Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 21, 2004

GSBCA 16324-RELO

In the Matter of WENDY J. HANKINS

Wendy J. Hankins, Greeneville, TN, Claimant.

Edward T. Nasalik, Executive Director, Heartland Finance Center, General Services Administration, Kansas City, MO, appearing for General Services Administration.

HYATT, Board Judge.

Real estate transaction expenses associated with purchasing a new residence following a transfer in the interest of the Government are reimbursable if the employee makes a daily commute from the new residence to the new duty station and the residence is closer to the new duty station. When the new residence is farther from the new duty station than the home at the old duty station and increases the employee's commuting time, the purchase cannot be deemed to be reasonably related to the transfer.

The Government will pay the cost to move no more than 18,000 pounds of household furnishings and effects in connection with a relocation of an employee. The weight of the household goods includes packing materials and crating required to protect fragile items.

Background

Prior to her transfer, claimant, Wendy J. Hankins, was employed by the United States Postal Service and lived near Birmingham, Alabama. In March 2003, she accepted a position as a human resources specialist with the General Services Administration (GSA) in Atlanta, Georgia. In the summer of 2003, she sold her home in Alabama and purchased a new residence in Greeneville, Tennessee. Her household furnishings were shipped via a Government bill of lading (GBL) to her new home. Her claim challenges two actions taken by GSA: (1) the agency's determination that she is not eligible to be reimbursed for the real estate transaction expenses she incurred in purchasing the house in Greeneville, and (2) the assessment of the costs of transporting her household goods calculated by GSA to be attributable to weight in excess of the statutory maximum of 18,000 pounds.

With respect to the first issue, Ms. Hankins contends that her purchase satisfies applicable regulations and she should be reimbursed for the expenses she claims. The agency declined to pay the real estate transaction costs associated with claimant's purchase of a

house in Greeneville because of the overall distance that Greeneville is from Atlanta. Using an internet mapping program, the agency calculated that distance to be some 285 miles, by interstate highway, and had concluded that the distance precluded a daily commute to the office from the new residence. Ms. Hankins disputes this conclusion, noting that the actual distance is some 189 miles and that the route she drives is approximately 208 miles, considerably shorter than the 285-mile route referred to by GSA in reviewing her claim for real estate expenses.

Claimant adds that the house in Greeneville is her sole permanent and legal residence. She recognizes that the location of her new home is unusually distant from the permanent duty station in Atlanta, but states that due to her personal family circumstances, in order to accept the position in Atlanta, she could relocate only to Greeneville, Tennessee. She further states that prior to accepting this position she had discussed her circumstances, on a confidential basis, with human resources and finance personnel in Atlanta, and they were satisfied with her reasons for moving to Greeneville.

In further support of her claim for reimbursement of real estate transaction expenses, claimant tells us that she does, in fact, regularly drive from her home in Greeneville to a MARTA (Atlanta's mass transit system) station, where she takes the train the rest of the way to the office. The drive to the MARTA station can take anywhere from close to three hours to nearly three and three-quarter hours. The train ride adds additional time. Claimant manages this commute in part because she works an alternative work schedule which gives her one day off during each two-week (ten work days) pay period. In addition, she maintains a room in Atlanta, which she uses on occasions when she must work exceptionally late or the weather is inclement. This room is not, she assures us, used on a regular basis, but only when a work or training commitment requires her to stay in Atlanta until an unusually late hour. Otherwise, on ordinary workdays it is her custom to make the round-trip commute. Ms. Hankins has furnished a chart showing that she has made the commute on a regular basis.

Also in connection with this relocation, GSA paid United Van Lines $14,530.14 to ship 30,500 pounds of claimant's household goods from her old residence to her new residence. Since the weight of this shipment exceeded the maximum amount of 18,000 pounds, GSA billed Ms. Hankins for the proportionate cost attributable to the excess weight. Claimant challenges the amount assessed by GSA. First, she maintains that the weight of goods reported to have been moved is erroneous because it did not deduct the weight of the cartons and packing materials used by the moving company. She also contends that the bill included charges for cartons that were not provided by the shipper, and that packing and unpacking charges were improperly inflated because the mover did not fully pack and unpack the shipment. Ms. Hankins maintains that the bill should be adjusted for these errors prior to calculating a pro rata share for her portion of the charges attributable to excess weight.

Discussion

When agencies transfer employees from one permanent duty station to another, statute and implementing regulations authorize the reimbursement of certain of their relocation expenses. 5 U.S.C. §§ 5724, 5724a (2000); 41 CFR pt. 302 (2003). The purpose of the statute is "to help pay the cost of moving to the new place of employment." The statute is designed to authorize payment of expenses "incident to transfer from the old to the new

station" so that "employees will not have to incur financial losses when transferred at the request of the Government." S. Rep. No. 89-1357, at 2-4 (1966), reprinted in 1966 U.S.C.C.A.N. 2565-67; Jeffrey R. Jenkins, GSBCA 15339-RELO, 00-2 BCA ¶ 31,066; Paul W. Gard, Jr., GSBCA 15311-RELO, 00-2 BCA ¶ 31,053.

Real Estate Transaction Expenses

When an employee relocates in the interest of the Government, the Federal Travel Regulation (FTR) provides that the agency will reimburse the employee for real estate transaction expenses incurred when a residence at the old official station is sold or a residence at the new official duty station is purchased. 41 CFR 302-11.1. The primary test contained in the regulation for determining whether a residence is "at" the duty station is found in 41 CFR 302-11.100, which states that the employee will be reimbursed for the expenses of the sale or purchase of a residence from which the employee makes the daily round-trip commute. With respect to the purchase of a home at the new duty station, the Board has recognized that an employee is not required to purchase a home within a specified minimum distance from the new official duty station in order to be reimbursed for real estate transaction expenses. What is required is that the new dwelling be one from which the employee makes the daily commute and -- this is the critical factor here -- that the new residence be nearer, or at least substantially reduce the commute, to the new duty station. Marko Bourne, GSBCA 16273-RELO (Dec. 23, 2003); John C. Burton, GSBCA 15991-RELO, 03-2 BCA ¶ 32,328; see Vincent P. Mokrzycki, GSBCA 16142-RELO, 04-1 BCA ¶ 32,468 (2003); Jenkins.

In this case, although Ms. Hankins may have established that, at least for now, she is commuting the full distance from Greeneville to Atlanta on a regular, or daily, basis, this is not dispositive of her entitlement to reimbursement. The principal focus of the inquiry, and the underlying rationale for the "daily commute" rule, is that the purchase of the new home be incident to the transfer. Implicit in this requirement, as we noted above, is that the new home will be closer to the new duty station than was the home owned at the old duty station. That simply is not the case here. Even accepting Ms. Hankins' representation that Greeneville is 189, not 285, miles from Atlanta, and that her actual one-way commuting distance is 208 miles, claimant's previous home, in Hoover, Alabama, near Birmingham, was only some 150 miles from Atlanta, and virtually all of that commute is on an interstate highway. The estimated driving time from Hoover to Atlanta is about two and one-half hours, in contrast to the considerably more than three hours that claimant tells us is routinely required for the one-way trip from Greeneville to Atlanta. Claimant has, in relocating to Greeneville, actually increased the overall distance and time required for her commute to work.

The purpose of the statute and regulations is to ease the cost that a transferring employee incurs to relocate closer to the new duty station, not to underwrite the cost of a move that makes the commute even longer.[1] See Jenkins. A move of that nature is regarded

[1] Although the Board and the General Accounting Office (GAO), which decided these cases prior to July 1996, both have considered that certain contingencies, such as the remoteness of the new duty station from suitable housing, or medical necessity, might serve

as having been undertaken by the employee for reasons other than the need to relocate as a result or consequence of the transfer. As such, GSA properly disallowed claimant's application for reimbursement of the expenses associated with the purchase of the new home in Greeneville.

Excess Weight of Household Goods Transported Under GBL

With respect to the transportation of Ms. Hankins' household furnishings, under statute, when an agency transfers an employee from one permanent duty station to another, in the interest of the Government, it will 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). Under applicable regulation, when an agency ships an employee's goods and those goods weigh more than 18,000 pounds, the employee shall reimburse the Government for "the cost of transportation and other charges applicable to the excess weight." 41 CFR 302-7.200. "Neither the statute nor the regulations permit any exception to this rule." Stephen K. Magee, GSBCA 16342-RELO (Apr. 9, 2004); see also Marion T. Silva, GSBCA 15673-RELO, 02-1 BCA ¶ 31,815. Additionally, when the agency's determination is based upon the documentation furnished by the moving company and made part of the record, the claimant must be able to provide substantial evidence of clear error in that documentation to successfully contest the charges attributable to excess weight. Richard D. Grulich, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891. Although she does not disagree that she must be responsible for her pro rata share of costs attributable to weight in excess of 18,000 pounds, Ms. Hankins maintains that prior to calculating her portion of the charges attributable to excess weight, the bill should be adjusted for what she deems to be errors and improper charges assessed by the moving company.[2]

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as an exception justifying the inability to purchase a new home within commuting distance of the new duty station, the purchase must still be "incident to the transfer." When the new residence is located at an even greater distance from the new official duty station than was the old home, the fact that the location selected was dictated by medical or other personal exigencies cannot serve to support the reimbursement of real estate transaction expenses arising from the purchase. David M. Whetsell, GSBCA 14089-RELO, 98-1 BCA ¶ 29,610. This is the case here. The purchase of the residence in Greeneville, which places Ms. Hankins even further from Atlanta than she was at her residence in the Birmingham area, cannot be deemed to have been reasonably related to this transfer. Id.

[2] In addition to charging Ms. Hankins for shipping costs attributable to excess weight of household goods, GSA also billed claimant an amount representing the cost of additional mileage for the move. The applicable regulation provides that "shipments may originate or terminate at any location; however, [the employee's] reimbursement is limited to the cost of transporting the property in one lot from the authorized origin to the authorized destination." 41 CFR 302-7.7. Thus, the regulation permitted Ms. Hankins to ship her goods at Government cost from Birmingham to Atlanta. Ms. Hankins does not contest the agency's assessment of the extra cost attributable to the added miles to move the household goods to

First, Ms. Hankins contends that the weight of goods reported to have been moved is erroneous because it did not deduct the weight of the cartons and packing materials used by the moving company. This, she explains, is because the truck that moved her did not deliver the packing materials, which were delivered separately the day before her move. Claimant contends that the moving truck should have been weighed, prior to loading, with the cartons and other packing materials on board. Then, after packing, the loaded truck, including all the packed cartons and furnishings, as well as unused cartons, should have been weighed again. The difference between the two weights is what should be used to determine the weight of her household goods.

This argument is unavailing – the regulations provide that for uncrated shipments (i.e., shipments of furnishings and personal effects in the mover's van or similar conveyance), the net weight of household goods is the weight shown on the GBL, which includes the weight of barrels, boxes, cartons, and similar materials used in packing but does not include pads, chains, dollies and other equipment used to load and secure the shipment. 41 CFR 302-7.12(a); Douglas V. Smith, GSBCA 14655-RELO, 99-1 BCA ¶ 30,171 (1998); LeRoy Aaron, GSBCA 14311-RELO, 98-2 BCA ¶ 29,762. Thus, it is immaterial that the van was not weighed with the packing materials prior to loading claimant's furnishings and effects.[3] Further, to the extent that Ms. Hankins complains that she was improperly charged for the weight of crating used to pack several breakable items of furniture, she misapprehends the regulations. The regulation provides for adjustments based on the weight of crating materials not applicable in these circumstances. This FTR provision addresses moves where the entire shipment is crated, not simply a few fragile items needing additional protection, as occurred here. 41 CFR 302-7.12(b); Robert J. Land, GSBCA 15367-RELO, 01-2 BCA ¶ 31,455. In this case, the crating was essentially part of the packing materials and properly included in the net weight of the household goods transported.

Next, claimant argues that the moving bill is inflated because the shipper charged GSA for supplying and packing boxes that claimant and her husband purchased

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Greeneville, Tennessee.

[3] In support of her contentions concerning the proper procedures for weighing shipments, Ms. Hankins cites us to excerpts from two decisions of the Comptroller General -- Lewis J. Rumfelt, B-189783 (Nov. 30, 1977), and Charles Gilliland, B-198576 (June 10, 1981). These decisions involve moves made by Defense Department employees under regulations existing at the time. Ms. Hankins believes that the extract from Rumfelt in particular supports her contention that packing materials are not properly included in the weight of goods shipped. Rumfelt, however, did not suggest that the weighing procedures described properly reflected requirements for determining the weight of shipments, but rather simply pointed out that the procedures used rebutted the claimant's contention that he had been improperly charged for the weight of packing materials that were not used by demonstrating that he was not charged for packing materials at all, whether used or not. Regardless of what practices may have been followed some twenty to twenty-five years ago, the regulations in effect at the time of this move provide that packing materials are to be included in net weight.

independently and packed themselves. GSA notes for the record that, based on its audit of the carrier's documentation, it does not see a basis to determine that it was billed for boxes that Ms. Hankins purchased. The carrier actually billed GSA for fewer containers than it shipped, which GSA attributes to a reduction reflecting the containers supplied by the employee. Ms. Hankins signed off on the shipper's inventory, signifying that it was correct, and GSA relied on this inventory as representing the best documentation available. Claimant explains, however, that while she reluctantly initialed the inventory prior to loading, she was told she could verify the inventory when it was unloaded. She undertook to do this and this is the basis for her claim that the shipper overcharged GSA for 112 boxes that it did not supply. The GBL appears to include specific charges for containers supplied. GSA has not responded to this specific point.

In addition to her personal statement, Ms. Hankins has submitted a letter from a neighbor who helped her move, corroborating that the mover did not repack cartons that had already been packed. Claimant urges that the resulting overcharge for containers and repacking amounts to some $1357. GSA's response to this contention is that it has audited the bill and concluded that the carrier billed appropriately under the circumstances. GSA states that relocating employees are routinely counseled not to pack their own household goods because this actually increases the cost to the Government because carriers are responsible for the items they ship, must ensure they are not shipping anything illegally, and are supposed to inspect anything already packed by the owner prior to loading it. GSA also states that the carrier asked GSA for authorization to incur this additional charge and GSA provided such authorization in order to permit the shipment to be made. From GSA's standpoint, whether the carrier actually inspected and repacked these boxes is of no consequence, because contractually the carrier bore the risk of any liability associated with its failure to perform the required inspection.

These contentions concerning the purchase of cartons and the fact that the mover may not have actually unpacked and repacked claimant's personal effects do not result in any relief for Ms. Hankins, either. Since GSA assumed the administrative responsibility for the move, it determined the contract clauses and conditions that would apply under the GBL issued to the carrier. The rates and prices negotiated by GSA reflected a full move, under which the mover would be responsible for all aspects of moving the household goods, including the packing of furnishings and effects, transporting them to the new residence, and unloading and unpacking at the destination. The regulation providing for this type of move, 41 CFR 302-7.13(b), contemplates that the mover will be obligated to perform these services. One of the conditions agreed to is that the carrier will bear certain risks and responsibilities, which again is reflected in the rates and prices negotiated by the parties. As a third party beneficiary of the contract, Ms. Hankins may well have been frustrated by her inability to reduce costs by purchasing her own cartons and packing her own household effects. Nevertheless, this is the nature of the bargain between GSA and the carrier, and she was not entitled to revise this agreement for her own benefit.[4] GSA has performed its administrative

[4] When the agency authorizes the actual expense method (i.e., shipment via GBL) for the transportation of household goods pursuant to a permanent change of station, the relocating employee still has the flexibility to exert some control over the process, either by performing a self-move or by selecting a commercial carrier of his or her own preference.

responsibility to audit the charges and is satisfied that they comply with terms of the contract and that it received the benefit of its bargain.[5] There is no basis here for the Board to disturb this determination.

Finally, Ms. Hankins believes that the bill should be adjusted to reduce the charges for unpacking her household goods. She states that the movers unloaded the van but actually unpacked very few items, which she admits was at her request. Since the unpacking was not performed, however, she objects to the charges being paid by the agency and, proportionately, by her with respect to the excess weight that was shipped for which she is financially responsible. Again, since this was a GBL move, Ms. Hankins cannot impose her own terms on GSA and the mover. The contract and rates quoted provided that the carrier would unpack the household goods at destination. GSA points out that the contract provided that the carrier would be paid for this service whether the employee took advantage of it or not. Again, the overall rates agreed to by the carrier reflect bargaining points of this nature and it is not the employee's prerogative to substitute his or her judgment as to what services should be paid for if a GBL move is performed. There is, therefore, no basis for adjusting the bill to reflect the fact that Ms. Hankins elected to waive the unpacking service.

In such cases the employee is reimbursed for the costs of the move by the agency, limited to a maximum amount reflecting the cost to the Government of shipping up to 18,000 pounds. 41 CFR 302-7.15.

[5] GSA did not respond to claimant's allegations concerning the overcharge for boxes, and the Board has no basis for resolving this controversy on the record before it. GSA may want to consider this matter further, however. To the extent that Ms. Hankins is correct that the carrier charged for more boxes than it supplied and GSA was not obligated by its contract to pay for these items, GSA should consider pursuing this with the carrier and, if an adjustment to the moving expenses is in order, making the appropriate adjustment to claimant's proportionate share of the expenses.

Decision

The claim is denied.

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CATHERINE B. HYATT
Board Judge