

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

December 20, 2001

GSBCA 15489-RELO

In the Matter of STEVEN J. COKER

Steven J. Coker, Colorado Springs, CO, Claimant.

Thomas L. Brockman, Jr., Director, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

A claim by Steven J. Coker, an employee of the Army Corps of Engineers, poses questions involving entitlement to reimbursement for several groups of costs incurred in connection with a change of permanent duty stations. On the principal issue, regarding reimbursement for the movement of household goods, the agency's determination was not only wrong, but also inconsistent with information in the agency's possession and legal precedent which the employee had called to the agency's attention. The employee is entitled to reimbursement in accordance with the commuted rate method. In this decision, we also settle minor, secondary issues raised by the claim.

In July 2000, the Corps offered Mr. Coker a transfer from Charleston, South Carolina, to Fort Carson, Colorado. The employee accepted the transfer. Fort Carson is part of the Corps' Omaha District. In speaking with the District's permanent change of station (PCS) coordinator, Mr. Coker made clear that he wished to move his own household goods from South Carolina to Colorado. On August 24 the District issued orders to the employee for a househunting trip and informed him that supplemental orders for the move itself would be issued later. The orders were amended on October 5 "[t]o authorize additional PCS entitlements. . . . Entitlements include shipment of household goods (self move), TQSE [temporary quarters subsistence expenses], temp[orary] storage NTE [not to exceed] 90 days, real estate expenses (purchase only), expired lease." The duty reporting date shown on the orders was October 1.

Mr. Coker made the authorized househunting trip in late August and early September. He then returned to South Carolina and rented a truck in which to transport his household goods. In late September and early October, he drove the truck, containing 10,420 pounds of his belongings, to Colorado. He also rented a car trailer, attached it to the truck, and used

it to haul his privately-owned vehicle. While en route, he made occasional telephone calls to his family and that of his fiancée¹ (who was traveling with him) to inform them of his whereabouts and check on their well-being. After arriving in Colorado, Mr. Coker stored his household goods and lived, for a period of time greater than the ninety days for which he was authorized TQSE, in temporary quarters.

Mr. Coker disagrees with four components of the agency's determination as to payment of relocation benefits. These items relate to shipment and storage of his household goods, en-route mileage, TQSE, and long-distance telephone calls.

The principal issue in this case is how much money the Corps owes Mr. Coker for shipment and storage of his household goods.

The Federal Travel Regulation (FTR) describes two different means of transporting a transferred employee's household goods. One is called the "actual expense method." Under this method, the Government assumes responsibility for awarding contracts and for other negotiations with carriers. It selects the carrier, arranges for carrier services and for packing and crating, prepares a Government bill of lading (GBL), pays charges incurred, and processes and pays any loss and damage claims. The other means of transporting goods is called the "commuted rate method." Under this method, the employee makes his own arrangements. He selects and pays a carrier or transports his goods himself and is responsible for costs resulting from loss or damage in shipment. He is reimbursed by the Government in accordance with published schedules of commuted rates. Storage as well as transportation of goods is arranged through whichever of these methods is selected. 41 CFR 302-8.3(a), (b) (2000).

The FTR establishes a "general policy . . . that commuted rates shall be used for transportation of employees' household goods when individual transfers [within the continental United States] are involved." 41 CFR 302-8.3(c)(3). The actual expense method may be used, however, when an agency performs a cost comparison which demonstrates a "real savings" to the Government of \$100 or more through use of this method. When an agency determines, through a complete cost comparison, that the actual expense method would be more economical, and the employee transports his own household goods, the Government reimburses the employee for the actual expenses he incurs in doing so, not to exceed the amount the Government would have spent if the goods had been shipped under a GBL. 41 CFR 101-40.203-2(d); Faithon P. Lucas, GSBCA 15107-RELO, 00-2 BCA ¶ 30,958; Carmen M. Isola, II, GSBCA 14284-RELO, 98-1 BCA ¶ 29,601; Lawrence M. Ribakoff, GSBCA 13892-RELO, 97-2 BCA ¶ 29,018.

The cost comparison must involve all anticipated costs, not merely line-haul charges. The cost under the actual expense method includes, among other things, accessorial and packing charges, administrative expenses of making all arrangements and payments, and paying any loss and damage claims. Id. 302-8.3(c)(4)(i); Charles E. Stevens, GSBCA 15010-RELO, 99-2 BCA ¶ 30,420; Jeffrey P. Herman, GSBCA 13832-RELO, 97-1 BCA

¹Although Mr. Coker's fiancée and the author of this opinion share a last name, they are not related to each other.

¶ 28,704 (1996). The cost comparison must be made before the method of transporting goods is selected. As we have stated many times, if it is not, and the orders do not explicitly say that the agency has determined that the actual expense method will be used, the agency will be deemed to have selected the "default" means of shipment – the commuted rate method. E.g., Raymond W. Martin, GSBCA 15550-RELO, et al., 01-2 BCA ¶ 31,505; Chris W. Giggey, GSBCA 13979-RELO, 97-2 BCA ¶ 29,312; Herman.

The Corps' Omaha District did not make a cost comparison before Mr. Coker began his trip from South Carolina to Colorado.² It inappropriately did not even issue orders to the employee for his move until after he was under way! See 41 CFR 302-1.3(b)(3) (agencies must give employees reasonable advance notice of transfer, providing sufficient notice to make necessary arrangements, unless an emergency exists). It did not state in those orders that any particular method of transporting household goods was selected – which, by operation of law, means that the District selected the commuted rate method.

Nevertheless, in December 2000, when the agency made a payment to Mr. Coker for the movement of his goods, that payment covered only the employee's actual expenses of renting and driving the truck in which he transported the belongings. The employee objected that this payment was not in accordance with the commuted rate method. Communications then ensued between the Omaha District and the Corps' Finance Center in Millington, Tennessee. The District's PCS coordinator told a Finance Center official that the shipment had been authorized at the commuted rate. When the Finance Center official supplied a dollar figure supposedly calculated in accordance with the commuted rate method, the PCS coordinator got from a local mover a quote for a GBL move which was for a lesser sum than the one the Finance Center had supplied. The PCS coordinator then told the Finance Center that shipment under the commuted rate method was rescinded and that the actual expense method was authorized instead.

The Finance Center director realized that this last action was not permissible. In an internal memorandum dated December 19, 2000, he was highly critical of the District for not conducting a cost comparison in advance of the move and thereby requiring the agency to pay Mr. Coker at the commuted rate for moving his own belongings, even if that would be more expensive than using the actual expense method. The Finance Center director noted that he had specifically told Corps offices, in July 2000, to perform cost comparisons prior to employee moves, provide those comparisons to affected employees, and include in travel orders a specific statement that based on the comparison, one of the two alternative means of shipping goods had been selected. The Omaha District's failure to follow these instructions, he said, was an "internal control weakness."³

²The inclusion in internal budget estimating documents of a dollar figure for transporting Mr. Coker's goods does not, as the agency contends, constitute evidence that a cost comparison was made prior to the move.

³The Finance Center director might also have noted, in this regard, that the Corps' Missouri River Division's PCS travel rules state clearly, "Unless the employee is advised that his/her household goods will be shipped on a Government Bill of Lading (GBL), the
(continued...)"

The Omaha District would not be deterred. In conferences held in early January 2001, District officials persisted in limiting payment to Mr. Coker to the costs he actually incurred in making the move. When the employee pointed out that this would be inconsistent with regulatory requirements, the officials demanded that he accept as payment the amount of the carrier's quotation, given long after the move, for shipping the goods under a GBL. Mr. Coker asserts, and the Corps does not deny, that one of the officials told Mr. Coker's supervisor that the employee would "not have any future in Omaha District if [he] continued to take an 'unreasonable' position in this matter" and that the official would "assist [him] in arranging a transfer outside of Omaha District." Mr. Coker refused to accept this compromise because "[f]rom my reading of the travel regulations and case decisions, I believe that there is no legal authority for the proposed settlement and that it could not withstand future audit reviews. . . . I'm concerned that, if I accept a payment based on the after-the-fact GBL estimate, that a future auditor might decide it was an illegal payment and direct me to repay the government."

Mr. Coker then brought this case to us. In response, the District has demonstrated that it is unfazed by its employee's perceptive response to the settlement offer. It has continued to assert, in the face of evidence that the District's PCS coordinator and the Finance Center's director realized that the agency had authorized reimbursement at the commuted rate, that the intent of Mr. Coker's orders was to authorize payment of actual expenses not to exceed the cost the Government would have incurred if it had shipped his goods under a GBL. The District also notes that it performed a study in 1989 which "revealed that in all cases payment by GBL was always much less than payment by commuted rate." The alleged "intent" and the decade-old study are of course completely irrelevant to this case. The orders do not show any intent to have the employee's goods shipped under a GBL.⁴ Orders which do not specifically provide for such shipment are deemed to authorize payment at the commuted rate for an employee's transportation of his belongings. Any study which was done eleven years before a move cannot substitute for a case-by-case cost comparison, as required by regulation. Even if it could, the after-the-fact "cost comparison" that was done casts doubt on the validity of the study, since the "comparison" did not include several of the costs which the Government would have incurred if it had assumed responsibility for the move. It did not include any administrative costs or reserve for loss and damage claims, and it may not have included accessorial charges, either.

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employee is personally responsible for making all arrangements, including direct payment to the carrier for charges of packing, crating, shipment, and storage of the household goods. . . . The employee may choose any mode of transportation or carrier. The commuted rate will be paid for all transportation of household goods."

⁴The only "evidence" of intent is a statement signed by the PCS coordinator which was provided to the Board in March 2001. The statement was supposedly signed on January 5, 2001, but because it is inconsistent with the coordinator's December 7 and 8, 2000, statements to the Finance Center, which specifically noted authorization of shipment at the commuted rate, we do not find it to be persuasive.

Mr. Coker has concluded his argument as to application of the commuted rate or actual expense method by contending:

If punitive actions are ever warranted, then they are in this case. [Omaha District officials] knew the rules, they knew what they were doing was in violation of the rules, they discussed the fact that what they were doing was in violation of the rules, and they did it anyway. Their actions have damaged me financially and emotionally. They have caused serious harm to my personal life. And, because of the fact that I pursued this claim, it has been made clear to me that I have no career in Omaha District. They should not be allowed to do such things with impunity.

He notes that in response to his Freedom of Information Act requests for documents relevant to this matter, the Omaha District maintained that it did not have in its possession records which demonstrate the validity of his assertions – records which he secured through a separate Freedom of Information Act request to the Corps' Finance Center, but which were equally accessible to the District.

While we are sympathetic to Mr. Coker's concerns, we cannot impose penalties on agency officials. This Board has no authority to take any action on a claim except to settle it. 31 U.S.C. § 3702(a)(3) (Supp. V 1999). We settle this aspect of the claim by directing the agency to make payment to Mr. Coker under the commuted rate method for his movement of his household goods from South Carolina to Colorado.

Because the disagreement between the agency and the employee extends to the calculation of appropriate payment under the commuted rate method, our settlement of the claim involves this matter as well. The agency appears to believe that if it must pay under this method, the appropriate payment is \$16,800.37. Curiously, the employee says, based on information he received from a General Services Administration representative, that the payment should be much less – perhaps as little as \$12,252.

The FTR explains:

When the commuted rate system is used, the amount to be paid to the employee for transportation and related services is computed by multiplying the number of hundreds of pounds shipped (within the maximum weight allowance) by the applicable rate per hundred pounds for the distance shipped as shown in the commuted rate schedule. The distance shall be determined in accordance with household goods mileage guides filed with the Interstate Commerce Commission.

41 CFR 302-8.3(a)(2).

There is no dispute as to the weight of the goods shipped – the figure is 10,420 pounds. The parties disagree as to the distance, however. The agency has calculated distance by reference to the Defense Table of Official Distances (DTOD) and says that by the DTOD, Fort Carson, Colorado, is 1696 miles from Charleston, South Carolina. The employee has calculated distance by the odometer reading on his rented truck, which shows

that he drove 2097 miles. He concedes that he probably drove about one hundred miles around Charleston, Colorado Springs, and points en route. The correct distance is therefore, he says, about 2000 miles.

Both sides are wrong as to distance. As the FTR plainly says, for calculating commuted rate payments, "The distance shall be determined in accordance with household goods mileage guides filed with the Interstate Commerce Commission." The DTOD is "the only official source for worldwide [temporary duty] and [permanent duty travel] distance information" – but only for inter-city travel by privately-owned conveyance (except airplanes). JTR C1065-A (Oct. 1, 2000). If Mr. Coker had driven his car from South Carolina to Colorado, for example, the DTOD mileage would have been controlling for purposes of reimbursement for expenses of car travel. For purposes of the commuted rate method, however, the DTOD has no standing. Nor, for that matter, does a rented truck's odometer reading. The correct distance, according to the household goods mileage guides, is 1659 miles. The reason that Mr. Coker's figure is so different from this one is that he did not drive by a direct route.

We have examined the commuted rate schedule to determine the correct charges for this move. The applicable line-haul rate for moving 10,420 pounds of household goods from Charleston to Colorado Springs, during peak season 2000 (May through September; the season is determined by the date on which the goods left their point of origin), was \$12,252. The rate for accessorial services was \$3,818.93. The total transportation cost, by the commuted rate method, was therefore \$16,070.93. This is the amount which, under the FTR, the agency must pay to Mr. Coker for movement of his household goods.

Payment at the commuted rate covers all of Mr. Coker's transportation costs. Because the employee hauled his privately-owned vehicle, rather than driving it, he is not entitled to any additional reimbursement relating to transit of the vehicle. Norman Lahr, GSBCA 15123-RELO, 00-2 BCA ¶ 31,012.

Costs of temporary storage of household goods, like those for transportation of those items, are reimbursed at the commuted rate whenever that method is authorized. The appropriate charges, under the commuted rate, for storage of Mr. Coker's goods in Colorado Springs were \$890.91 for the first day and \$28.13 for each additional day. It is not apparent from the record how long Mr. Coker kept his goods in storage. The agency should determine this length of time and then pay Mr. Coker the appropriate amount as commuted rate charges for storage of the goods, subject to the regulatory limits on the period for which storage charges are reimbursable. See 41 CFR 302-8.2(d); JTR C8605.

Two separate issues remain to be resolved. The first involves TQSE. Mr. Coker was authorized reimbursement of TQSE for ninety days. Because the employee had taken a five-day-long househunting trip before moving to Colorado, the agency allowed reimbursement for a period of only eighty-five days. For each of the first twenty-five days, the agency allowed reimbursement for actual costs, up to the daily rate provided by regulation for the first thirty-day period of TQSE. For days twenty-six through eighty-five, the agency allowed reimbursement for actual costs, up to the daily rate provided for additional days of TQSE. The agency contends that this action was in accordance with JTR C13225, which says that if an employee is reimbursed for a househunting trip and is authorized reimbursement of

actually-incurred TQSE, "the actual number of [househunting trip] days paid or reimbursed . . . are deducted from the first 30-day period of authorized TQSE." Mr. Coker maintains that "[i]t should be the last 5 days of the first 30 day period that are zeroed out, not the first 5 days."

The relevant regulation does not say which days of the first thirty-day TQSE period should not be subject to reimbursement, to account for the time an employee spent on a prior, Government-paid househunting trip. The agency's decision to select the first days of the period appears to be reasonable and permissible. Whether the choice has any financial impact would depend on the costs the employee incurred on each day during the period, and the regulation does not constrain the agency to choose days with an eye toward maximizing the employee's benefits.

The final issue involves reimbursement for long-distance telephone calls Mr. Coker made to family members while en route from South Carolina to Colorado. The agency denied payment on the ground that such reimbursement "is applicable only on Temporary Duty Travel (TDY)." The employee suggests that this determination is inconsistent with regulation and Omaha District policy.

The FTR establishes as a general rule that an agency shall pay per diem, transportation costs, and other travel expenses of an employee being transferred from one permanent duty station to another in accordance with the provisions of statute and regulation which deal with travel while on official business. 41 CFR 302-2.1(b). Whether telephone calls an employee makes to family members while traveling for the Government constitute "official business" (such that the costs of the calls are reimbursable) or not is dependent on each agency's own rules. Agencies have wide latitude to determine the circumstances in which calls are deemed "official." Linda M. Conaway, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133; Rachelle A. Booth, GSBCA 14713-TRAV, 99-1 BCA ¶ 30,168 (1998); Kathryn Hodges, GSBCA 14554-TRAV, 98-2 BCA ¶ 29,972; Mary Ann Wilson, GSBCA 14300-TRAV, 98-2 BCA ¶ 29,931; Andrew R. Miller, GSBCA 14486-TRAV, 98-2 BCA ¶ 29,921, modified on reconsideration, 98-2 BCA ¶ 30,101; Carolyn K. Stiles, GSBCA 14443-TRAV, 98-2 BCA ¶ 29,798.

According to the rules of the Omaha District, at the time Mr. Coker moved to Colorado, "reimbursement for personal telephone calls to an employee's home/family during TDY status may now be considered official/allowable." For some reason, the District has allowed reimbursement for such calls which occur while an employee is traveling for purposes of temporary duty, but not for those which occur while an employee is traveling for purposes of a permanent change of station. While this distinction is unusual, and may not be one we would have made, Mr. Coker has not demonstrated to us that it is devoid of any reasonable basis. Under these rules, Mr. Coker's calls to family members while en route from South Carolina to Colorado were properly not reimbursed by the agency.

STEPHEN M. DANIELS
Board Judge