

DECISION

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

FILE: B-205873

DATE: May 4, 1982

MATTER OF: Deane H. Zeller - Relocation expenses - Loan origination fee - Household goods excess weight

- DIGEST: 1. Transferred employee incurred loan origination and loan processing fees incident to purchase of home at new duty station. Absent itemization to demonstrate that portions are excludable from finance charges under 15 U.S.C. § 1605(e), employee's loan origination and loan processing fees are finance charges under 15 U.S.C. § 1601(a), and are not reimbursable under FTR para. 2-6.2d.
2. Transferred employee is responsible for payment of costs incurred in the shipment of household goods in excess of statutory maximum amount of 11,000 pounds in connection with his permanent change of station. His contention that net weight of his household goods should have been 85 percent of gross weight under paragraph 2-8.2b(3) of FTR, is not supported by the record. Additionally, there is no authority to grant employee credit for packing of his household goods, on actual expense shipment, even though there may have been savings to the Government.

This decision is in response to a request, dated December 18, 1981, from Mr. Jerry A. Fries, an authorized certifying officer of the Bureau of Land Management, concerning the propriety of reimbursing Mr. Deane H. Zeller for a loan origination fee and a loan processing fee in connection with his permanent change of station. Mr. Zeller also has appealed the 11,000-pound weight limitation applicable to the transportation of his household goods, and his liability for the excess weight charges. For the reasons set forth below, Mr. Zeller may not be reimbursed for the loan origination fee and loan processing fee, and he is liable for the costs attributable to the excess weight of his household goods.

The loan origination fee and loan processing fee in Mr. Zeller's reimbursement voucher were denied by the Bureau of Land Management on the basis that they were finance charges under the Truth in Lending Act, Title I, Pub. L. No. 90-321, May 29, 1968, 82 Stat. 146, and Regulation Z issued by the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 226 (1981), and thus were not reimbursable under the Federal Travel Regulations, FPMR 101-7, para. 2-6.2d (Sept. 1981) (FTR).

Paragraph 2-6.2d of the FTR provides, in pertinent part, that:

"* * * no fee, cost, charge or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

Section 106 of the Truth in Lending Act, Title I, 15 U.S.C. § 1605, provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

"(a) Definition

"Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

"(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

"(2) Service or carrying charge.

"(3) Loan fee, finder's fee, or similar charge.

"(4) Fee for an investigation or credit report.

"(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss."

* * * * *

"(e) Items exempted from computation of finance charge in extensions of credit secured by an interest in real property

"The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R. Part 226) was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

Mr. Zeller contends that the loan origination fee is really the same as VA or FHA application fees, both of which are reimbursable, and that the loan processing fee was the lender's charge for an appraisal and credit report. The settlement sheet shows the loan origination fee as that, not as an application fee. Thus, it must be treated as a loan origination fee. There is no documentation to indicate what was included in the loan processing fee, so it must be treated as a loan processing fee.

We believe that it is clear that both the loan origination and loan processing fees Mr. Zeller paid are finance charges. Neither of the fees was itemized in the record to show if all or any part of either fee would be excluded by 15 U.S.C. § 1605(e) from the definition of a finance charge. Absent itemization and allocation of cost to demonstrate excludable charges, loan fees are finance charges and, thus, not reimbursable. Anthony J. Vrana, B-189639, March 24, 1978.

As to Mr. Zeller's appeal of the 11,000-pound weight limitation, 5 U.S.C. § 5724(a) (1980) authorizes the transportation of household goods of transferred employees at Government expense and specifically limits the maximum weight of goods authorized to be transported to 11,000 pounds. The same limitation is found in the FTR para. 2-8.2a. Paragraph 2-8.4e(2) provides that the employee is responsible for the payment of the cost arising from the shipment of the excess weight. As the 11,000-pound weight limitation is statutory, no Government agency or employee has the authority to permit transportation in excess of the weight limitation at Government expense. Therefore, the law requires the employee to pay the Government the charges incurred incident to shipment of the excess weight. See William R. O'Brien, B-200795, May 26, 1981; George R. Halpin, B-198367, March 26, 1981.

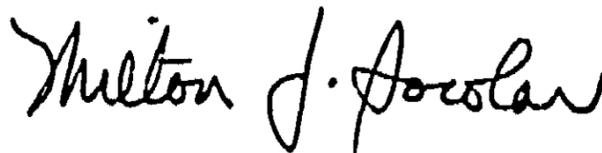
Mr. Zeller contends that the limit of 11,000 pounds is too low for a family the size of his, eight people; that, since he packed about one-third of his household goods, he should get a credit for the savings to the Government for packing (\$402.50, according to the carrier's estimate); and that the general rule that 85 percent of total weight is actually household goods, should be applied to his shipment. As stated above, the limit of 11,000 pounds is statutory, and may not be waived no matter how large an employee's family is. We have held that when an employee ships household goods on the actual expense method, as was done here, there is no authority to give an employee a credit when he does his own packing, even though there may be a savings to the Government. Alex Kale, 55 Comp. Gen. 779 (1976); Joseph B. Marcotte, Jr., B-196774, August 19, 1980.

Finally, Mr. Zeller contends that he should be allowed to apply a factor of 85 percent of the gross weight, to allow for packing materials, to reach the net weight of household goods for which he should be charged. This contention appears to be based on the provisions of FTR para. 2-8.2b(3) which provides that:

"Containerized shipments. When special containers designed normally for repeated use, such as lift vans, CONEX transporters, and household goods shipping boxes are used

and the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the container, the net weight of the household goods shall be 85 percent of the gross weight less the weight of the container. If the known tare weight includes interior bracing and padding materials so that the net weight is the same as it would be for uncrated shipments in interstate commerce, the net weight shall not be subject to the above reduction. If the gross weight of the container cannot be obtained, the net weight of the household goods shall be determined from the cubic measurement on the basis of 7 pounds per cubic foot of properly loaded container space."

The record does not indicate that the shipment was "containerized." Shipment by containers is necessary to justify application of the "containerized shipments" method in determination of the net weight. A bill of lading was submitted by the commercial carrier which listed the net weight of Mr. Zeller's household goods as 13,580 pounds, with no listing of the weights of containers. In this instance, it is proper to conclude that the weight listed in the bill of lading is the weight for which Mr. Zeller must be charged. Thus, Mr. Zeller exceeded the weight limitation by 2,580 pounds and he is liable for the costs incurred because of the excess weight of his household goods, and the formula in FTR para. 2-8.4e(2), should be applied.



Acting Comptroller General
of the United States