

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 29, 2003

GSBCA 15903-RELO

In the Matter of MARIANO G. AGUILAR, JR.

Mariano G. Aguilar, Jr., Oxnard, CA, Claimant.

A.V. Easter, Site Manager, Indianapolis Transportation Payments Office, Defense Finance and Accounting Service, Indianapolis Center, Indianapolis, IN, appearing for Department of Defense.

PARKER, Board Judge.

Background

The Department of Defense (DoD) sent Mariano G. Aguilar home to the United States from Germany upon his retirement in February 2000. After subtracting 4017 pounds in packing allowances, DoD determined that Mr. Aguilar shipped 21,291 net pounds of household goods -- 3291 pounds over the 18,000 pound limit. DoD has asked Mr. Aguilar to pay for the excess shipping in the amount of \$2924.58.

Mr. Aguilar claims that approximately 2490 pounds of the shipped goods were not household goods, but were instead professional books, papers and equipment, which should not have been included in the weight computation. He also states that a pre-shipment counselor told him that such items would not count against the overall 18,000 pound weight allowance. DoD says that these items, consisting mostly of textbooks, course materials and training manuals collected during sixteen years of Government service, do not qualify as professional books, papers and equipment as defined in applicable regulations.

Discussion

DoD correctly determined that, in this case, the course-related materials do not constitute professional books, papers and equipment as defined in the Federal Travel Regulation (FTR). At the time of Mr. Aguilar's transfer, section 302-8.2 of the FTR set forth the applicable rules governing shipment of household goods:

(a) **Maximum weight allowance.** The maximum weight of household goods that may be transported or stored at Government expense is limited to 18,000 pounds net weight for all employees.

(b) **Professional books, papers, and equipment.**

(1) For purposes of this part, the term "professional books, papers, and equipment" includes those professional or specialized items and other materials which are personally owned by the employee for use in the performance of official duties. . . .

(2) There is no statutory authority to transport personally owned professional books, papers, and equipment in addition to the maximum weight allowance (§ 302-8.2(a)) established by law for transportation of an employee's household goods and personal effects. However, there may be instances in which the weight of the professional books, papers, and equipment would cause an employee's household goods shipment to be in excess of the maximum weight allowance. In such instances, the personally owned professional books, papers, and equipment may be transported to the new permanent duty station as an administrative expense of an agency (not chargeable to travel and transportation appropriations). Shipment of these items as an administrative expense would be instead of shipment as an allowance of the employee.

(3) Authority to transport professional books, papers, and equipment as an administrative expense shall be subject to agency policy and discretion within the following guidelines:

(I) The employee shall furnish an itemized inventory of professional books, papers, and equipment for review by an appropriate authorizing official at the new permanent duty station. In addition, the employee shall furnish appropriate evidence (as determined by the agency concerned) that transporting the itemized materials as part of the employee's household goods would result in an excess of the employee's maximum weight allowance.

(ii) The authorizing official at the new permanent duty station shall review and certify that the professional books, papers, and equipment as itemized are necessary in the proper performance of the employee's duties at the new duty station and that if these items were not transported to the new duty station, the same or similar items would have to be obtained at Government expense for the employee's use at the new duty station.

41 CFR 302-8.2 (2000).¹

These provisions make it clear that the decision whether to authorize the shipment of excess weight professional books, papers and equipment is a discretionary decision to be made by the agency. In making the decision whether to incur this administrative expense, the agency must consider whether the items will be necessary in the proper performance of the employee's duties at the new duty station.

Here, DoD properly concluded that Mr. Aguilar's course-related materials would not be necessary to the performance of any duties to be performed at the new duty station. One obvious reason for this conclusion was that Mr. Aguilar did not have a new duty station -- he had retired from Government service and was being sent home. Because DoD properly determined that the items in question were not professional books, papers and equipment as defined in the FTR, the items must be considered to be part of Mr. Aguilar's household goods. Since Mr. Aguilar's household goods weighed more than 18,000 pounds, he is responsible for shipping the excess.

Mr. Aguilar maintains that, regardless of regulatory requirements, the fact that he was advised by a pre-shipment counselor that the items would not count against the 18,000 pound weight allowance should entitle him to reimbursement. This is incorrect. Although it is not clear exactly what the counselor told Mr. Aguilar, it is well-settled that even erroneous advice given by Government officials cannot create a right to reimbursement in

¹ DoD's Joint Travel Regulations (JTR), which implement the FTR for DoD's civilian employees, say essentially the same thing. JTR C8007 (Feb. 1, 2000).

excess of statutory and regulatory entitlements. Masood Badizadegan, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789. The claim is denied.

ROBERT W. PARKER
Board Judge