UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 21, 2012

CBCA 2506-RELO

In the Matter of DANA G. KAY

Dana G. Kay, Scottsdale, AZ, Claimant.

Patrick Cunningham, Director of Transportation Payments, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

BORWICK, Board Judge.

In this matter, we deny claimant's claim for reduction of her debt assessed by the agency, the Department of Defense through the Defense Finance and Accounting Service (DFAS), for a permanent change of station (PCS) household goods (HHG) shipment in excess of eighteen thousand pounds.

Background

This is the second case on claimant's PCS move. The facts are as follows. On September 28, 2007, the agency authorized claimant's PCS move from King of Prussia, Pennsylvania, to Scottsdale, Arizona, and granted claimant shipment of HHG by government bill of lading (GBL), not to exceed 18,000 pounds. Claimant's HHG were picked up on or about December 21, 2007, at her residence at her old duty station.

On December 5, 2007, well before the move, the mover conducted an inventory of claimant's HHG and reported that the shipment would contain seventeen crates, one for a fifty-six inch plasma television and others for a chandelier, a platform bed, a ten-piece wall unit, and a grand piano for which the mover would need a third-party service. The mover estimated the weight at 32,400 pounds. After the move, the mover reported that shipped

items that eventually needed extra packing and crating materials were eight glass tabletops, two oil paintings, one marble tabletop, and one chandelier.

The HHG shipment in fact weighed 28,480 pounds, 10,480 pounds over the 18,000 pound allowance stated in the travel authorization. The weight of the shipment is confirmed by certified weight tickets. Claimant did not dispute the accuracy of the weight. The agency paid the movers $28,020.84 charged in the GBL and assessed claimant an excess weight debt of $10,311.04, which represented the cost of shipping 10,480 pounds.

By letter of August 19, 2009, the agency notified claimant of the debt assessed due to the overweight shipment. Claimant submitted a claim to this Board disputing the agency's determination. Claimant submitted a claim at this Board alleging that she was misled by erroneous estimates to use the GBL method of moving. Claimant also disputed the charges in the GBL and the use of what she regarded as excessive packing for the move. The Board denied the claim, for the reasons stated in that opinion. *Dana Gao Kay*, CBCA 1701-RELO, 10-1 BCA ¶ 34,314 (2009), *motion for reconsideration denied,* 10-1 BCA ¶ 34,376. Claimant did not, in her earlier claim, raise issues regarding a split move, the method of calculating the overweight charges, or a credit for moving professional books, papers, and equipment (PBP&E).

On or about June 11, 2010, claimant raised those issues with the agency. Claimant maintained that since a portion of her HHG was delivered directly to her new residence, and a portion was put in storage, she was not over the 18,000 limitation established by statute and regulation, 5 U.S.C. § 5724(a) (2006), 41 CFR 302-7.2 (2007), at least as to the portion shipped directly to her residence. Claimant also disputed the method of calculating the overweight portion of her HHG and argues that she was not given a $1500 credit for moving PBP&E that had been stated on an amended travel authorization before the move occurred. Upon the agency's refusal to reduce the debt, claimant submitted a second claim to this Board.

Claimant seeks here to litigate this matter in a piecemeal manner. In judicial tribunals, it has long been the rule that when a final judgment has been entered, *res judicata* bars such repetitive litigation on the same set of transactional facts, not only as to the matters in the first suit that were decided, but also as to those matters raised in a second suit that could have been, but were not, raised in the first suit. *Corners & Edges, Inc. v. Department of Health and Human Services*, CBCA 1002, 09-2 BCA ¶ 34,140 (citing *Nevada v. United States*, 463 U.S. 110 (1983)). We apply those principles here. The transaction in question is claimant's PCS move from King of Prussia to Scottsdale. All of her claims relate to the overweight charge which was challenged and decided in CBCA 1701-RELO. Appellant failed in the earlier case to raise the claims she brings here. This matter is barred by *res judicata*.

Similarly, this claim comes too late and without a valid basis to reconsider the earlier determination.

Moreover, the claims claimant now raises are not valid. Claimant may not split her shipment to avoid the overcharge for shipments in excess of the 18,000 pound maximum allowable weight. The Federal Travel Regulation (FTR) provided at the time of claimant's move (as it does today) that while HHG "may be transported and stored in multiple lots," the employee's weight allowance "is based upon shipping and storing all HHG as one lot." 41 CFR 302-7.3 (2007); see also JTR C5160-E.

Claimant questions the method by which the agency calculated the overweight charge. The record shows that in calculating the overweight charge, the agency used the standard, traditional, and approved method of basing the overcharge on the ratio of excess weight to the total weight of the shipment. *John C. Bland*, GSBCA 16094-RELO, 04-1 BCA ¶ 32,431 (2003).

Claimant argues that her debt should be reduced by $1500 for an alleged shipment of PBP&E. The agency says that the amended authorization was an additional authorization of funds so that the carrier could be paid for moving those items as HHG, not PBP&E. Nevertheless the amended authorization does state that the amendment was issued to authorize "shipment of professional books, papers, and equipment as an administrative expense."

Claimant argues that the quoted language demonstrates her entitlement to a reduction of her debt by $1500 for shipment of PBP&E. Claimant is wrong. The authorization for shipment of PBP&E does not waive regulatory requirements imposed by the FTR and Joint Travel Regulations (JTR) for reimbursement of a PBP&E shipment. Indeed, we must construe the travel authorization consistent with regulatory requirements. *Domenicangelo D'Angella*, GSBCA 16704-RELO, 06-1 BCA ¶ 33,171 (2005). First, an itemized inventory of PBP&E must be provided for review by an authorized official at the new station. The authorizing official must certify that the items are necessary for the employee's performance at the new station and that if the items were not transported, the agency would have to purchase the same or similar items. Finally, there must be evidence that transportation of the PBP&E caused the overweight condition. 41 CFR 302-7.303; JTR C5154-C2a-c; *see Matthew L. Masterson*, CBCA 1517-RELO, 10-1 BCA ¶ 34,348 (2009).

The agency states that in this matter no agency official provided the required certifications. Moreover, the record does not contain evidence that the presence of PBP&E caused claimant's shipment to be overweight. Finally, claimant points to an e-mail message from one official that the questioned shipment of items and books was "professional." That

e-mail message does not meet the certification requirement as to the necessity of items for the employee's use or the necessity for the agency to purchase the items if not shipped. Consequently, the record does not demonstrate that claimant is entitled to a debt reduction of $1500 due to transportation of PBP&E.

Decision

For the reasons stated above, this claim is denied.

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ANTHONY S. BORWICK
Board Judge