company," albeit one without weight ticket certification. Claimant also summarized the contents of the weight tickets from July 7, 2022, and challenged the agency's calculation of the overage. She stated that the formula for calculating the overage from the July 7, 2022, weight tickets should have been "61,880 minus 39,600 = 22,280 gross, with no packing removed. 10% of packing is 2,228 lbs. 22,280 minus 2,228 = 20,052 lbs. That should mean I am only excess 2,052 lbs." Claimant further stated that her HHG was packed in wooden crates, which should also be calculated in the deduction of the overweight assessment. In her notice of claim, claimant stated, "The axles were different on the weight tickets and my HHG to San Antonio were crated. When they deducted for packing, only 2000 was deducted instead of 10%."

The Board received the agency's response to claimant's appeal on June 5, 2024. The agency stated that "[o]ur office does not have the means to verify if the weight tickets and weight that was computed is accurate and have based our determination on the information provided in her appeal package. Our office concurs with the debt."

Discussion

When civilian employees of an agency are transferred from one permanent duty station to another in the interest of the Government, the agency is responsible for the cost of transporting and storing the employee's HHG "not in excess of 18,000 pounds net weight." 5 U.S.C. § 5724(a)(2) (2018). The JTR further provides that, if HHG is transported by van line, the employee is entitled to add an additional 2000 pounds to the maximum weight allowance to account for the weight of packing materials:

The worldwide maximum weight of HHG that may be transported . . . is 18,000 pounds net weight for each civilian employee. For uncrated or van line shipments, a 2,000-pound allowance is added to the maximum weight allowance to cover packing materials.

JTR 054304 (May 2022); *see* 41 CFR 302-7.2 (2022). Because claimant's HHG was shipped by van line, the maximum allowable gross weight of HHG is 20,000 pounds (that is, the initial 18,000-pound allowance plus the 2000-pound packing materials allowance). The JTR provides that "[u]nder no circumstances may the Government pay any expenses associated with excess weight" beyond that 20,000-pound allowance. JTR 054304.

The extent to which a federal employee can challenge an allegedly erroneous HHG weight is well-settled. "In order to set aside the agency's determination, claimant must show clear and substantial evidence of error or fraud." *Nathan F.*, CBCA 7768-RELO, 24-1 BCA ¶ 38,510, at 187,182 (quoting *Michael M.*, CBCA 7644, 23-1 BCA ¶ 38,365, at 186,301). "[I]n the absence of proven error or fraud, the carrier's weight is deemed to be accurate. Mere suspicion is not sufficient." *Id.* (quoting *Vincent A. Leduc*, CBCA 1166-RELO, 08-2 BCA ¶ 33,997, at 168,125).

The Board in *Nathan F.*, 24-1 BCA at 187,182, recently discussed how difficult it is for an employee to challenge the validity of a weight ticket that recorded measurement of the claimant's HHG during the transport process. The Board identified only three instances when it or its predecessor for travel and relocation claims, the General Services Board of Contract Appeals, had found that a claimant had established that the certified weight of his or her HHG was incorrect. Each of those three cases involved unusual circumstances that plainly called into question the reliability of the weight tickets on which the agency was relying. *See Michael V. Torretta*, GSBCA 16560-RELO, 05-1 BCA ¶ 32,928, at 163,107-08 (finding weight tickets unreliable where a greater than 10,000-pound difference existed between the estimated and final weight measurements and where the tickets were for three truckloads even though the HHG was shipped in only two); *Jerry Jolly*, GSBCA 14158-RELO, 98-1 BCA ¶ 29,518, at 146,401-02 (1997) (finding weight document unreliable due to unsigned, handwritten addition of over 6000 pounds to total); *Robert G. Gindhart*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405, at 146,101 (1997) (finding weight ticket unreliable where HHG became "waterlogged" because of movers' negligence).

Here, the record contains nothing more than speculation about an alleged weight discrepancy, raising questions about the weight of the axles of the truck in which the HHG was transported. That is not the "clear and substantial evidence the law requires." *Thomas Kupris*, CBCA 1534-RELO, 09-2 BCA ¶ 34,192, at 168,989.

While claimant has not proven that her HHG was improperly weighed, her allegation that the agency incorrectly calculated her debt is supported by the record. The weight tickets in the record from July 7, 2022, reflect that the gross weight of claimant's HHG was 22,280 pounds. The July 22, 2022, reweigh ticket reflects a gross weight of 22,380 pounds, 100 pounds more than fifteen days before. The agency's calculation of claimant's debt is based on an even higher gross weight of 23,160 pounds, a figure that is unsupported by any of the

weight tickets in the record. The agency has disclaimed any ability to explain how it identified the gross weight upon which it is relying or to verify the validity of the assessed gross weight.

Claimant is entitled to be charged for excess weight based upon the lesser of the weights recorded on certified weight tickets in the record. *Thomas Kupris*, 09-02 BCA at 168,989. That means that claimant's debt should be calculated based on the gross weight of 22,280 pounds measured on July 7, 2022.² Following the JTR formula for HHG overages of gross weight (22,280 pounds), less 2000 pounds of packaging materials, less the 18,000 pounds initially allowed, the correct excess weight of claimant's HHG was 2280 pounds. Using the excess weight calculation sheet's equation for calculating overweight debt of "Excess ÷ Gross x Total Actual Cost" ($2280 \div 22,280 \times 44,583.21$), claimant's actual debt is \$4562.38.

Decision

For the foregoing reasons, the claim is granted in part. Although claimant has not established that the weight tickets in the record are incorrect, the agency has overstated the amount of claimant's debt. We reduce the amount that the agency can collect from claimant to \$4562.38.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

² Claimant's statement that ten percent of the weight should be deducted for packing materials is not supported by the record or the regulation. Since the move was classified as an "uncrated or van line shipment," only 2000 pounds may be deducted from the gross weight for packing materials. 41 CFR 301-7.2; JTR 054304.