

KEYWORDS: waiver of indebtedness; excess weight

DIGEST: An employee requests reconsideration of the September 25, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07081002. In that decision, DOHA waived \$2,271.96 of the \$10,513.09 claim against the employee and determined that the balance (\$8,241.13) could not be considered for waiver.

CASENO: 07101803

DATE: 11/08/2007

DATE: November 8, 2007

_____)
In Re: _____))
 [REDACTED]) Claims Case No. 07101803
))
Claimant _____))

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee's debt resulting from the government's payment to a moving company of the entire amount charged for the employee's household goods shipment, including weight in excess of the authorized weight, cannot be considered for waiver under 5 U.S.C. § 5584 because the debt is not a result of an erroneous payment.

DECISION

An employee requests reconsideration of the September 25, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07081002. In that decision, DOHA waived \$2,271.96 of the \$10,513.09 claim against the employee and determined that the balance (\$8,241.13) could not be considered for waiver.

Background

On April 6, 2005, pursuant to her separation from employment, the employee was issued orders transferring her from Germany to California. The employee was authorized to ship 18,000 pounds of household goods (HHG). The employee was advised by the Traffic Management Office (TMO) that she could ship her HHG to an alternate location in Iowa. Under government bill of lading (GBL) JQ-383963, JQ-383807, and JQ-383888, she shipped her HHG from Germany to Iowa in reliance on this advice. However, it was later determined that the employee was not authorized to ship her HHG to Iowa at government expense. As a result, the employee was charged \$2,271.96, which represents the difference in the cost of shipping her HHG from Germany to California, instead of from Germany to Iowa. This amount was waived and is not at issue in this reconsideration request.

The record further shows that the employee shipped additional HHG under GBL ZX-065853 from California to Iowa. For all four shipments, the employee actually shipped 23,470 pounds, or 5,470 pounds in excess of her entitlement.¹ The government paid the cost of the excess weight, and the employee became indebted to the government in the amount of \$8,241.13.

In her request for reconsideration, the employee does not dispute her liability for the costs associated with the excess weight. However, she does dispute the calculation of the amount she was determined to be in excess of her weight entitlement. She states that there are obvious errors in the calculation of her excess weight. She cites the Department of the Air Force Joint Personal Property Shipping Office's (JPPSO) memorandum dated May 24, 2007, listing the weights charged against her weight allowance (with the chargeable weights in the parenthesis) for the three shipments from Germany to Iowa as: "GBL JQ-383807, dated 22 Mar 06, 20,044 (12,026); GBL JQ-383888, dated 28 Mar 06, 1,942 (1,165); GBL JQ-383936, dated 23 May 06, 1,032 (619)." She also disputes the weight of the shipment that was delivered out of non-temporary storage in California. She is unclear how this shipment weighed 9,660 pounds. She provides a weight certificate that reflects a weight of 8,820, and a DD Form 1164 that also reflects a weight of 8,820.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive the collection of erroneous overpayments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience, and not in the best interest of the United States, provided that the claim arose from administrative error and there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction

¹The Department of the Air Force Joint Personal Property Shipping Office (JPPSO) - San Antonio, has verified that the employee exceeded her weight allowance by 5,470 pounds, resulting in an excess cost of \$8,241.13.

1340.23 (Instruction) ¶ E4.1.2. However, in order to be considered for waiver under 5 U.S.C. § 5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1.

Debts based on excess costs incurred in the shipment of an employee's household goods are generally not subject to waiver since the costs are not erroneous. *See* DOHA Claims Case No. 07040601 (April 12, 2007); and DOHA Claims Case No. 02102812 (November 18, 2002). The government is simply recouping payments made in the normal course of business to satisfy its obligation to the carrier. It is standard government practice to ship the total weight of an employee's household goods at government expense and then collect any charges for excess weight from the employee. For shipments in excess of the authorized weight allowance, the employee is financially responsible for all costs associated with the excess weight following transportation completion, as determined by the service concerned. *See* ¶ C5175 of Volume 2 of the Joint Travel Regulations (JTR).

In this case, payment to the carrier was made in accordance with standard government practice. The payment made to the carrier was not erroneous when made, and there was no error on the part of the government in making the payment. As stated in her reconsideration request, the employee does not dispute her liability for the indebtedness associated with her excess weight. She does however continue to challenge the calculation of the excess weight. The employee has requested a waiver under 5 U.S.C. § 5584, and our review is limited to the appropriateness of granting waiver in this situation. Since there was no erroneous payment, the resulting debt of the employee cannot be considered for waiver. Alternatively, even assuming solely for purposes of this reconsideration that there had been an erroneous payment, it is not against equity and good conscience to collect shipping charges that the employee incurred which exceeded her entitlement where she knew that she was liable for costs that exceeded her entitlement. The employee cannot request waiver as a substitute for the adjudication of her claim involving the proper calculation of her excess shipping cost debt. She may contact the Defense Finance and Accounting Service (DFAS) and the JPPSO in order to pursue her challenge to the calculation of her indebtedness.

Conclusion

The employee's request for additional waiver relief is denied, and we affirm the September 25, 2007, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board