

KEYWORDS: claim; excess weight

DIGEST: As a general rule, questions involving excess weight and classification of items as professional materials are for the Service. We will not question the Service's determination unless clear error is shown.

CASE NO: 06031701

DATE: 3/30/2006

March 30, 2006

In Re:

[Redacted]

Claimant

Claims Case No. 06031701

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

As a general rule, questions involving excess weight and classification of items as professional materials are for the Service. We will not question the Service's determination unless clear error is shown.

DECISION

This responds to a request for reconsideration of Defense Office of Hearings and Appeals (DOHA) Appeal Decision, DOHA Claim No. 05092818 (February 14, 2006), in which we denied a member's claim for reimbursement of an excess weight charge for the shipment of household goods (HHG) incident to his permanent change of station (PCS).

Background

At the time of the member's PCS from Maxwell AFB, Alabama, to McConnell AFB, Kansas, the member was a lieutenant colonel in the United States Air Force. As an O-5 with dependents, he was entitled to a weight allowance of 17,500 pounds. The member exceeded his allowance by an adjusted weight of 6,824 pounds. [\(1\)](#)

Thus, the Joint Personal Property Shipping Office (JPPSO) determined that the member owed the Government \$6,194.09 for HHG weight in excess of that allowed for his grade. The member appealed this indebtedness on the basis that at least part of the excess weight consisted of professional books, papers, and equipment (PBP&E) which were included with his HHG and that at least part of it was attributed to waterlogged boxes. In addition, the member disputed the accessory charge for movement of his piano. He also pointed out that the weight of his household goods in the move in question exceeded the weight of a subsequent move. After careful review, our Office denied his claim. He now requests reconsideration of that denial based on the fact that he was never counseled by the Traffic Management Office (TMO) about the need to mark PBP&E on the inventory and, thus, should not be penalized for the Government's failure. He also continues to dispute the cost for additional pick-up of the piano and states that he has presented documentation showing that it cost \$114.29 versus \$125.72. Finally, he states that he has not seen anyone in the review process address each of his issues independently nor certify the costs.

Discussion

Our Office is limited to rendering decisions based on the applicable statutes and regulations (*e.g.*, volume 1 of the Joint Federal Travel Regulations) and prior administrative decisions, and we cannot allow a claim at variance with applicable laws and regulations. *See* DOHA Claims Case No. 99122105 (March 21, 2000). It is standard practice of the services to ship a member's HHG at government expense and then to collect from the member any charges for weight or service in excess of his entitlement under the law or regulations. The governing regulation involved in this case is paragraph U5310 of volume 1 of the JFTR, which limits the Government's HHG transportation obligation to the cost of a move equal in weight to a member's weight allowance. The question of whether and to what extent the member has exceeded his weight allowance is a matter primarily for administrative determination, and this Office ordinarily will not question a Service's determination unless clear error is shown. *See* DOHA Claims Case No. 98042831 (May 29, 1998), DOHA Claims Case No. 97011407 (June 6, 1997), and B-252368, Aug. 19, 1993.

Regarding the member's assertion that he should not be held accountable because he was never counseled about marking PBP&E, we see nothing in statute or regulation allowing the member relief from liability because he was not counseled about marking the inventory. We have consistently held that a member's lack of knowledge of a travel regulation does

not establish an entitlement to payment contrary to applicable law and regulations. *See* DOHA Claims Case No. 01083001 (October 29, 2001). We do note that the JPPSO did adjust the member's liability to \$6,194.09, by deleting 151 pounds to account for lost or damaged property. However, we will not question their decision not to reduce weight to account for PBP&E which the member said were included but should not have been included in the total weight. Questions regarding whether or not certain items are classified as professional materials are generally matters for administrative determination and not subject to further review. *See* B-251563, June 14, 1993.

The member states that he signed the DD Form 619, *Accessorial Services Performed*, to acknowledge that the service of picking up and moving the piano was performed, not because he agreed that the cost was \$125.72 or that the service was required. In addition, he references documentation from the TMO that he states supports the fact that the cost for additional pick-up should have been \$114.29, not \$125.72. Although the member states that he included this documentation in previous claims, there is nothing in the record that supports the pick-up should have only cost \$114.29. ⁽²⁾ The Service's determination stands in absence of clear and convincing contrary evidence.

Finally, from an examination of the record it appears that the member's claim has been reviewed and examined on various levels. In addition, our Office's Appeal Decision addressed each issue raised by the member in a thorough manner.

Conclusion

For the reasons stated, the Appeal Decision is sustained. In accordance with 32 C.F.R. Part 282, Appendix E, paragraph o(2), this is the final Department of Defense administrative action in this matter.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

_____/s/_____

Catherine M. Engstrom

Member, Claims Appeals Board

1. The Joint Personal Property Shipping Office (JPPSO) initially assessed that the member exceeded the weight allowance by 6,975 pounds. However, upon further review, the JPPSO deleted 151 pounds for lost or damaged HHG and reduced the charge for excess HHG to \$6,194.09.
2. Referencing the JPPSO's letter of October 7, 2004, the member believes he should not be responsible for any accessory charges. In this case, however, the member is responsible for a portion of such charges considering the excess weight of this shipment. *See* 1 JFTR U5340-B1.