

November 18, 2002

In Re:

Claimant

Claims Case No. 02102812

CLAIMS APPEALS BOARD DECISION

DIGEST

When the government contracts with a moving company to move a service member's household goods, it is standard business practice for the government to pay all costs and then bill the member for any excess weight charges. Because no erroneous payment is made in that situation, the member's resulting debt cannot be considered for waiver.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 02090910, dated October 10, 2002, in which we denied the waiver request of a retired service member.

Background

In July 1998, an Army service member was transferred from Chesterfield, Missouri to Overland Park, Kansas. In connection with his transfer, he was authorized to ship 18,000 pounds of household goods as an O-6 with or without dependents.⁽¹⁾ According to the government bill of lading,⁽²⁾ he actually shipped a total weight of 24,400 pounds. As a result, he exceeded his authorized shipping entitlement by 1,160 pounds, after adjusting for applicable weight credits and debits. The shipping of the excess 1,160 pounds resulted in an additional charge of \$605.07, which, in accordance with long-established practice, was paid by the Government to the carrier and then charged to the member.

The member retired from military service in January 2001. As part of the retirement process, he obtained written certifications, from the transportation and finance offices at his final duty station, that he had no outstanding indebtedness to the government. On January 9, 2002, the member received a letter from the Defense Finance and Accounting Service (DFAS) notifying him that he owed the government the aforesaid \$605.07 and requesting payment. The member believes that it is inequitable to raise the indebtedness more than three years after the move and it will cause financial hardship due to his decreased income resulting from his retirement. The member does not dispute the overage in the weight.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive the collection of erroneous overpayments of pay and allowances made to, or on behalf of, a member or former member of the uniform services, if the 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 member.

It has been the long-standing government agency practice to ship the total weight of a member's household goods at

government expense and then collect any charges for excess weight from the member. When a household goods shipment is made in accordance with this practice, the government bill of lading constitutes a contract between the government and the carrier. Under that contract, the carrier is entitled to payment for its services. Therefore, where the government initially pays the cost of a household goods shipment which exceeds the applicable weight allowance, it is a valid payment and there has been no erroneous payment for the purposes of the waiver statute. Likewise, the government has committed no error, but has merely made payment in the normal course of business in satisfaction of its contractual obligation. Accordingly, the initial payment of excess weight charges against a member arising from such payments may not be considered for waiver under the provisions of 10 U.S.C. § 2774. *See* B-258964, July 12, 1995; B-239661, June 4, 1990; and 67 Comp. Gen. 484 (1988).

In the case before us, the payment to the carrier was made in accordance with the standard government practice and subject to the understanding that the excess costs due to the overweight household goods were to be collected from the member. To the extent that either the transportation office or the finance office erred in certifying that the member had no outstanding indebtedness on his account, such error was not an error in payment. The payment to the carrier was not erroneous and there was no error on the part of the government in making that payment. Further, any error on the part of the transportation or finance offices in certifying the absence of indebtedness would not serve as a basis for relieving the member of his obligation to pay the debt. The government is neither bound nor estopped by the erroneous or unauthorized acts of its officers, agents, or employees even though committed in the performance of their official duties. *See* DOHA Claims Case No. 99092806 (February 4, 2000) citing 56 Comp. Gen. 131 (1976) and *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *reh'g denied* 497 U.S. 1046 (1990). For the aforesaid reasons, the debt may not be considered for waiver.

Finally, we note that financial hardship does not provide a basis for waiver. *See* DOHA Claims Case No. 97042817 (July 1, 1997). The Defense Finance and Accounting Service (DFAS), at its own discretion, may arrange a repayment plan which takes hardship appropriately into account.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

1. *See* Volume 1 of the Joint Federal Travel Regulation (JFTR), para. U5310.
2. Personal Property Government Bill of Lading, YP-475,454, dated July 1, 1998, issued under the authority for shipment orders R-04-002378, dated April 23, 1998.