

DATE: May 29, 1998

In Re:

[Redacted]

Claimant

Claims Case No. 98042831

CLAIMS APPEALS BOARD DECISION

DIGEST

1. Our Office does not provide for a hearing in settling waiver applications. The agency which was responsible for the overpayment must determine the facts surrounding the erroneous payment.
2. A member's debt resulting from the government's payment to the carrier of the entire amount charged for the member's household goods shipment, including weight in excess of the authorized weight, is not appropriate for waiver. The debt is not the result of an erroneous payment and, therefore, cannot be waived under 10 U.S.C. § 2774.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 97100102, April 6, 1998, which denied the waiver request of a former member of a debt he owed to the Army in the amount of \$1,860.86, resulting from charges the Service paid to a carrier for the weight of the service member's May 1995 household shipment exceeding the weight authorized by law.

The record shows that the member was authorized to ship 14,500 pounds of household goods (HHG). He shipped 18,120 pounds of HHG. The Service determined that since the government paid the excess cost of the shipment, the member owed \$1,860.86. The member first learned of the overweight in July 1996 when he received the indebtedness letter. In rebutting the indebtedness, the member stated that in his 20 years of military service, he has always maintained between 11 and 13 thousand pounds in weight. He offered a copy of the Joint Statement of Loss or Damage at Delivery (DD Form 1840) for his 1992 move which indicated weight of 13,380 pounds and documents which indicate that he gave away furniture and miscellaneous items prior to the 1995 move. He also annotated the 1992 and 1995 inventories to show items from the 1992 move which were also moved in 1995, items that were given away before the 1995 move, items he could not match between the two inventories, and items that were new for the 1995 move. In March 1997, the Army examined the documentation provided by the member. The Army's estimation of the weight of the items the member states were given away and new items indicates that the 18,120 figure was accurate and legitimate for the 1995 move. Additionally, the weight certificate from the origin agent of the carrier indicates 18,120 pounds and the destination agent confirmed this weight. In September 1997, the Defense Finance and Accounting Service (DFAS) ruled that the member's debt was ineligible for consideration for waiver. Our Settlement Certificate stated that since there is no indication that the debt was caused by government error, it may not be considered to have arisen as a result of "erroneous payment" and, therefore, may not be considered for waiver under 10 U.S.C. § 2774.

On appeal, the member disagrees with the findings in the Settlement Certificate. He does not believe that he could have shipped 18,120 pounds as claimed by the carrier. He states that his professional gear should have been deducted from the weight and he restates his contention that he voluntarily eliminated furniture and countless boxes of household items prior to the May 1995 move. Additionally, he emphasizes the hardship the indebtedness would cause to him and his family because he is retired from the military and unemployed and his wife is not in good health. The member also requests a hearing on this matter.

Discussion

Our Office applies the same practices and procedures that had been applied by the General Accounting Office when the Comptroller General settled waiver applications.⁽¹⁾ The Comptroller General did not provide for a hearing in settling waiver applications. See Brian P. Happy, B-214932, May 29, 1984; and DOHA Claims Case No. 98020429 (May 14, 1998). The agency which was responsible for the overpayment must determine the facts surrounding the erroneous payment, not this Office. See 4 C.F.R. § 92.3.

Under 10 U.S.C. § 2774, we may waive a claim of the United States against a member or former member of the uniformed services for erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States.

Regarding the shipment of a service member's household goods, the long-standing rule states that upon completion of shipment the government pays the carrier the entire amount charged and collects any excess charges from the service member 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; therefore, they cannot be waived under title 10, United States Code. See 67 Comp. Gen. 484 (1988). For this reason, we deny the waiver request. Personal or family financial hardships are not basis for waiver. See DOHA Claims Case No. 97032501 (June 9, 1997). The member can contact DFAS to request that he be allowed to repay the debt over an extended period of time. DFAS has authority to make such determinations in accordance with the relevant regulations.

Regarding his contention that the shipment did not weigh 18,120 pounds, we note that the member does not offer proof of actual weight of the items he eliminated prior to the 1995 move, nor other evidence which would overcome the weight certificate provided by the carrier. It has long been held that the weight of a prior or subsequent move is not necessarily indicative of the weight of the move in question because of the possibility of inclusion or exclusion of items which would vary the prior or subsequent weights. However, in the absence of fraud or clear error, where the transportation voucher prepared by the carrier in support of its freight charges is supported by a valid weight certificate, the government must rely on the scale certifications of record in computing the excess costs. See Frederic Newman, B-195256, Nov. 15, 1979. The Service's determination in these matters stands in the absence of clear and convincing contrary evidence. See DOHA Claims Case No. 97011407 (June 6, 1997); and Major Joel L. Bennett, U.S. Army (Ret.), B-251159, Mar. 16, 1993.

The member argues that the weight of his professional gear should have been deducted from the total. He claims this weight to be approximately 470 pounds, while the Army estimates it to be 555 pounds. Even if the 555 pounds were deducted from the 18,126 pounds, the member's shipment would be over the authorized weight of 14,500 pounds. We recommend that the Army look into the matter of the professional gear in verifying the amount of the member's debt.

Conclusion

We affirm the Settlement Certificate.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. See 62 Fed. Reg. 5387 (February 5, 1997).