

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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December 16, 2004

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GSBCA 16466-RELO

In the Matter of WILLIAM S. GRANDERSON

William S. Granderson, Marine Corps Air Station, Iwakuni, Japan, Claimant.

Shirley Lee Autry, Deputy Director, Finance, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**BORWICK**, Board Judge.

Claimant is responsible for the charge of shipping his son's excess weight unaccompanied baggage (UAB) from claimant's overseas location to his son's university in Arkansas. The agency correctly applied the provisions of the Joint Travel Regulations (JTR) in determining that the Government's responsibility for this educational travel allowance is limited to paying for claimant's shipment of 350 pounds of UAB.

## Background

In the summer of 2003, claimant was stationed in Tel Aviv, Israel, with the United States Army Corps of Engineers. Claimant's son, who also lived in Tel Aviv, planned to attend the University of Arkansas. On June 25, 2003, the agency issued a dependent educational travel authorization for the transportation and per diem of claimant's son between Tel Aviv and Monticello, Arkansas. The authorization also granted claimant shipment of UAB up to 350 pounds. The authorization stated that expenses and charges not allowed at Government expense were the financial responsibility of the employee.

Claimant's son packed his UAB on August 3. Claimant explains that the family "unknowingly packed too much"—by 298 pounds. The shipping specialist at the United States Embassy in Israel estimated that the overweight shipment would cost claimant an additional \$407. Claimant explains that based upon that advice, he elected to pay that amount to the Embassy and send the shipment.

The agency, using a government bill of lading, shipped the UAB by air. The shipment weighed 648 pounds and exceeded the 350 pounds allowed by 298 pounds. The total charge for shipping was \$3222.07, and an audit determined that the charge for the overweight

portion of the shipment was \$1481.75 (the proportion of the shipping charge attributable to the excess weight).

On April 27, 2004, the agency's finance center issued to claimant a demand letter which stated:

It has been determined that your unaccompanied baggage exceeded the authorized maximum weight. The USACE Finance Center has recompensed the movers/shippers, on your behalf, for the total liability. It is your responsibility to reimburse the Finance Center in the amount of \$1481.75.

On May 11, 2004, a program analyst with the agency office in Tel Aviv sent an e-mail message to the accountant at the agency's finance center explaining that the claimant had already reimbursed the Government \$407 of the \$1481.75 due for the overweight portion of the shipment.

### Discussion

This case involves the payment of an allowance under 5 U.S.C.A. ch. 59 (1996 & West Suppl. 2004).<sup>1</sup> That chapter authorizes agencies, in the exercise of their discretion, to grant certain allowances to an employee officially stationed in a foreign area. 5 U.S.C. § 5922(a). The allowances authorized are to be paid under regulations prescribed by the President governing (1) payments of the allowances and differentials, and the respective rates at which the payments are made; (2) the foreign areas, groups of positions, and the categories of employees to which the rates apply; and (3) other related matters. 5 U.S.C.A. § 5922(c).

Allowances granted under the subchapter may be paid in advance, or an advance of funds may be made through the proper disbursing official in such sums as are considered advisable in consideration of the need and the period of time during which expenditures must be made in advance by the employee. 5 U.S.C.A. § 5922(b). However, an advance of funds not subsequently covered by allowances accrued to the employee under this subchapter is recoverable by the Government by setoff against accrued pay or such other method as provided by law for the recovery of amounts owing to the Government. 5 U.S.C.A. § 5922(b)(1)(2).

Concerning the educational travel allowance, 5 U.S.C. chapter 59 provides in pertinent part:

The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

....

(4) An education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for,

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<sup>1</sup> We have taken jurisdiction over such cases even though they involve 5 U.S.C. ch. 59 and not 5 U.S.C. Ch. 57. Frederick S. Newman, Jr., GSBGA 15873-TRAV, 02-2 BCA ¶ 31,993.

incurred because of his service in a foreign area or foreign areas in providing adequate education for his dependents (or, to the extent education away from post is involved, official assignment to service in such area or areas), as follows:

....

(B) The travel expenses of dependents of an employee to and from a school in the United States . . . to obtain an American secondary or postsecondary educational institution education (other than a program of post-baccalaureate education), not to exceed one annual trip each way for each dependent. At the election of the employee, in lieu of the transportation of the baggage of a dependent from the dependent's school, the costs incurred to store the baggage at or in the vicinity of the school during the dependent's annual trip between the school and the employee's duty station may be paid or reimbursed to the employee, except that the amount of the payment or reimbursement may not exceed the cost that the Government would incur to transport the baggage.

5 U.S.C.A. § 5924 (1996 & West Supp. 2004).

The JTR implement the statute by providing in pertinent part:

A student dependent (of a civilian employee in a foreign area), who is performing authorized travel at Government expense to/from a school, is authorized unaccompanied baggage (see the definition in Appendix A) shipment of 350 pounds net weight (see par. C8020-B). Shipment must be made by the least costly transportation mode that meets the student dependent's needs. During a student's annual trip between the school and the employee's [permanent duty station], an employee may have the student's unaccompanied baggage commercially stored in the school's vicinity instead of transporting the unaccompanied baggage. The funding DoD component may pay directly, or an employee may be reimbursed for, the storage cost up to the cost of round-trip baggage transportation of the stored weight NTE 350 pounds.

JTR C2306.

Since the JTR limit the weight of the UAB for which the agency is allowed to pay, it follows that the employee is responsible for the overweight charges that the agency has paid on claimant's behalf. George B. Brown, GSBCA 16361-RELO (Aug. 31, 2004) (applying this principle to the 18,000 pound limitation on the Government's shipment of household goods).

Claimant argues he is not responsible for the overage because the agency underestimated the costs of shipping the excess weight of UAB. Such estimates however, cannot bind the Government to spend money in violation of statute or regulation. Marina A. Galindo, GSBCA 15501-RELO, 02-1 BCA ¶ 31,775; Keith D. Weverstad, GSBCA 14366-RELO, 98-1 BCA ¶ 29,438; reconsideration denied, 98-2 BCA ¶ 30,052. The Board must deny the claim. Claimant owes the agency for the audited overcharge, less the \$407 claimant has already paid.

Claimant also seeks waiver of the debt, but such a waiver is solely in the discretion of the agency. Cindy L. Luciano, GSBCA 16403-RELO, 04-2 BCA ¶ 32,715.

The Board denies the claim.

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ANTHONY S. BORWICK  
Board Judge