

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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April 9, 2004

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GSBCA 16342-RELO

In the Matter of STEPHEN K. MAGEE

Stephen K. Magee, Bend, OR, Claimant.

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

**DANIELS**, Board Judge (Chairman).

In March 2002, Stephen K. Magee separated from federal service. At the time, Mr. Magee was working for the Department of Defense (DoD) in Germany. As part of DoD's obligation to provide travel and transportation for Mr. Magee and his wife back to their residence in the United States, 5 U.S.C. §§ 5722(a)(2), 5724(d) (2000), the department paid for the shipment of the Magees' household goods to their home in Oregon. The goods weighed more than 18,000 pounds, and DoD maintains that Mr. Magee must pay the portion of the shipping cost attributable to the weight in excess of that poundage.

DoD calculated the amount of the debt in the following way: Mr. Magee's household goods were shipped under two separate Government bills of lading. Under one, 26,996 pounds were shipped. DoD applied a fifteen percent credit, or 4,049 pounds, for a packing allowance, thereby determining that the household goods weighed 22,947 pounds. Under the other Government bill of lading, 516 pounds were shipped. DoD applied a fifty percent credit, or 258 pounds, for a packing allowance, thereby determining that the household goods weighed 258 pounds. In total, 27,512 pounds were shipped, and 23,205 of those pounds were attributable to Mr. Magee's household goods. Mr. Magee is responsible for the cost of shipping the goods whose weight exceeds 18,000 pounds – 5,205 pounds. The total cost of the two shipments was \$31,623.64. The portion of this cost for which Mr. Magee is responsible is 5,205 divided by 27,512, or a bit more 18.9 percent of the total. That portion, according to DoD, is \$6,096.06.

Mr. Magee asks that the Board consider the following factors in deciding whether to sustain DoD's right to the amount in question: Neither he nor his wife is employed. He is retired and has a fixed income, the Social Security component of which is reduced because he receives a pension as a federal retiree. The couple's medical expenses in 2002 and 2003

were very high. When he and his wife married, each was working for the Federal Government, and therefore eligible for shipment of 18,000 pounds of household goods when transferred, but his wife resigned from federal service in 1997. Mr. Magee previously asked that DoD waive his debt to the department in light of these same factors. DoD declined to do so.

As DoD understands, none of the factors cited by Mr. Magee may be considered in deciding whether to sustain the department's right to the amount in question. By statute, an agency's liability for transporting a transferred employee's household goods is limited to the expenses of moving goods "not in excess of 18,000 pounds." 5 U.S.C. § 5724(a)(2). By regulation, if the agency takes responsibility for the shipment of those goods, it must pay the carrier's entire bill and, if the goods weigh more than 18,000 pounds, collect from the employee "the cost of transportation and other charges applicable to the excess weight." 41 CFR 302-7.200 (2003) [Federal Travel Regulation]; see also JTR<sup>1</sup> C8010-B.1 (Mar. 1, 2003) ("excess weight charges" are "the employee's financial responsibility"). Neither the statute nor the regulations permit any exceptions to this rule. 41 CFR 302-7.2; JTR C8100 ("NOTE: *Under no circumstances shall the Government pay any expenses associated with excess weight.*"); see Michael L. Rivera, GSBCA 16350-RELO (Mar. 23, 2004) and cases cited therein.

Thus, no matter Mr. Magee's financial circumstances or the reasons for them, he is required to pay the portion of the shipping costs associated with the weight of his goods in excess of 18,000 pounds. Similarly, it is irrelevant that the Magees might have been entitled to ship 36,000 pounds of goods at Government expense if they had both separated from Government service and moved back to Oregon in 2002. See JTR C8100 (maximum weight that may be transported by Government "is 18,000 pounds net weight for each employee"). Mrs. Magee separated five years earlier, and she was a dependent, not an employee, when Mr. Magee separated.

In his reply to DoD's comments to the Board regarding this claim, Mr. Magee mentions that when he and his wife moved to Germany to work for DoD, they shipped over fifty boxes of professional materials, and those materials were not counted against the 18,000-pound weight limit. If this assertion is true, it could be relevant to the portion of the cost of sending the Magees' household goods back to Oregon for which Mr. Magee is responsible. If the combined weight of a transferred employee's household goods and professional books, papers, and equipment (PBP&E) is more than 18,000 pounds, the Government may pay for the shipment of the PBP&E as an administrative expense. 41 CFR 302-7.4, -7.5, -7.302, -7.303; JTR C8120. Generally, this may be done only if, among other things, an appropriate official certifies that the materials "are necessary for the proper performance of the employee's duties at the new [permanent duty station]." 41 CFR 302-7.303(b); JTR C8120-B.2. Obviously, a separated employee does not need professional materials to perform duties for the Government at the location to which he moves after separation, and under a previous version of the regulations, that would disqualify such an employee from having PBP&E shipped home at Government expense. Mariano G. Aguilar,

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<sup>1</sup> The JTR is the Department of Defense's Joint Travel Regulations, which implement and supplement the Federal Travel Regulation.

Jr., GSBCA 15903-RELO, 03-1 BCA ¶ 32,178. The regulations in effect when Mr. Magee separated provide an exception to the general rule, however: if the costs of shipping an employee's PBP&E to a duty station outside the continental United States were absorbed by an agency as an administrative expense, and the employee separates from Government service from a duty station abroad, the PBP&E may be returned to a location in the United States as an administrative expense. 41 CFR 302-7.303 note; JTR C8210-C.5.

Even under the revised regulatory provisions, though, we do not see any justification for DoD's paying for the transportation of any of Mr. Magee's PBP&E from Germany to Oregon as an administrative expense. Mr. Magee has never specifically requested that the department make such a payment. Further, PBP&E may be shipped at the Government's administrative expense only if the employee furnishes for review by an authorizing official an itemized inventory of PBP&E, 41 CFR 302-7.303(a); JTR C8210-B.1, and Mr. Magee has never provided DoD with such an inventory. Nor did he question, until March 2004, the documentation the department sent him beginning in October 2002 which showed that no PBP&E were included in the shipment of his belongings. DoD consequently has no basis for paying as an administrative expense for the shipment of any of Mr. Magee's belongings. James R. Wyatt, Jr., GSBCA 16038-RELO (Feb. 4, 2004).

We make a small reduction in the amount of money to which DoD is entitled, however, to correct for mathematical errors made by the department. The fraction of the total cost which is commensurate with the excess weight of Mr. Magee's household goods is, as DoD found, 5,205 divided by 27,512. Had DoD multiplied this fraction by the total cost of \$31,623.64, it would have found that Mr. Magee is obligated to reimburse the department \$5,982.88. Instead, DoD erroneously used the fraction 5,204 (due to a rounding error) divided by 26,996 (the weight of the larger shipment alone). Because this fraction is slightly larger than the proper one, its use resulted in the calculation of a debt which is \$113.18 too high. DoD may collect from Mr. Magee only \$5,982.88.

Whether this debt should be waived or not is a matter committed by the Congress solely to the agency involved. 5 U.S.C. § 5584. We have no authority to review DoD's determination as to waiver. Kellis L. Nobles, GSBCA 16066-RELO, 04-1 BCA ¶ 32,436 (2003) and cases cited therein.

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STEPHEN M. DANIELS  
Board Judge