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DECISION



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

FILE: B-216347

DATE: March 26, 1985

MATTER OF: Department of State - Effective Date of Increase in Weight Allowed for Stored Household Goods

DIGEST:

An amendment to Volume 6, Foreign Affairs Manual, increasing the allowable combined weight for shipment and storage of household effects is applicable to effects in storage under competent orders on the effective date of the amendment for costs of storage accruing after the effective date of the amended regulation. The rule against retroactive amendments to travel orders would not be applicable since the new weight allowances are fixed amounts requiring no administrative discretion to authorize, and the regulations specifically provide for applying the more beneficial allowance in these circumstances.

The issue in this case is whether the Department of State regulation found at Foreign Affairs Manual, Volume 6, § 162, which was amended effective May 1, 1984, to increase the allowable combined weight for shipment and storage of household effects at Government expense from 11,000 pounds to 18,000 pounds, is applicable to effects already in storage on that date. We find that 6 FAM § 162, as amended, may be applied to household effects in storage on the effective date of the amendment.^{1/}

BACKGROUND

Authority for Foreign Service employees' travel and relocation is contained in 22 U.S.C. § 4081 (1982). Under this authority effective May 1, 1984, the Secretary of State amended 6 FAM § 162 to increase the combined weight allowance for shipment and storage of household effects for each employee to a fixed weight regardless of family status. That is, the ordinary allowance for each employee was raised to 18,000 pounds, and the limited allowance for

^{1/} This decision is issued at the request of the Chief, Transportation Division, Department of State, who asked whether 6 FAM § 162, as amended, permits reimbursement for household effects in storage which exceeded the previously authorized weight.

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those provided Government furnishings at their post was raised to 7,200 pounds for employees and to 12,000 pounds for chiefs of mission.^{2/}

At the time of the amendment a number of employees who were already stationed overseas had effects in storage whose weight, combined with the weight of effects previously shipped to the overseas post of duty, exceeded the former lower combined weight limits. These employees were paying for the excess weight of their effects in storage. Apparently concurrently with the increase in the weight allowances the Department of State reached an agreement with employee organizations that the new allowances would also apply, effective May 1, 1984, to employees whose goods were already in storage. We have been asked by the Department whether the rule against retroactive amendments to travel orders precludes applying the new weight allowances to household effects and personal possessions already in storage as of May 1, 1984.

DISCUSSION

Household effects of Foreign Service employees transferred under title 22, United States Code, are placed in long-term storage under the authority of 6 FAM § 162. As a general rule travel orders may not be amended retroactively to increase or decrease rights or obligations already fixed or vested. B-164228, October 9, 1975. If an employee is traveling under valid orders prescribing specific travel allowances when the maximum limit on travel allowances is increased, the employee's agency may take administrative action to change those orders to authorize a greater allowance for that portion of the travel not completed. If no administrative action is taken, the employee does not benefit from the increase. Larry Burstein, et al., 57 Comp. Gen. 281 (1978). On the other hand, where changes in

^{2/} This action was taken following the enactment of Pub. Law 98-151, § 118, 97 Stat. 977, which, effective November 14, 1983, amended 5 U.S.C. §§ 5724 and 5726 to increase the maximum authorized weight allowance to 18,000 pounds for transportation and storage of other Federal employees' household goods and personal effects.

travel allowances are mandatory, the employee will receive the increased allowance on the effective date of the statute or regulation so providing without administrative action to change the travel orders. 49 Comp. Gen. 493 (1970); 55 Comp. Gen. 179 (1975); B-201321, June 10, 1981.

The weight allowances for household effects were prescribed by the Secretary of State under general authority to pay the travel and related expenses of members of the Foreign Service including costs of transporting and storing their furniture and household and personal effects. 22 U.S.C. § 4081(11) and (12). The statute provides no specific weight allowance or maximum weight allowance. Thus, the weights prescribed in the regulations were set pursuant to the Secretary's general authority to prescribe regulations to carry out functions under the statute. 22 U.S.C. § 3926.

The weight limits provided in 6 FAM § 162 prior to May 1, 1984, were set as maximum amounts which could be authorized with apparent discretion left to the authorizing official to set lesser amounts. 6 FAM § 162.2. The amended regulations effective May 1, 1984, set specific weight allowances with no provision for prescribing lesser amounts. Thus, upon the amended regulations becoming effective, the weight allowances they prescribe became the authorized allowances. The question here, then, is whether those allowances may be applied to goods already in storage as of May 1, 1984, so that beginning with that date the extra charges being paid for storage by employees whose goods exceeded their allowances authorized under the prior regulations can cease or be reduced.

Concerning whether to apply the old or the new regulation in cases where travel orders are issued before the regulation is changed but expenses are incurred after the change, 6 FAM § 111.5 provides as follows:

"Travel, transportation, and related expenses under travel orders issued prior to the effective date of the regulations issued hereunder, but incurred after the effective date, are payable:

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"a. Under these regulations; or

"b. Under regulations in effect at the time the travel order was issued, when the regulations issued hereunder are more restrictive and when the change in regulations occurred too late to alter arrangements already made."

Applying this general directive, the higher weight allowances in the amended regulations would appear applicable on and after the effective date of the amendment to goods placed in storage under orders issued prior to that date. Accordingly, and in view of the nondiscretionary terms of the amended regulation prescribing the higher allowances, the new higher allowances should be applied to goods in storage on and after May 1, 1984. 49 Comp. Gen. 493, supra. Employees' excess weight charges, if any, accruing on and after May 1, 1984, should be based on the revised weight allowances as the Department and the employee organizations agreed. Of course the higher allowances may not be applied retroactively for periods prior to May 1, 1984.

Harry R. Jan Cleve
for Comptroller General
of the United States