

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

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December 19, 2003

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GSBCA 16265-RELO

In the Matter of JUDITH B. GROSS

Judith B. Gross, Kaneohe, HI, Claimant.

Rick Miller, Civilian Travel and Allowances, Personnel Resources, Legislation and Entitlements, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

**NEILL**, Board Judge.

Claimant, Ms. Judith B. Gross, is a recently retired civilian employee of the United States Air Force. Her final permanent duty station (PDS) was Hickam Air Force Base (AFB) in Hawaii. On separating from Government employment, she elected to stay in Hawaii. Before being transferred to Hickam, Ms. Gross' PDS was in the continental United States (CONUS) at Beale AFB in California. On leaving for her assignment in Hawaii, Ms. Gross obtained permission to leave some of her household goods (HHG) in non-temporary storage (NTS) at Beale AFB. Following her retirement, Ms. Gross asked that the Air Force accept total responsibility for the cost of shipping these goods to her in Hawaii. The Air Force replied that it lacked the authority to make the shipment solely at its expense. Ms. Gross now asks us to review the agency's denial of her request. Based upon the applicable regulations, we affirm the agency's determination that the bulk of the expense of shipping these goods to Hawaii must be borne by Ms. Gross herself.

Background

In 1997, Ms. Gross left her position at Beale AFB to take a new assignment at Hickam AFB in Hawaii. Before leaving for Hawaii, she sold the home she had resided in while working at Beale AFB and put a portion of her HHG in NTS at the Government's expense. She remained employed at Hickam AFB until her retirement on September 3, 2003.

Upon retirement, Ms. Gross asked the Air Force to release to her the HHG it had been holding in NTS and to have them delivered to her at Hickam AFB. The Air Force declined to accept responsibility for the total cost for this shipment. It contends that, as a separated employee who has finished her tour outside the continental United States (OCONUS), the

claimant is entitled to travel and transportation expenses for the return of herself, her dependents, and her HHG to her home of record at the time she was given her OCONUS assignment, namely, the area in which she had lived while working at Beale AFB. The Air Force is also prepared to deliver to claimant, at the Government's expense, the HHG it has held in storage these six years. However, it is not prepared to deliver the HHG to any point not within commuting distance of Beale AFB.

Ms. Gross suggests an alternative course of action. She proposes that she relinquish her right to return travel and transportation back to her CONUS home of record for herself, her dependents, and her HHG in exchange for the Government's shipping to Hickam AFB, at its expense, the HHG in NTS at Beale AFB. Ms. Gross points out that this could result in a significant savings to the Government. Although the agency recognizes that it might well cost less to ship the HHG to Hawaii, it contends that it lacks the authority in law to authorize the requested shipment.

### Discussion

The present status of the claimant in this case is of particular significance. As a retired federal employee, any entitlement she may have belongs to her not as an employee undergoing a permanent change of station (PCS), but as an employee separating from Government employment.

If, rather than retiring at her OCONUS post, Ms. Gross had remained in active service and been transferred in the Government's interest to a new PDS, then the agency would most certainly have the authority to ship to her at her new PDS not only her HHG in Hawaii but also those which it is holding in NTS at Beale AFB.

As a separating employee, Ms. Gross' entitlement to shipping of HHG is more limited. By statute, an agency has the authority to pay the travel and transportation costs associated with the return of an employee who elects to retire on completion of his or her OCONUS tour. To where, however, does the employee return? To what location are the employee's HHG to be shipped? Since the separated employee is not traveling on to a new PDS, a question inevitably arises as to how far the returning employee can travel and transport his or her HHG at Government expense. The same statute expressly addresses this issue by stating that an employee, on return from an OCONUS assignment, is entitled to no more than the costs of travel and transportation back to the actual place of residence at the time the OCONUS assignment was given. See 5 U.S.C. §§ 5722(a), 5724(d) (2000); 41 CFR 302-3.101 tbl. F (2002) (Federal Travel Regulation (FTR) 302-3.101 tbl. F).

When claimant was assigned to her new PDS in Hawaii, her actual place of residence was in the vicinity of Beale AFB. Pursuant to statute and regulation, therefore, as a separated employee, she is entitled to the delivery, at the Government's expense, of her HHG to a location within the Beale area. This of course includes HHG in NTS at Beale AFB as well as her HHG in Hawaii. Given her present plan to retire in Hawaii, however, it would not appear that she intends to make use of her entitlement to return travel and transportation to the area of Beale AFB. Neither does her entitlement to the local delivery of her HHG in NTS at Beale appear to be of any significant value to her.

Ms. Gross' proposal that the Air Force waive current regulations and enlarge instead on her right to delivery of HHG in NTS at Beale AFB in exchange for her relinquishing her right to return travel and transportation to Beale is not without some pragmatic appeal. She contends that, if the Air Force were to accept her suggestion, this would constitute a "win-win" decision since shipment of the remaining HHG to Hawaii would cost the agency far less than the cost of returning her and her HHG to Beale AFB. Nevertheless, the agency quite rightfully notes that what is proposed is not authorized either in statute or regulation and, therefore, cannot be done. It is well established that, absent a specific provision in statute or regulation which might permit it under certain circumstances, neither an agency nor this Board has the authority to waive, modify, or depart from the Government's official travel regulations for the benefit of any federal employee who is subject to them. E.g., David Mendoza, GSBCA 15921-RELO, 03-1 BCA ¶ 32,082; Thomas A. Riopelle, GSBCA 15722-RELO, 02-1 BCA ¶ 31,820; Daniel M. Coney, GSBCA 15444-RELO, 01-2 BCA ¶ 31,500; Tanya Cantrell, GSBCA 15191-RELO, 00-1 BCA ¶ 30,894; Michael J. Kunk, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998); Defense Intelligence Agency Employee, GSBCA 14745-RELO, 99-1 BCA ¶ 30,117 (1998).

Furthermore, it is equally well settled that, even if compliance with these regulations will allegedly lead to inequities for the employee in question, this still does not provide the agency with authority to expend public funds contrary to provisions of published regulations. Devon Scott Shelley, GSBCA 15867-RELO, 02-2 BCA ¶ 31,968. As we have previously explained, if the rule were otherwise, executive branch employees could usurp the control over public funds that is lawfully that of the Congress or, where authorized by statute, of officials who promulgate these regulations. Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996) (citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)).

As a former employee of the Department of Defense (DoD), Ms. Gross is subject to DoD's Joint Travel Regulations (JTR), which implement and, to a limited degree, supplement the provisions of the FTR for DoD's employees. Ms. Gross refers us to JTR C8825, which she contends supports her claim for shipment, at Government expense, of her stored HHG at Beale AFB to Hickam AFB in Hawaii. The provision she relies on appears in part E of chapter 8 of the JTR. Part E deals with NTS for employees assigned to OCONUS posts. It reads in part:

#### C8825 Removing HHG from NTS

A. Partial or Full Removal. An employee, whose HHG are in NTS at Government expense, is entitled to withdraw all or any portion of the authorized HHG weight allowance from storage as long as they are for employee or dependent use in establishing or enlarging the residence.

B. Government-paid Expenses. The Government is responsible for all costs for withdrawal, drayage, unpacking, and uncrating, as long as:

1. the place to which HHG are delivered is in the commuting area of employee's actual residence, and

2. the employee is entitled to return transportation.

Ms. Gross believes that because her actual residence is now in Hawaii and she is entitled to return transportation, her HHG in NTS at Beale AFB should be shipped to her in Hawaii at Government expense. It is, of course, true that the claimant no longer has a residence near Beale AFB and that her actual residence is now in Hawaii. Nevertheless, her understanding of the term "actual residence," as used in the JTR provision, is out of context and in conflict with other relevant regulations. As already pointed out, any right Ms. Gross may have to shipment of HHG is not occasioned by a PCS move but by her separation from Government employment. For a separating employee concluding an OCONUS assignment, the "actual residence" as used in this JTR provision is the residence occupied at the time the employee received his or her OCONUS assignment. This is the residence listed in the service or transportation agreement signed by the employee prior to departure to an OCONUS post, pursuant to which the employee is assured that the expenses of return travel and transportation will be paid by the Government. FTR 302-2.15 to 2.16; JTR C4002-A.5, C4004-B.1. Similarly, this is the actual residence to which JTR C8500 expressly authorizes the agency to ship the HHG of an employee separating from Government service upon completion of an OCONUS tour.

The situation confronting the claimant in this case is not unique. It is, in fact, provided for in regulation. As the agency points out in its administrative report to us, we are dealing here simply with a requirement to ship a retiring employee's goods to an "alternative location." The regulations implementing the statutory authorization to pay for the return travel and transportation of a retiring employee, when completing an OCONUS term, recognize that the employee may no longer plan or wish to return to the location where he or she resided at the time the OCONUS assignment was received. We find a typical example of this in the present case where the claimant has already sold her residence near Beale AFB and expressed a wish to retire in Hawaii. When this occurs, the regulations do not insist that the retiring employee necessarily return to the last actual place of residence in CONUS. Rather, they also provide for travel and transportation to an alternate site, if this is desired, provided the cost of the employee's travel and transportation of his or her HHG does not exceed what the Government would otherwise pay to return the employee and HHG to the actual place of residence. Any additional cost must be borne by the employee. FTR 302-3.301.

Claimant's HHG in NTS at Beale AFB may, therefore, be shipped to Hawaii as an alternative location. Ms. Gross must bear any cost of this shipment which exceeds what the cost of withdrawal, drayage, unpacking, and uncrating the HHG would otherwise have been if they were delivered to claimant at some point within the commuting area of Beale AFB.

Decision

The agency's determination is affirmed. Ms. Gross' claim is denied.

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EDWIN B. NEILL  
Board Judge