

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 4, 2005

GSBCA 16484-RELO

In the Matter of CHARLES E. PIXLEY

Charles E. Pixley, Athens, GA, Claimant.

Robert Cooke, Chief, Fiscal Services Branch, Food and Safety Inspection Service, Washington, DC, appearing for Department of Agriculture.

HYATT, Board Judge.

Claimant, Dr. Charles E. Pixley, was hired as the Director of the Laboratory Quality Assurance Division of the Food Safety and Inspection Service, Department of Agriculture. This office is located in Athens, Georgia. Dr. Pixley, who had recently retired from the military, relocated to the Athens area from San Antonio, Texas. Various relocation expenses were authorized in connection with his move, including transportation and temporary storage of up to 18,000 pounds of household goods.

Prior to the move, a survey designed to estimate moving expenses was conducted by the transportation coordinator. Based on the results of the survey, Dr. Pixley was advised that his household goods would likely exceed the authorized weight of 18,000 pounds and that he would be liable for any costs associated with the excess weight.

Dr. Pixley's household goods were transported under a Government bill of lading (GBL). The process was coordinated by the agency's move management company, Interstate Relocation Services. The moving company weighed the household goods at origin and again at destination. The total weight at origin was shown to be 23,480 pounds; at destination the weight totaled 24,460. The carrier was unable to produce copies of the weight tickets from the weighing that occurred at destination, but all charges were based on the lesser amount reflected on the weight tickets which were certified at origin.

Following the move, the Food Safety and Inspection Service billed Dr. Pixley for the added expenses associated with the excess weight of the household goods. Dr. Pixley has challenged the bill, filing this claim with the Board.

Discussion

When an agency hires a new appointee to the federal service and a relocation is necessary, the Government may pay the costs of transporting and storing not more than 18,000 pounds net weight of the employee's household goods from the place of actual residence at the time of selection to the duty station. 5 U.S.C. § 5723(a)(2) (2000). This statutory limitation is implemented in the Federal Travel Regulation (FTR), which applies to most civilian employees of the Federal Government. 41 CFR 302-7.2 (2003). Because the Government cannot pay for moving any more than 18,000 pounds of household goods, the employee whose goods are moved is responsible for reimbursing the Government for the costs attributable to any weight in excess of 18,000 pounds. Richard D. Grulich, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891. As the Board has frequently noted, these rules leave no room for compromise – if the shipment exceeds 18,000 pounds, the employee must pay for the cost associated with the additional weight. E.g., George W. Currie, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814; Robert K. Boggs, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491.

Dr. Pixley raises several points in his claim. With respect to the reported weight of his household goods, he does not believe that the mover's determination of the weight of his household goods is proper, primarily because he had moved frequently during his career with the military and the weight of his household goods never exceeded the 18,000 pound limit. His last shipment of household goods, when he was moved by the Army from Germany to Texas, in 1999, weighed 17,796 pounds. He states that the move to Georgia entailed considerably less furniture than did the last move with the military, because his daughter had removed her furniture and belongings from his household and he had moved to Atlanta about a year before this move, bringing with him several rooms of furniture and about 1500 pounds of professional books and gear to furnish an apartment. This, in his opinion, should have reduced the weight of the remaining household goods to considerably less than 18,000 pounds.

Claimant also questions the accuracy of the origin weight based on the re-weigh process. Dr. Pixley and his spouse were skeptical of the accuracy of the origin weight and specifically requested that the shipment be re-weighed. They were present when this occurred. They do not recall the exact weight that was determined at destination, but do recollect that this weight was about 3500-3700 pounds more than the origin weight, which they found to be suspicious. Although the carrier has agreed to limit its charges to the origin weight, Dr. Pixley believes that the inability of the carrier to furnish the weight tickets from the re-weigh serves to invalidate the weight ticket generated in San Antonio.

Similar contentions as to the accuracy of the weighing process have been squarely rejected by the Board. See James R. Wyatt, Jr., GSBCA 16038-RELO, 04-1 BCA ¶ 32,573; Ingrid Rodenberg, GSBCA 13729-RELO, 97-2 BCA ¶ 29,027. In both of these cases, the transferring employees contended that previous shipments had been less than 18,000 pounds and that they had not acquired any additional furnishings since the prior move, but rather had reduced the furnishings and other items to be transported. The Board has observed that the opportunities for relief in cases such as this are severely constrained. E.g., Michael J. Kunk, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998). In the absence of proven error or fraud, the carrier's reported weight is deemed to be accurate. As we stated in Kunk, the employee may only avoid liability for the cost of transporting weight alleged to be in excess of 18,000 pounds "where the Government's assessment of costs is based on charges proven by clear and substantial evidence to be marred by error." 99-1 BCA at 149,283 (citing Jerry Jolly,

GSBCA 14158-RELO, 98-1 BCA ¶ 29,518 (1997) (record contained persuasive documentary evidence that mover's charges were based upon unreliable weight data); Robert G. Gindhart, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997) (mover's charges were based on weight of household goods which became waterlogged during shipment)).

Mere suspicion that the reported weight of the goods is not accurate, which is essentially all that we have here, does not suffice to constitute clear and substantial evidence of error or fraud. Boggs. Moreover, claimant's suspicions are countered to at least some degree by the pre-move survey, which determined that the shipment would likely exceed 18,000 pounds. The documentation used to support the agency's calculation of the debt and its collection action do not contain any irregularities that justify Dr. Pixley's position. The weight at origin was measured on an independent scale. Although the weight at destination was, for unexplained reasons, inconsistent with the original weight, there has not been any attempt to recover based on the higher weight. The loss of the documentation does not invalidate the initial weight ticket, given that it was lower. See Marina A. Galindo, GSBCA 15501-RELO, 02-1 BCA ¶ 31,775 (re-weigh at destination was higher than original weight recorded at origin). Absent more, claimant has not met his burden to show the documentation on which his debt is based is untrustworthy.

Dr. Pixley further notes that in previous moves with the military he was accorded a ten to fifteen percent weight reduction to allow for packing materials. This was not accorded in this move. In addition, claimant and his spouse also instructed the movers that they would unpack their household goods themselves. Although the invoice does not reflect any charges for unpacking the household goods, Dr. Pixley is concerned that this cost was built into the contract and not deducted to reflect the fact that the cost was not incurred.

In its response the agency confirms that no unpacking costs were charged or incurred. The documentation provided by the agency is consistent with this statement. With respect to Dr. Pixley's suggestion that there should be an allowance for the weight of packing materials, we note that the applicable 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); Wendy J. Hankins, GSBCA 16324-RELO, 04-2 BCA ¶ 32,686; Douglas V. Smith, GSBCA 14655-RELO, 99-1 BCA ¶ 30,171 (1998); LeRoy Aaron, GSBCA 14311-RELO, 98- 2 BCA ¶ 29,762. The weight of packing materials was thus properly included in the weight of the shipment.

Accordingly, we conclude that the Food Safety and Inspection Service has properly established a debt in this case.

CATHERINE B. HYATT
Board Judge

