

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 16, 2006

GSBCA 16727-RELO

In the Matter of JAMES AND MARY DAVIDSON

James and Mary Davidson, Dana Point, CA, Claimants.

Michael Mullen, Acting Chief, Financial Management Division, United States Secret Service, Washington, DC, appearing for Department of Homeland Security.

HYATT, Board Judge.

The United States Secret Service has submitted this claim on behalf of two of its former employees, James and Mary Davidson. The issue is whether the agency has properly collected excess costs of transporting household goods in connection with dual permanent changes of station (PCSs) effected in 1997.

Background

In January 1997, James Davidson was employed as the Assistant to the Special Agent in Charge, stationed in Washington, D.C., and his spouse, Mary Davidson, was a Special Agent stationed in the Baltimore, Maryland, Field Office. That same month Mr. Davidson was notified of his transfer to the Secret Service's Los Angeles, California, Field Office and Ms. Davidson received notification of her impending transfer to the agency's Santa Ana, California, Resident Office.

The Davidsons elected separate travel authorizations for each of their moves. The Secret Service states that they resided together at the time they were notified of their transfers

and that they continued to reside together after they reported to their new posts of duty in California. Authorization for the sale of the old residence, purchase of a new residence, and miscellaneous expense allowances was included on Ms. Davidson's travel orders. The Davidsons had three dependent children at that time as well. Mr. Davidson claimed one child on his travel orders and Ms. Davidson claimed the other two on hers. They were authorized to drive separate cars to the new posts of duty and did so. Ms. Davidson's travel orders authorized shipment of household goods and related storage. Mr. Davidson's travel orders did not include authorization to ship or store household goods.

The Davidsons arrived in California in June 1997. Their household goods arrived, in one lot, in July 1997. The Government bill of lading was issued in Mr. Davidson's name, even though the authorization was provided on Ms. Davidson's travel orders. The total weight of the household goods shipment was stated to be 21,920 pounds.

In January 2003, the Secret Service notified the Davidsons, who at that time were both retired from Government service, of an assessment of excess weight charges in the amount of \$4820.53 associated with the shipment of their household goods to California in 1997. The Davidsons disputed the assessment, urging that the mover's charges were excessive and unreliable, and a lengthy dialogue concerning this issue took place between the claimants and the agency. In June 2005, the Internal Revenue Service collected this amount by offset against the claimants' tax refund. The Davidsons continue to dispute the assessment, and the agency has filed this claim on their behalf.

Discussion

The Secret Service has presented a well-researched and carefully considered position paper with respect to this matter, asking the Board whether the claimants were properly required to reimburse the Government for the amount of \$4820.53 in costs attributable to the 3920 pounds of household goods shipped in excess of the maximum limit of 18,000 pounds.

Under the Federal Travel Regulation (FTR) provisions in effect at the time the Davidsons were relocated to California, when two or more members of a household were government employees relocating at the same time, the employees were offered two options: (1) they could elect separate authorizations for the move, in which case neither employee would be eligible for allowances as a member of the immediate family or (2) only one employee would receive the available allowances and the other would be eligible for relocation allowances solely as a member of the immediate family. 41 CFR 302-1.8(a) (1997). Although the FTR has been considerably revised since 1997, when the Davidsons accomplished their PCS moves with the Secret Service, the pertinent provisions permitting separate travel authorizations when more than one employee in a single household is being

transferred in the interest of the Government are basically unchanged as to their substance. *See* 41 CFR 302-3.200 (2005); *see also Russell Showers & Winifred Lehman*, GSBCA 16608-RELO, 05-2 BCA ¶ 33,051; *Daniel C. Schofield*, GSBCA 15531-RELO, 01-2 BCA ¶ 31,560; *James D. Fenwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999).

In instances in which the employees chose separate authorizations, the regulations provided that notwithstanding the separate allowances, the employing agency or agencies would not make duplicate payments for the same expenses. 41 CFR 302-1.8(c) (1996).¹ In essence, then, the question presented by this claim is whether two married employees who are relocating from a single residence to another single residence may both be authorized separate allowances for the transportation and storage of household goods such that their combined eligibility for transportation of household goods is 36,000 pounds, rather than the usual 18,000 pounds permitted when only one member of the household is authorized to relocate in the interest of the Government.

The Secret Service has provided extensive citations to the pertinent case law in presenting this matter to the Board. The agency explains that its uncertainty arises in part from statements in the regulations that duplicate payments will not be permitted for the same expenses, and the language of the statute and cases that unequivocally state that no more than 18,000 pounds of household goods may be transported at government expense in connection with a PCS move. These rulings, together with the fact that only Ms. Davidson's travel orders authorized the transportation and storage of household goods, suggest that the cost associated with the transport of household goods in excess of 18,000 pounds was properly charged to and collected from the Davidsons. At the same time, the agency notes that the ruling in *Stephen K. Magee*, GSBCA 16342-RELO, 04-1 BCA ¶ 32,620, suggests in dicta that under the Joint Travel Regulations a married couple both employed by the Federal Government might, under separate PCS travel authorizations, be authorized to transport a combined total of 36,000 pounds of household goods. Thus, the agency recognizes that the proper interpretation of the regulations is not clear and asks the Board to decide whether the agency has properly collected this money from the Davidsons.

The agency also asks for clarification of its authority to waive this debt if in fact the Board determines that the Davidsons were entitled to move no more than 18,000 pounds of household goods at government expense. Finally, the Davidsons continue to assert their belief that the moving company overcharged the Government and that the weight of their

¹ The regulations continue to provide that duplicate payments for the same expenses will not be permitted. 41 CFR 302-3.201 (2005).

goods did not exceed 18,000 pounds. As we discuss below, in light of a recent Board decision that is precisely on point, we need not address either of these issues.

Shortly before the Secret Service submitted the Davidsons' claim to the Board, the Board issued a decision squarely addressing the question now raised by the agency. That is, in *Russell Showers & Winifred Lehman*, GSBCA 16608-RELO, 05-2 BCA ¶ 33,051, the Board held that when two employees who are members of the same immediate family are relocating to a single residence at their new duty stations, they are still both eligible for separate authorizations of the shipment of 18,000 pounds of household goods, entitling them to a maximum of 36,000 pounds that may be moved. So long as the expense incurred is for the transporting of the couple's combined furnishings, and is not in essence an attempt to collect the cost of transporting the same 18,000 pounds twice, the regulations permit the Government to pay for up to 18,000 pounds of household goods for each employee. Under this analysis, since Mr. and Ms. Davidson were individually entitled to transportation of up to 18,000 pounds of household goods incident to their PCS to California, the shipment of the Davidson's household goods to California obviously did not exceed their combined maximum limitation of 36,000 pounds.

The only question remaining to be addressed, then, is whether the failure to authorize the transportation of household goods on Mr. Davidson's travel orders adversely affected the couple's entitlement. The answer is no. Under the rules in effect both in 1997 and now, transportation of up to 18,000 pounds of household goods from the old duty station to the new duty station is a benefit that is required to be provided in connection with a transfer that is in the interest of the Government, as both of these transfers were. *See* 5 U.S.C. § 5724(a)(2) (2000); 41 CFR 302-3.101 (2005), 41 CFR 302-1.2(a) (1997). It is not a discretionary benefit. Mr. Davidson's travel orders should have included this authorization, and the agency may not, after the move has occurred, effectively deny him this benefit by collecting the amount attributable to the cost of transporting more than 18,000, but less than 36,000, pounds of household goods. *See Brian P. Byrnes*, GSBCA 14195-TRAV, et al., 98-1 BCA ¶ 29,535 (holding that travel orders may be amended retroactively "if the original orders do not conform to applicable statute and regulation"). The amount collected from the Davidsons should be refunded to them.

CATHERINE B. HYATT
Board Judge

