

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 25, 2005

GSBCA 16584-RELO

In the Matter of JAMES GREGORY MILLS

James Gregory Mills, FPO Area Pacific, Claimant.

Rebecca Lott, Comptroller, United States Naval Air Pacific Repair Activity, FPO Area Pacific, appearing for Department of the Navy.

BORWICK, Board Judge.

In this matter claimant, James Gregory Mills, contests the Department of the Navy's (agency's) refusal to reimburse claimant for \$5095 of charges he incurred for non-temporary storage of his household goods (HHG). Claimant incurred the charges in connection with his permanent change of station (PCS) from a domestic duty station to a duty station outside the continental United States (OCONUS). We conclude that the agency violated the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR) in effect when claimant reported for duty by refusing to provide non-temporary storage of his HHG, either in Government-owned facilities or commercially. Under those circumstances, we grant the claim and allow reimbursement of the \$5095, since the agency acknowledges that the amount does not exceed what it would have cost the Government to procure non-temporary commercial storage during the allowable storage period.

Background

On October 11, 2000, the agency issued a PCS authorization from the Naval Aviation Depot, Marine Corps Air Station, Cherry Point, North Carolina, to the Naval Air Facility, Atsugi, Japan. Among other benefits, the agency authorized claimant non-temporary storage of HHG. Claimant's duty reporting date was October 22, 2000.

Before claimant's transfer, he talked about storage options with the agency's transportation officer at the Marine Corps Air Station. The transportation officer explained that the Government would arrange for the non-temporary storage of claimant's HHG. Claimant asked how much care his HHG would receive and how secure the storage would be. The transportation officer told claimant that if anything were stolen or damaged the Government would reimburse him. Claimant then asked about self-storage. The transportation officer stated erroneously that claimant could store the goods himself, but would be limited in the amount the Government would pay.

On or about October 21, 2000, claimant put his HHG into private commercial storage, where they stayed for three years. By memorandum of July 28, 2004, claimant requested reimbursement for the self-storage of his HHG for calendar year 2004, which he had not yet paid, and a determination that the agency would reimburse him for the years 2002 and 2003, which he had already paid. On November 8, 2004, the agency's command at Atsugi Japan approved claimant's request for payment, "not to exceed the Government contracted amount." The agency attached an amended travel authorization authorizing conversion of non-temporary storage at personal expense to non-temporary storage at Government expense.

After an extensive exchange of e-mail messages, the chief of the agency's Travel and Transportation Branch in Washington, D.C. and the Travel and Overseas Allowances Program Manager advised the agency's command that there could be no reimbursement because the JTR only provided for Government-arranged non-temporary storage of HHG, not an employee's self-storage of HHG.

On December 16, 2004, the agency's comptroller refused claimant reimbursement based upon the aforementioned advice. Claimant thereupon submitted a claim to the Board seeking reimbursement of \$5095. According to claimant, and undisputed by the agency, three years of commercial storage contracted for by the agency would have cost the agency \$5929.

Discussion

This case is similar to *Paul Gill*, GSBCA 16593-RELO (Mar. 18, 2005). In *Gill* we explained:

The FTR in effect at the time claimant reported for duty provided that an employee may be allowed non-temporary storage of HHG upon his or her OCONUS relocation when the employee was unable to use, or not authorized to move, the HHG, if the storage was authorized in the public interest, and if the estimated cost of the storage would have been less than the cost of the round-trip transportation of the HHG. 41 CFR 302-9.2 (2001). Since the agency had authorized claimant's non-temporary storage of HHG, the agency had made those determinations and they are not at issue.

The FTR provided that the HHG may be stored either in available Government-owned space or in suitable commercial or privately owned space if Government-owned space was not available or if commercial or privately owned space obtained by the Government was more economical or suitable because of location, difference of transportation costs, or other reasons. 41 CFR 302-9.2. The language of the FTR suggested that it was the Government that arranged, stored, and paid for the non-temporary storage of an employee's HHG, either in Government facilities or suitable commercial or privately owned space.

The implementing JTR, in effect at the time of claimant's transfer, was to the same effect. Under the JTR, the transportation office storing the HHG forwarded the completed HHG services order along with any amendments to the employee and the employee's OCONUS personnel office. The gaining

OCONUS personnel office established an employee non-temporary storage HHG file that was separate from an employee's personnel records and that served as a suspense file for any funding and any subsequent HHG shipment. JTR C8815-1, -2. Allowable costs included those necessary for packing, crating, unpacking, uncrating, transportation to and from the place of storage, charges while in storage, and other necessary charges directly related to the storage. 41 CFR 302-9.2(c)(2).¹

Slip op. at 2-3.

In *Gill* the agency argued that the claim was not reimbursable because the claimant had relied upon erroneous advice in choosing self-storage of his HHG. We rejected that argument, explaining:

Having authorized claimant's non-temporary storage of HHG, the agency was required by the FTR and JTR to provide the storage, either in available Government-owned facilities or in storage procured directly by the agency. The agency's transportation office deprived claimant of this benefit to which he was entitled. In these limited circumstances, we have allowed reimbursement of claimant's out of pocket expenses, as long as those expenses do not exceed what it would have cost the Government to procure non-temporary storage commercially during the allowable storage period. *See Kenneth W. Trotman*, GSBCA 15250-RELO, 00-2 BCA ¶ 30,959; *Alex L. Rowe*, GSBCA 14479-RELO, 98-2 BCA ¶ 29,919. Similarly, when an agency has denied an employee the benefit of moving HHG by Government Bill of Lading (GBL) because the agency was unable to procure a mover within the time constraints of the move, we have allowed reimbursement of the employee's actual expenses. *See Michael Vissichelli*, GSBCA 15974-RELO, 03-2 BCA ¶ 32,311.

Slip op. at 3.

Here, the discussions about non-temporary storage of HHG claimant seemed to have had with the agency's transportation officer were more extensive than the discussions the claimant had in *Gill*. Nevertheless, the result is the same. The agency authorized non-temporary storage of HHG in claimant's PCS authorization of October 11, 2000, and having authorized that benefit, the agency was required to provide it, regardless of the advice offered. The agency does not dispute that the amount claimed--\$5095--is less than the agency would have paid had the agency paid for commercial non-temporary storage of HHG for the same period of time in the geographic area. The Board therefore grants the claim.

¹ The current versions of the FTR and JTR are substantively the same. *See* 41 CFR 302-8.103, -8.104, -8.200 (2003); JTR C5195 (2004).

ANTHONY S. BORWICK
Board Judge