

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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March 7, 2005

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GSBCA 16497-RELO

In the Matter of MARK W. MILLER

Mark W. Miller, Kettering, OH, Claimant.

Linda J. Cardwell, Deputy Chief, and Michelle L. Fritz, Permanent Change of Station Administrator, Civilian Personnel Division, Department of the Air Force, Wright-Patterson Air Force Base, OH; and Rick Miller, Civilian Travel and Overseas Allowances, Compensation and Legislation Division, Office of Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

**HYATT**, Board Judge.

Claimant, Mark W. Miller, a new civilian employee of the Air Force working at Wright-Patterson Air Force Base (AFB) in Dayton, Ohio, seeks to be reimbursed at the commuted rate for the expense of transporting his household goods from his former home, in Richmond, California, to the Dayton, Ohio, area. The Air Force believes his entitlement is limited to the actual expenses he incurred in transporting his household goods, not to exceed what it would have cost to ship those goods under a Government bill of lading (GBL).

Claimant, while a graduate student at the University of California at Berkeley, was offered a position as a translator with the Air Force at Wright-Patterson AFB on June 10, 2003. His selection was subject to successful completion of a pre-employment drug test and issuance of a security clearance. At the same time he was notified of his selection, he was provided with three handouts explaining the relocation process for civilian Air Force employees. He reviewed the materials and concluded that the Air Force would use one of two methods to ship his household goods to Dayton – either the commuted rate method or the actual expense (GBL) method.

After he received the offer and while he was awaiting a report date and travel orders, Mr. Miller was told by his landlord that he would have to vacate his apartment in September. Mr. Miller contacted the Air Force personnel involved in his hiring process for advice. When it did not appear that his orders would be issued prior to the expiration of his lease in September, he looked for short-term accommodations in the San Francisco area, but was

unable to locate any quarters with a short-term lease that he could afford. The Air Force told him that his travel orders could not be released without an official report date. He was advised that if he moved prior to receiving official travel orders there was a risk that he might not be reimbursed for the cost of the move. He was also told that there was some possibility that he might be reimbursed, depending on the circumstances.

As mid-September approached, claimant still did not have a report date, and he had not succeeded in locating an affordable interim solution for lodging. He crated his belongings and placed them in storage. He continued to hope, however, that a report date would be established in the near future, so he called the personnel department at Wright-Patterson AFB once more to discuss his situation. He mentioned that he would be driving to Ohio in the near future and asked what receipts he needed to keep for reimbursement purposes.

Mr. Miller left California for Ohio on September 17, 2003. He was issued a report date on November 24, 2003, and reported for duty on December 1, 2003. He arranged to have his three crates of belongings shipped to Ohio in mid-December.

After he reported for duty, Mr. Miller looked into obtaining reimbursement for his move to Ohio. Because of the extenuating circumstances prompting his move prior to receipt of an official report date and issuance of travel orders, the office that recruited him fully supported his efforts to be reimbursed for his moving expenses notwithstanding the fact that he incurred them prior to the issuance of official travel orders. Eventually, the agency determined that the offer letter manifested a clear administrative intent to hire claimant and confirmatory travel orders were issued on March 22, 2004. These orders authorized reimbursement of claimant's travel and per diem expenses en route to the new permanent duty station, temporary storage of household goods, and transportation of household goods by GBL. The orders further stated that if the employee made his own arrangements for shipment of his household goods, reimbursement would be limited to expenses actually incurred, not to exceed the GBL cost.

Mr. Miller submitted his receipts for the move and was reimbursed his per diem allowance and mileage expenses for the trip to Ohio. He was also reimbursed for the cost of storing his goods for ninety days and for the expenses he actually incurred in having his belongings shipped from California to Ohio. Mr. Miller believes, however, that the Air Force should have compensated him under the commuted rate for the shipment of his household goods because it did not perform a cost comparison prior to issuing the travel orders for a GBL move and because a GBL move was effectively unavailable to him in December, when he had to move his belongings to Ohio. To this end, he has asked the Board to review his claim.

### Discussion

The authorizing statute provides that, pursuant to such regulations as the Administrator of General Services may prescribe, a transferring employee shall be reimbursed the expenses associated with the packing, transporting, and unpacking of household goods and personal effects on a commuted basis at rates prescribed in the regulations, except that the agency may reimburse the employee under the actual expense

method if the agency determines it is more economical. 5 U.S.C. § 5724(c) (2000). The regulations, prescribed by the General Services Administration (GSA) in the Federal Travel Regulation (FTR) and supplemented by the Department of Defense in the Joint Travel Regulations (JTR), thus recognize two primary means for transporting a relocating employee's household goods to the new duty station. Under the commuted rate method, the employee arranges for shipment, pays the carrier directly if one is utilized, and is reimbursed by the Government in accordance with rate schedules of commuted rates published by GSA. Alternatively, under the actual expense, or GBL, method, the Government assumes responsibility for making all shipping arrangements, ships the goods under a GBL, and pays the carrier directly. If the GBL method of transportation is authorized and the employee chooses to make his or her own arrangements, the employee will be paid the actual costs incurred, not to exceed what the Government would have incurred under a GBL. 41 CFR 302-7.13 - .15 (2003); JTR C5160.

For individual moves, the FTR states that the commuted rate method is preferred, principally because the Government is spared various administrative expenses associated with selecting a carrier, such as arranging for the carrier services and for packing and crating, preparing the GBL, paying charges incurred, and processing loss and damage claims. If, however, after performing a cost comparison, the agency determines that it would be more economical to authorize the actual expense method and undertake to perform the move itself, this method may be authorized instead. The JTR also provides that "[i]f no cost comparison is made, and/or if the PCS [permanent change of station] travel authorization does not explicitly say that the actual expense method is authorized, the commuted rate applies." 41 CFR 302-7.301; JTR C5160-H.5.

In this case, the Air Force states that if a cost comparison had been performed, the cost calculations for shipping under the commuted rate method would have been approximately \$9500; under the actual expense, or GBL, method, the approximate cost came to a total of \$6408. As his confirmatory orders reflected, Mr. Miller was compensated the amount of \$2978.37, representing the actual combined cost of temporary storage and then shipment of his belongings from California to Ohio.

Mr. Miller's objection is premised on the fact that the Air Force automatically authorized shipment under a GBL, with the further proviso that should he choose to make his own arrangements, reimbursement would be limited to actual costs up to the amount the Government would have incurred had a GBL shipment been used. He maintains that the Air Force could only restrict him to a GBL move if it performed a cost comparison between the two methods prior to selecting the GBL move and that in any event a GBL move was effectively unavailable to him. Thus he believes he should be recompensed under the commuted rate method.

In particular, Mr. Miller is of the view that the Air Force's restriction of his reimbursement to the actual expenses incurred is contrary to the regulations as interpreted by Board precedent. Specifically, Mr. Miller relies on the Board's decision in Jeffrey P. Herman, GSBCA 13832-RELO, 97-1 BCA ¶ 28,704 (1996). In Herman, the employee was counseled regarding his moving options prior to his transfer. He decided to perform a self-move. His travel orders reflected this initially. After he moved, the orders were amended to provide for the commuted rate and he was paid accordingly. Following that, the

disbursing office questioned his entitlement to be paid under commuted rate, claiming that a cost comparison showed the actual expense method to be more economical and determining that Mr. Herman's reimbursement should thus be limited to actual costs not to exceed the cost of a GBL move. The Board concluded that the employee was entitled to reimbursement under the commuted rate because the regulations contemplated that a cost comparison justifying the agency's selection of the actual expense be performed in advance of the move, so that the travel orders would accurately reflect which of the two methods was being authorized. In the absence of pre-move cost comparison, or travel orders authorizing a GBL move, the employee was entitled to be reimbursed under the default commuted rate method.

Herman and subsequent cases have recognized that while the employee may choose to effect a self-move, the Government must specify either the commuted rate system or the actual expense method in the travel orders in advance of the move. *E.g.*, Matthew Young, GSBCA 15154-RELO, 00-1 BCA ¶ 30,822 (citing Lawrence M. Ribakoff, GSBCA 13892-RELO, 97-2 BCA ¶ 29,018). In unusual circumstances, the Board has also recognized that an agency may, after the move has been accomplished, retroactively amend travel orders specifying a GBL move to allow recovery under the commuted rate system where an employee has incurred costs in excess of the GBL estimate, but was effectively unable to use the Government's carrier. *E.g.*, Michael Vissichelli, GSBCA 15974-RELO, 03-2 BCA ¶ 32,311, and cases cited therein.

Nonetheless, claimant misapprehends the proper application of the regulations and Board precedent to his circumstances. The regulations, and the precedent interpreting them, are intended to apply to moves which take place following the issuance of official travel orders authorizing relocation expenses. Both the FTR and the JTR expressly provide that travel expenses may not be incurred prior to the issuance of a written travel authorization. 41 CFR 302-2; JTR C1050-C.1. Mr. Miller was advised of this requirement on several occasions but, for personal reasons, moved to Ohio and arranged to have his belongings transported there well before any travel orders were issued. Ordinarily, under the above regulations, this would have been dispositive of the matter and no compensation for moving costs would have been permitted, since it is well settled that costs of this nature are incurred at the risk of the employee when incurred prior to the issuance of valid travel orders.

In this case, the hiring component within the Air Force decided confirmatory orders were justified and a travel authorization was issued well after all travel had been completed by the claimant. As such, the agency had no opportunity to make an advance determination of whether the commuted rate system or a GBL move would be more economical. Here, the claimant, who moved prior to receiving official travel orders, had no reliable expectation of any compensation for moving expenses, let alone a reasonable basis for assuming the commuted rate system would be authorized. The regulations do not contemplate or require that the agency, in the unusual circumstance presented here, do more than approve reimbursement of actual expenses, so long as they do not exceed what it would have cost the Government under the most economical method. That method was a GBL move.

#### Decision

The claim is denied.

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CATHERINE B. HYATT  
Board Judge