



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 8, 2008

CBCA 778-RELO

In the Matter of ANTHONY ANGLADA

Anthony Anglada, Nassau, Bahamas, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Alexandria, VA, appearing for Department of Justice.

GILMORE, Board Judge.

This claim involves a determination by the Department of Justice's Drug Enforcement Administration (DEA or Government) that Anthony Anglada, Special Agent with the DEA, owes the Government \$6289 for excess weight charges in conjunction with his permanent change of station (PCS). Mr. Anglada has asked the Board to review this determination.

Background

Claimant, Anthony Anglada, was transferred by DEA from Rockford, Illinois, to Nassau, Bahamas, with an official reporting date of August 7, 2005. In July of 2005, a DEA transportation management specialist (TMS) advised claimant that DEA could ship a boat at Government expense, and with that information, claimant purchased a ski-boat for approximately \$10,000.¹

¹ Claimant actually purchased a boat and a trailer. All references in this decision to the boat include the trailer.

Mr. Anglada's travel authorization provided that the Government would pay to ship only 7200 pounds of his household goods (HHG). This was because he would be moving into furnished quarters outside the continental United States.

On July 12, 2005, the TMS submitted a PCS move registration initiation to the carrier that advised that the weight of claimant's household goods was estimated at 7200 pounds, the weight of his unaccompanied baggage (UAB) was 800 pounds, and his privately owned vehicle was a Dodge Caravan. The last entry on the form stated "SPECIAL HANDLING: 18' Bayliner Boat." DEA Form 132a, "Authorized Travel Expenses," dated July 19, 2005, did not specifically list shipment of the boat as an authorized expense. It listed only the household goods up to 7200 pounds, UAB of 800 pounds, temporary storage up to 7200 pounds, non-temporary storage up to 10,000 pounds, and a privately owned vehicle.

On July 28, 2005, the carrier prepared government bill of lading (GBL) worksheets for the boat, the car, and the household goods and submitted the worksheets to DEA. The GBL worksheet for the boat gave the estimated weight as 3000 pounds and the estimated shipping cost as \$6694, and the GBL worksheet for the household goods gave the estimated weight as 7200 pounds and the estimated cost as \$14,022. The estimated weight of the boat was not included as a part of the estimated weight of the household goods on the worksheets. The boat and the household goods were listed on two separate GBL worksheets. Mr. Anglada was not privy to this correspondence.

After Mr. Anglada's HHG were packed and weighed near the end of July, the carrier advised Mr. Anglada that his HHG were approximately 200 pounds over the authorized weight and Mr. Anglada retrieved a number of items so that the weight remained under the limitation. On August 3, 2005, the carrier asked the TMS whether the weight of the boat counted against the 7200 pounds since the household goods without the boat came in at 7166 pounds. The TMS advised the carrier that the boat counted against the HHG's 7200 pound limitation, and he told the carrier to send Mr. Anglada an overweight notice. An overweight notice dated August 3, 2005, was mailed to Mr. Anglada at his Illinois address. By this date, Mr. Anglada had already moved and, thus, did not receive the notice.

Under the Federal Travel Regulation (FTR), 41 CFR pt. 302-7 (2005), which governs the transportation and storage of household goods for employees transferred in the interest of the Government, agencies are required to establish policies and procedures to implement the requirements under that part. *See* 41 CFR 302-7.300. DEA's Transportation Standard Operating Procedure (TSOP) Memorandum dated June 3, 2005, specifically addresses the protocol for the shipment of HHG and notification to the employee of any excess weight charges. The TSOP requires the TMS to counsel transferees regarding the shipment of their HHG and the options available if their HHG's weight exceeds the specified maximum. It also requires the TMS to advise transferees that the assigned carrier will notify them by letter

that their HHG may exceed the maximum weight allowed. The TMS is additionally required to advise transferees that they are required to sign and return the excess weight notification letter to the carrier, and that failure to sign and return the letter may delay the pack-out of their HHG. The carrier is required to send an excess weight letter by certified mail to the transferee, and the carrier is required to ensure that the transferee signs the notification letter and to submit a copy of the signed statement to the Government. Upon receiving the excess weight estimate, the TMS is required to **again** (emphasis in document) counsel the transferee regarding options available for shipment of the excess weight. These steps were not taken by the TMS.

Mr. Anglada reported to duty at his new post in Nassau, Bahamas, on August 7, 2005. Mr. Anglada's boat arrived on August 7, 2005, and was delivered to him on August 25, 2005. The other HHG arrived on August 21, 2005, and the vehicle arrived on August 28, 2005.

The carrier's voucher for the HHG (excluding the boat) was received by the Government on October 3, 2005. The carrier's voucher for the boat was received by the Government on September 25, 2006, although the boat was delivered to the claimant over a year earlier. The carrier explained to the Government that the one year delay in submitting a voucher for shipment of the boat occurred because the billing employee left the company at the time of the move, and the work shifted to other employees.

By letter dated January 19, 2007, approximately a year and a half after Mr. Anglada moved, the Government notified Mr. Anglada that he owed \$6289 for the excess weight of his shipment. In the notice, his HHG were listed as 7166 pounds, and the boat as 3000 pounds, for a total of 10,166 pounds, and the authorized weight was listed as 7200 pounds. Thus, the excess weight was stated as 2966 pounds. According to the excess weight formula, the amount due for 2966 pounds of excess weight was \$6289. Mr. Anglada argues that if he had known the boat was not going to be shipped at Government expense, he would not have purchased the boat. Mr. Anglada states that the boat and trailer, in any event, did not weigh 3000 pounds. He submitted a manufacturer's brochure for a 2007 Bayliner boat which lists the weight as 2312 pounds. The Government contends that Mr. Anglada was only authorized 7200 pounds for HHG and the regulations provide that the boat is to be included in the HHG allowance. The Government further contends that the 2007 brochure is not evidence of the weight of the boat Mr. Anglada shipped in 2005 and that 3000 pounds was listed as the estimated weight of the boat by the carrier before shipment and also by a moving company in the Bahamas after the shipment.

Discussion

The statute governing the travel and transportation expenses of transferred employees provides that, when the head of the agency so authorizes or approves, the agency shall pay from government funds:

(1) the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family, or a commutation thereof under section 5704 of this title; [and]

(2) the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight

5 U.S.C. § 5724(a) (2000).

This 18,000 pound limitation in the statute would have normally applied to this claimant. However, the implementing regulations allow agencies to limit the HHG weight authorized if an employee is transferred to quarters that are outside the continental United States and furnished or partly furnished. 41 CFR 302-7.16. The DEA Foreign Assignment Relocation Handbook provides that DEA will pay to transport only 7200 pounds of HHG if an employee is transferred to a foreign post with quarters that are furnished or partly furnished, and that the limitation does not include the weight of UAB or HHG placed in temporary storage. This handbook does not address the shipment of a boat. The PCS Advisory Notice sent to claimant by the DEA states that an employee transferring to a furnished post is limited to 7200 pounds of HHG and the remainder of the 18,000 pounds “will then be shipped to the employee’s Home of Record and stored in non-temporary storage at Government expense.” This advisory notice does not address the shipment of a boat. The FTR provides at 41 CFR 300-3.1 that:

Household Goods (HHG)--Property, unless specifically excluded, associated with the home and all personal effects belonging to an employee and immediate family members on the effective date of the employee’s change of official station orders (the day the employee reports for duty at the new official station) that legally may be accepted and transported by a commercial HHG carrier.

(1) HHG also includes:

. . . .

(v) Vehicles other than POVs [privately owned vehicles] (such as motorcycles, mopeds, jet skis, snowmobiles, golf carts, boats (e.g., boat, sailboat, canoe, skiff, rowboat, dinghies, sculls and kayak, mounted or unmounted on trailers) of reasonable size that can fit into a moving van[]).

Claimant's travel authorization allowed 7200 pounds for HHG, 800 pounds for UAB, 7200 pounds for temporary storage, 10,000 pounds for non-temporary storage, and the shipment of one vehicle. The boat was not included on claimant's travel authorization as a separate item.

The DEA admits telling Mr. Anglada that the boat could be shipped at government expense, but contends that Mr. Anglada was responsible for reading the PCS Advisory Notice, the Foreign Assignment Relocation Handbook, and the FTR, about transportation and storage of household goods and, thus, should have known that the weight of the boat had to be included in the HHG weight limitation in order for the Government to pay for its shipment.

The record shows that prior to the shipment of claimant's HHG, claimant and the carrier were proceeding under the assumption that the boat was not included in the 7200 pound weight limitation for HHG. After the excess weight was believed to have been resolved between the carrier and claimant, DEA told the carrier that the weight of the boat should have been counted against the 7200 pounds for HHG, and to send Mr. Anglada an overweight notice. An overweight notice was then sent to claimant's former address, and, thus, he did not receive it.

It was not until a year after the move that the carrier submitted the voucher for the shipment of the boat, and submitted a weight certificate for the boat prepared by a moving company in the Bahamas. The boat was not actually weighed. The carrier told the DEA that boats do not get weighed, and that it received the boat weight estimate of 3000 pounds from the manufacturer. There is no manufacturer's literature from 2005 in the record providing the weight of the boat. The Government paid the carrier for the shipment of the boat more than a year after the move, and then a year and a half after the move asked claimant to pay for the excess weight of the HHG (personal items and the boat) in the amount of \$6289.

It appears that this move was on a fast track and that many of the steps normally required to prepare for a move were not followed by the parties involved, including claimant. Claimant was moving a wife and three children; he may not have had time to read all of the regulations submitted to him; and he was relying on the TMS's advice that the Government could pay for a boat to be shipped. However, claimant knew that his travel authorization indicated that he could ship 7200 pounds of HHG, 800 pounds of UAB and one

vehicle. Claimant did not receive a separate authorization for shipment of the boat. Claimant should have made further inquiry and, thus, is not free from fault in this matter.

It is unfortunate that the TMS's advice to claimant regarding the shipment of the boat was not accurate, and that claimant did not receive the counseling on weight limitations set forth in the TSOP Memorandum. However, this Board, and the General Services Board of Contract Appeals, our predecessor board that decided employee relocation benefit claims, have consistently held that even if an agency made a commitment to reimburse an employee for expenses which the employee was not eligible to receive, the commitment cannot overcome the fact that Congress has not authorized such reimbursement. *See, e.g., Andrew J. Marks*, CBCA 672-RELO, 07-2 BCA ¶ 33,602; *Kevin R. Kimiak*, GSBCA 16641-RELO, 05-2 BCA ¶ 33,007. Only the expenses authorized by statute and regulation may be reimbursed. *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, and cases cited therein. Mr. Anglada is responsible for payment of costs attributed to his move of HHG in excess of 7200 pounds.

Although we find that claimant is liable for the shipping costs of any weight in excess of 7200 pounds, there remains the issue of the weight of the boat. Because claimant was not provided with weight tickets for the weight of the boat at the time of shipment, and because the carrier and claimant were proceeding at that time under the assumption that the Government was paying for the shipment of the boat, claimant was not given an opportunity to verify or challenge the weight of the boat at the time of shipment. The only weight for the boat in the record at the time of shipment was the 3000 pound estimate listed in the worksheets that the carrier sent to DEA for preparation of the GBLs.

It appears that this estimated weight was used throughout the shipping process. The moving company which prepared a weight ticket in the Bahamas after the shipment also listed the weight at 3000 pounds. However, it is not clear how this estimate was determined, and there is no manufacturer's literature in the record for the year 2005 showing that the boat weighed 3000 pounds. It seems unlikely, too, that the weight would be exactly 3000 pounds. Even though the boat was shipped in August of 2005, claimant did not receive notice that he owed any money for excess weight until January 2007. He has submitted the 2007 manufacturer's literature for a Bayliner boat like the one he owns, and the weight is listed as 2312 pounds. We accept the 2007 manufacturer's literature as the most persuasive evidence as to the weight of the boat. Thus, 2312 pounds should be used as the weight of the boat, instead of 3000 pounds, for purposes of calculating Mr. Anglada's overweight charges.

Mr. Anglada's claim is denied, except that the Board determines that the actual weight of the boat for purposes of calculating the overweight charge is 2312 pounds

instead of 3000 pounds. In light of this, the DEA shall recalculate the overweight amount and bill Mr. Anglada for that amount.

BERYL S. GILMORE
Board Judge
