

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-198367**DATE:** June 17, 1982**MATTER OF:** George R. Halpin - Transportation of Household Goods - Excess Weight - Reconsideration

DIGEST: An employee of the Drug Enforcement Administration is liable for excess weight charges incurred in transportation of household goods under Government Bill of Lading where total weight shipped exceeded statutory maximum of 11,000 pounds, regardless of fact that weight certificate did not clearly identify goods weighed as those of the employee where employee failed to exercise his right to witness the original weighing or to request a reweigh. The employee has not met his burden of showing a material mistake of law or fact.

Mr. George R. Halpin, through his counsel, has requested reconsideration of our decision B-198367, March 26, 1981, which established his liability for excess weight charges incurred in the transportation of his household goods in connection with his official change of station. Upon reconsideration, we affirm our disallowance of Mr. Halpin's claim.

As an employee of the Drug Enforcement Administration, Department of Justice, Mr. Halpin was officially transferred to a position in Los Angeles, California, in July 1977. In connection with this transfer Mr. Halpin shipped 13,100 pounds of household goods on Government Bill of Lading No. L-0,967,654 from Chicago, Illinois, at a total cost to the Government of \$3,009.27. Applying the 11,000 pound limitation set out in 5 U.S.C. § 5724(a)(2) and the procedure prescribed by paragraphs 2-8.3b(5) and 2-8.4e(2) of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) for computing the amount payable by an employee for excess weight charges, we concurred with the agency's determination that Mr. Halpin is liable to the Government in the amount of \$480 for 2,100 pounds of excess weight. We held that the fact that the applicable weight certificate was not cross-referenced to Mr. Halpin's shipment did not establish clear error in the weight of Mr. Halpin's shipment, and was, therefore, of insufficient probative value to relieve him of his liability for the excess weight charges.

In connection with our initial consideration of his claim Mr. Halpin contended that because documentation of his prior move, albeit 4 years earlier, reflected a weight of 10,850 pounds, and that he was convinced that he exceeded as much weight as he acquired during the intervening 4 years, the present weight certificate had to be in error. Mr. Halpin also accented the fact that the weight certificates were not properly completed and could not objectively be identified as pertaining to the weight of his household goods. As a result, Mr. Halpin concluded, since the Government did not have clear substantiation or uncontroverted evidence to support its contention that his household goods exceeded 11,000 pounds, he was not liable for any excess weight charges.

In our March 26, 1981, decision in Mr. Halpin's case, we held that the question of whether and to what extent authorized weights have been exceeded in the shipment of household effects is a question of fact primarily for administrative determination and ordinarily will not be questioned by us in the absence of evidence showing it to be clearly in error. Absent other sufficient evidence that the agency's reliance on a valid weight certificate in determining excess weight was clearly in error, the fact that the certificate did not cross-reference to Mr. Halpin's shipment was of insufficient probative value to relieve the employee of liability for excess weight charges.

Mr. Halpin's counsel asks us to reconsider our decision and hold that Mr. Halpin is not obligated to pay the excess weight charges. However, he has submitted no new evidence, nor does he point to any factual error or legal precedent which would indicate a mistake of fact or law.

Mr. Halpin claims that our decision "is based on the erroneous assumption that the weight submitted by the mover was a correct weight." Our earlier decision was not, however, based upon such an assumption. Rather it was based upon the fact that Mr. Halpin had not met his burden of proof to show that the weight certificate was not properly to be considered. As reiterated above, Mr. Halpin had adequate opportunities under the regulations to have acquired the necessary evidence

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to have successfully challenged the weight certificate. He elected, however, not to exercise his rights under the regulations to attend the original weighing or to request a reweighing.

We note that even if the resolution of the issue of the validity of the weight certificate were to have been made in Mr. Halpin's favor, it would not in itself be ultimately dispositive of whether and in what amount he was liable for the excess weight charges. Where an error has been committed in determining the net weight of household goods shipped by the actual expense method under a Government Bill of Lading, a constructive shipment weight would be obtained as provided for by paragraph 2-8.2b(4) of the Federal Travel Regulations. See Charles Gilliland, B-198576, June 10, 1981. To correct the error, the constructive weight of the shipment would be substituted for the incorrect weight.

As to Mr. Halpin's request to be relieved of his obligation because "the Government is in a much better position to absorb the loss," 5 U.S.C. § 5584 (1976), specifically prohibits the Comptroller General from waiving claims for travel and relocation expenses. William R. O'Brien, B-200795, May 26, 1981; Charles Gilliland, supra. Thus, there is no authority to relieve Mr. Halpin of responsibility for the excess weight charge.

Upon review, we find no basis that would warrant changing the conclusion reached in our decision of March 26, 1981.

for *Harry R. Van Cline*
Comptroller General
of the United States