

In Re:

[Redacted]

Claimant

DATE: June 6, 1997

Claims Case No. 97011407

CLAIMS APPEALS BOARD DECISION

DIGEST

Waiver is not appropriate where a service member seeks relief from a debt arising from the government's payment of a portion of a carrier's charges attributed to weight of household goods in excess of the weight that the service member is entitled to ship on PCS. The member argued that the Service or the carrier failed to provide the weight of a portion of the internal packing material for the purpose of determining whether the weight of his household goods still exceeded the entitlement even with an allowance for internal packing material and alleged that the Service or the carrier committed error by disobeying his instructions not to pack certain items which he did not intend to ship.

DECISION

the service member, appeals the settlement⁽¹⁾ of the U.S. General Accounting Office (GAO) which denied his application for the waiver of a debt he owed to the Air Force in the amount of \$3,028.74, resulting from charges the Service paid to a carrier for the weight of the service member's household shipment exceeding the weight authorized by law. Pursuant to Public Law No. 104-316, October 19, 1996, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay or allowances, including travel, transportation or relocation expenses and allowances, was transferred to the Director, Office of Management and Budget (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the Department of Defense to the Secretary of Defense. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.⁽²⁾

Background

The record shows that on April 9, 1991, the service member was issued orders permanently changing his station of duty (PCS) from the United Kingdom to Griffis Air Force Base, New York. In connection with his PCS, the service member was authorized to ship 17,500 pounds of household goods.⁽³⁾ However, he actually shipped 20,085 pounds, or 2,585 pounds in excess of his entitlement.⁽⁴⁾ The government paid the cost of the excess weight, and the service member became indebted to the government in the amount of \$3,028.74.

The service member contends that he was not given credit for the weight of 20 special crates, weighing an estimated at 2,000 pounds. It is not disputed that these crates were required for proper shipment of certain items of his household goods.⁽⁵⁾ The member also contends that he should be given credit for a portion of the shipment (15 to 20 boxes estimated to weigh 65 pounds each), which by mistake, the origin carrier packed but which the member had set aside to mail at his own expense. With regard to the 2,000 pounds for the special crates, the service member describes in detail his numerous efforts to obtain the exact weight of these items and how the carriers involved or the Air Force had failed to obtain the exact weight despite his numerous requests.

The administrative report of the Joint Personal Property Shipping Office (JPPSO)-San Antonio, dated April 27, 1992, stated that the origin weight was 23,108 pounds net, and the destination weight was 22,891 pounds net. In computing the excess charges, JPPSO utilized the lower net weight. After crediting the service member with 880 pounds for professional books and materials, it allowed the service member 10 percent of the resulting net weight (or 2,201 pounds) for internal packing material.

On October 5, 1994, the service member appealed the decision of the Defense Finance and Accounting Service (DFAS)-Denver Center, which denied his request for waiver. DFAS denied the request on the basis that his debt was ineligible for waiver based on the Comptroller General's decision 67 Comp. Gen. 484 (1988); the Comptroller General held that upon completion of a shipment the government pays the carrier the entire amount charged and collects any excess charges from the service member or employee for exceeding his or her authorized weight allowance or for extra services. These debts do not result from "erroneous" payments made to the service member or employee; therefore, they cannot be waived under title 10, United States Code, Section 2774 (10 U.S.C. 2774).

Decision

The Comptroller General's decision cited above is dispositive of this appeal. Additionally, see Captain Eric W. Burch, USAF, B-258964, July 12, 1995, cited by GAO in its Settlement Certificate. The claimant has argued that the Air Force erred in not crediting him for the weight of the special crates, and for the 15-20 boxes that he did not intend to ship. But, even if errors had been made, an error, by itself, is an insufficient legal basis for relief under 10 U.S.C. 2774; an erroneous payment is necessary. The payment made to the carrier was in anticipation that the member would pay any amount in excess of his entitlement. Accordingly, this payment was not erroneous. Any error which may have been involved in the origin carrier's taking custody of the 15-20 boxes which the service member did not intend to ship, is not analogous to a detrimental reliance on a written authorization of an erroneous weight allowance that existed in Gunnery Sergeant Robert S. Jackowski, USMC, B-229335, Oct. 21, 1988. The factual circumstances here are not as compelling as those in Captain Eric W. Burch, USAF, *supra*, where the Comptroller General denied relief in the face of allegations of erroneous action; *i.e.*, erroneous verbal advice. Here, the claimant would have us expand the concept of "erroneous payment" to allow relief for "erroneous" inaction. There is simply no precedent for such an expansion.

In our view, the service member continues to challenge the legal application of the allowance for interior packing material as described in the Joint Federal Travel Regulations (JFTR), notwithstanding his appeal of the waiver determination. While the service member requested a waiver and did not appeal to the GAO what he perceived to be an error in the determination of the weight, it appears that any legal claim would have failed. Preliminarily, under para. U5335-A of Volume 1 of the Joint Federal Travel Regulations, 1 JFTR para. U5335-A, when practical, the actual weight of unpacked and uncrated household goods will be established before packing and such actual weight will be used to determine whether the service member's weight allowance was exceeded. In relevant part, under 1 JFTR para. U5335-B, when actual weight is not known, the allowance for interior packing materials is 10 percent of the net weight of the shipment as shown on the PPGBL, procurement documents or other shipping documents which includes the weight of the interior packing material.

The service member did not clearly demonstrate the actual weight of his unpacked and uncrated household goods. Assuming that his estimate for the weight of the special crates was correct, he still did not offer proof of the actual weight of the interior packing material unrelated to the special crates. As circumstantial evidence of the actual weight of the unpacked and uncrated household goods, the service member had to identify all of the weight unrelated to the household goods themselves. Additionally, given all of the problems detailed by the service member in connection with this move, we are not convinced that, in fact, it was practical to obtain the actual weight of the unpacked and uncrated household goods. In any event, the Service's determinations in these matters stands in the absence of clear and convincing contrary evidence. See Colonel Rodney M. Atack, USA, B-239661, Jun. 4, 1990; and McNamara-Lunz Vans & Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978).

Conclusion

We affirm GAO's settlement.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. Settlement Certificate Z-2943359-050, October 7, 1996
2. The legal basis of the transfer is further described in B-275605, Mar. 17, 1997.
3. See generally 37 U.S.C. 406. Both the service member and the Air Force agree that the service member's entitlement was 17,500 pounds.
4. See Personal Property Government Bill of Lading (PPGBL) TP-531,524.
5. The claimant stated that he had several fragile or extremely heavy items; for example, a planer/jointer, a saw/shaper which were 1,200 and 800 pounds each in a knocked down mode. Additionally, there were antique grandfather clocks, wall clocks, large stained glass windows, and the smallest was for an antique ship's bell.