

**DECISION**

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

**FILE:** B-206704

**DATE:** August 8, 1983

**MATTER OF:**

James C. Wilson - Transportation of Household Goods - Excess Weight -

**DIGEST:**

Reconsideration

In James C. Wilson, 62 Comp. Gen. 19 (1982), we stated that to correct error resulting from invalidation of weight certificates the constructive weight of the household goods shipment should be computed and substituted for the incorrect actual weight. However, where constructive weight was unobtainable, and mover's evidence supporting revised weight determination, which was unrebutted by employee, was the only evidence of record on the correct weight of the shipment, and that weight was not unreasonable, we held that excess weight charges should be computed on the revised weight. In requesting reconsideration the employee has not met his burden of showing a material mistake of law or fact in our prior decision, and has presented no further evidence as to the weight of his household goods.

Mr. James C. Wilson has requested reconsideration of our prior decision in his case, B-206704, October 28, 1982 (published as 62 Comp. Gen. 19 (1982)), 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, for the reasons set forth below, we affirm our disallowance of Mr. Wilson's claim.

On November 30, 1978, Mr. Wilson's household goods were moved under Government Bill of Lading No. L-0364516 from Meridian, Idaho, to Kirkland, Washington, because of his transfer of official station as an employee of the Department of Health and Human Services. The carrier's invoice for this shipment included charges for 15,300 pounds of household goods. 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)

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of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), for computing the amount payable by an employee for excess weight charges, the agency determined that Mr. Wilson was liable to the Government in the amount of \$714.23 for 4,300 pounds of excess weight.

Mr. Wilson responded by disputing the weight billed by the carrier and asserting that the shipment weight had been "bumped" by the inclusion of goods which did not belong to him. The carrier admitted that a total of 200 pounds had been erroneously billed to the Government and furnished copies of statements filed by the drivers and the carrier's local agent which identified the extraneous items. The carrier revised the total billing weight down to 15,100 pounds and refunded \$33.22 to the agency based upon that figure. Mr. Wilson's position was that since the weight was incorrect he is relieved from any liability for an alleged excess in the weight of his household goods shipment.

In our prior decision on this matter, we held that the invalidation of the weight certificates does not mean that the agency may not claim excess weight costs arising from the move. Where the parties were unable to obtain a constructive shipment weight under FTR para. 2-8.2b(4), and the only substantive evidence of record on the weight of Mr. Wilson's shipment was the revised total submitted by the carrier, we found that Mr. Wilson failed to meet the burden of proving his claim as to the actual weight of his household goods shipment and was liable for excess weight charges.

In connection with our initial consideration of his claim Mr. Wilson argued that the agency's reliance in reimbursing the mover on such an improper weight certificate was clearly in error and he should not be bound by the agency's determination made on such a basis. Thus, he should be relieved from any liability for an alleged excess in the weight of his household goods shipment.

However, as we pointed out in our prior decision in Mr. Wilson's case, resolution of the issue of the validity of the weight certificate in Mr. Wilson's favor is itself not ultimately dispositive of whether and in what amount he is liable for excess weight charges. The invalidation of the weight certificates does not mean that the agency may not claim excess weight costs in the move. We held that 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 should be obtained based on 7 pounds per cubic foot as provided for by paragraph 2-8.2b(4) of the FTR. To correct the error, the constructive weight of the misweighed shipment should be computed and substituted for the incorrect actual weight. After an invalidation of weight tickets occurs, the weight of the shipment must be determined by other reasonable means.

In Mr. Wilson's case the record showed that the carrier furnished copies of statements filed by the drivers and the carrier's local agent which identify the extraneous items as a copy machine and two boxes of office effects having a maximum weight of 200 pounds. The carrier revised the total billing weight down to 15,100 pounds and refunded \$33.22 to the agency based upon this figure. We noted that the fact that the driver apparently allowed contraband (personal non-revenue-property) to be weighed with the Wilson's load, and did nothing to correct or explain their actions until asked to file statements several months later, left some question as to the reliability of such statements. We stated as follows:

"Nevertheless, these facts and explanations are themselves unrebutted in the record before us, and standing alone they are not unreasonable. Mr. Wilson has presented no substantive evidence beyond his allegation of an improper weight that refutes the carrier's explanation of unintended error. Nor has Mr. Wilson submitted any evidence to show that the actual weight of his household goods was any other figure than the revised weight determination established by the carrier. \* \* \*

"We are also mindful that Interstate Commerce Commission Regulations provide that the shipper or his representative can witness the original weigh or a reweigh for which he has a right to request. See 49 C.F.R. § 1056.6 (1978). Thus, Mr. Wilson could have witnessed the original weigh or could have requested and witnessed a reweigh.

"Mr. Wilson says that the weight of his household goods shipment is incorrect; however he adds nothing to the evidential record before us to support his contention. Thus, on the basis

of the administrative record before us, we conclude that Mr. Wilson has failed to meet his burden of proof under section 31.7 of Title 4, Code of Federal Regulations, and is liable for excess weight charges computed as set forth below. \* \* \*

Mr. Wilson asks us to reconsider our decision and hold that he 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. Wilson states that he continues;

"\* \* \* to take the same position which I have taken from the beginning of this dispute. If someone wants to come to my home and estimate the weight of items which I shipped in 1978 \* \* \* they are free to do so."

Mr. Wilson also asserts generally that he "was not granted due process during the presentation of evidence" on which our prior decision was predicated.

In essence Mr. Wilson contends on appeal that since the original weight certificates for his household goods were invalidated, and since it is now his word against the carrier's as to the amount of excess weight included in his shipment, the Government does not have clear substantiation or uncontroverted evidence to support its contention that his household goods exceeded 11,000 pounds. As a result he maintains that he is not liable for any excess weight charges.

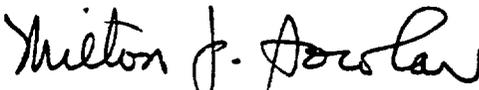
Under our claims settlement procedures set out at Part 31 of title 4, Code of Federal Regulations, claims are settled on the basis of the facts as established by the Government agency concerned and by evidence submitted by the claimant. There is no provision under our claims procedures for our Office to conduct adversary hearings or to interview witnesses. All claims are considered on the basis of the written record only, and the burden of proof is on the claimants to establish the liability of the United States and the claimants' right to payment.

In the present case the burden of proof falls upon Mr. Wilson to present any statement or evidence he may have to establish a different net weight than that arrived at by the carrier. As we stated in our prior decision in

Mr. Wilson's case, the carrier's account and explanation is un rebutted in the record before us, and standing alone it is not unreasonable. Mr. Wilson had adequate opportunities under the regulations to have acquired the necessary evidence to successfully establish a constructive weight using shipping inventories or weight estimates prepared by professional movers. Nor did Mr. Wilson exercise his rights under the regulations to attend the original weighing or to request a reweighing.

Accordingly, since Mr. Wilson has not presented any evidence to show that the actual weight of his household goods was any other figure than the revised weight determination established by the carrier, he has failed to sustain his burden of proof to present evidence of sufficient probative value to permit payment of the claim.

Upon review, we find no basis that would warrant changing the conclusion reached in our decision of 62 Comp. Gen. 19 (1982).

*for*   
Comptroller General  
of the United States