

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 1, 2005

GSBCA 16693-RELO

In the Matter of ALAN POLESZAK

Alan Poleszak, San Diego, CA, Claimant.

Joseph E. Ross, Associate Chief Counsel, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

The Drug Enforcement Administration (DEA) has charged a transferred employee, Alan Poleszak, for the shipment of the portion of his household goods which exceeds 18,000 pounds net weight. Mr. Poleszak challenges the agency's action, contending that his goods weighed less than 18,000 pounds. Because the employee has not shown clear and substantial evidence of error or fraud in the determination of net weight used by the agency, we deny his claim.

Background

When an agency transfers an employee in the interest of the Government from one permanent duty station to another, it must pay for the expenses of transporting 18,000 pounds – but no more – of the employee's household goods and personal effects. 5 U.S.C. § 5724(a)(2) (2000); 41 CFR 302-7.2 (2004). The cost of transporting additional goods is the responsibility of the employee. *James R. Wyatt, Jr.*, GSBCA 16038-RELO, 04-1 BCA ¶ 32,573 (citing *George W. Currie*, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814; *Robert K. Boggs*, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491).

DEA transferred Mr. Poleszak from Eugene, Oregon, to San Diego, California, in October 2004. DEA hired North American Van Lines to transport his goods to San Diego.

Prior to the move, in August 2004, North American estimated the weight of the goods as 17,995 pounds.

The record contains a State of California weighmaster certificate dated October 4 – at the time of the move – which shows that the truck which carried the goods had a gross weight of 66,860 pounds and a tare (empty) weight of 44,560 pounds. Thus, the net weight of the goods was measured as 22,300 pounds at that time.

After arriving in San Diego, the goods were placed into storage. They were delivered to Mr. Poleszak in four trucks in January 2005. The record contains State of California weighmaster certificates dated January 17 and 18 which show that four trucks had a gross weight of 95,800 pounds and a tare weight of 73,760 pounds. Thus, the net weight of the goods was measured as 22,040 pounds at that time.

DEA has an agreement with North American under which, if the actual weight of shipped goods is more than 115% of the pre-move survey weight, and the carrier “fails to adequately justify the difference between the actual and premove survey weights, [the carrier] stipulates that the agreed weight of the shipment will be 115% of the premove survey weight. The agreed weight shall take precedence over the actual weight for the assessment of . . . charges when based on weight.” One hundred fifteen percent of 17,995 pounds is 20,694 pounds.

DEA paid \$22,721 to have North American move his goods from Eugene to San Diego. The agency has calculated that based on a weight of 20,648 pounds, the portion of the shipment attributable to weight in excess of 18,000 pounds was 13%, and Mr. Poleszak is responsible for reimbursing the agency 13% of \$22,721, or \$2914. The agency’s calculations are not quite accurate, as discussed below.

Discussion

Mr. Poleszak contends that the weight used by DEA in assessing charges against him for the shipment of his household goods is seriously in error. To substantiate this allegation, he compares the goods transported from Eugene to San Diego with goods transported for him a year earlier, in July 2003, when DEA transferred him from San Diego to Eugene. The 2003 shipment was said to weigh 16,920 pounds. Mr. Poleszak asserts that when moving back to San Diego, he transported by himself several heavy items which were included in that amount. This reduced the weight of goods entrusted to the common carrier by about 1900

pounds. In addition, he sold or donated to charities “several hundred pounds of other goods” which had been moved by carrier to Eugene. On the other hand, he says that while living in Oregon, he purchased heavy items weighing about 1400 pounds which he included in the carrier’s truck bound for San Diego. All in all, Mr. Poleszak concludes, the weight of the goods transported by carrier from Eugene to San Diego must have been less than the weight of the goods transported by the same means a year earlier. Because the total sent north in 2003 was less than 18,000 pounds, the total sent south in 2004 could not have been considerably more than that amount, as maintained by DEA.

While Mr. Poleszak’s argument is thoughtful and well explained, it cannot prevail. Certified weight tickets are a common and accepted means of proving the weight of a shipment of household goods. *Jaime V. Mercado*, GSBCA 16313-RELO, 04-1 BCA ¶ 32,583. We have held, “The burden of proving that certified weights for the movement of household goods are incorrect is exceedingly heavy and rests on the claimant. Agency determinations of net weight will be set aside only where a claimant can show clear and substantial evidence of error or fraud.” *Robert G. Gindhart*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997); *see also Mercado*; *Richard D. Grulich*, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891; *Helene Mikes*, GSBCA 15374-RELO, 00-2 BCA ¶ 31,138, *reconsideration denied*, 01-1 BCA ¶ 31,214 (2000); *Ira A. C. Peets*, GSBCA 15294-RELO, 00-2 BCA ¶ 31,058. An employee’s belief that the weight of his goods could not have increased as much as alleged between recent moves is not enough to defeat documentation of the weight at the time of the second move. *Mercado*; *Wyatt*; *Mikes*; *Douglas V. Smith*, GSBCA 14655-RELO, 99-1 BCA ¶ 30,171 (1998); *Ingrid Rodenberg*, GSBCA 13729-RELO, 97-2 BCA ¶ 29,027.

Mr. Poleszak concludes that either the carrier which moved his goods from San Diego to Eugene in 2003 erred in stating that his household goods weighed less than 17,000 pounds or North American, which moved his goods from Eugene to San Diego in 2004, did so in stating that a bit less goods weighed more than 22,000 pounds. This assertion may well be correct. It does not compel a determination that the 2004 weight is incorrect, however. To the contrary, it inadvertently shows why the kind of argument made by Mr. Poleszak is not persuasive: the 2003 weight could well have been wrong and the 2004 weight correct. (If that is so, of course, the employee benefited by not having to pay charges associated with excess weight in 2003.) We note that in any event, DEA has calculated charges on the basis of a weight which is *less* than either of the certified net weights of the goods of record in this case – the one measured when the goods were moved or the one measured when the goods were removed from storage. As a result of the agency’s agreement with the carrier and the carrier’s poor estimate of the weight of the goods, the agency’s position is effectively that the goods were not as heavy as either certified net weight shows. This fact makes the agency’s position even more difficult to assail. *Mercado*.

The formula used by DEA for assessing charges owed by Mr. Poleszak for the portion of the shipment attributable to weight in excess of 18,000 pounds – total cost multiplied by the fraction excess weight divided by total weight – has been explicitly approved by us. *Jerry C. West*, GSBCA 16451-RELO, 04-2 BCA ¶ 32,764. The agency has made a slight error in application of the formula, however. It has assumed that the total weight of the shipment for payment purposes is 20,648 pounds, but that weight should actually be 115% of 17,995 pounds, or 20,694 pounds. With this correction, the portion of North American's charges attributable to the employee is \$22,721 multiplied by the fraction 2694 pounds divided by 20,694 pounds, or \$2954.

STEPHEN M. DANIELS
Board Judge