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DECISION



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

FILE: B-219158

DATE: January 13, 1986

MATTER OF: John V. Olson

DIGEST:

A transferred employee was assessed weight charges for 4,560 pounds of household goods transported at Government expense since he exceeded the statutory maximum of 11,000 pounds. The employee alleges that the weight ticket for his shipment is fraudulent, based on circumstantial evidence which does not afford a clear inference of fraud. In the absence of proof to the contrary, GAO will accept public weighmaster's ticket as valid and accurate, especially when administrative agency has made like determination. Burden of proof is upon claimant to affirmatively establish that excess weight charge was the result of fraud or clear error. The employee has not met this burden here.

Mr. John V. Olson, a civilian employee of the Navy, has requested review of the disallowance^{1/} of a claim for refund of \$1,281.07, which was collected from him in connection with the transportation of his household goods incident to a permanent change of station. The amount was collected by the Navy as reimbursement for the payment of transportation and related charges on weight of the shipment that was in excess of his authorized weight allowance. For the reasons that follow, Mr. Olson's claim is denied.

Background

In November 1983, Mr. Olson's goods were shipped by Balkwill Van and Storage, Inc., under a Government Bill of Lading. The net weight indicated on the Bill of Lading

^{1/} The General Accounting Office's Claims Group disallowed the claim by Settlement Certificate, dated July 9, 1984; this review is made at the request of Mr. Olson through his Senator.

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is 15,560 pounds, 4,560 pounds over the then allowed statutory limit of 11,000 pounds contained in 5 U.S.C. § 5724(a) (1982). To substantiate the net weight, the carrier submitted a weight ticket obtained from certified scales and signed by a weighmaster that indicated a gross weight of 45,100 pounds and a tare weight of 29,540 pounds.

Mr. Olson disputes that the weight of his shipment exceeded 11,000 pounds. He has repeatedly alleged that his shipment weight was "bumped"^{2/} by the carrier and that the weight ticket therefore does not accurately reflect the weight of his goods. Accordingly, our inquiry is whether Mr. Olson has produced sufficient evidence to show that the weight was clearly in error. See e.g., Joseph S. Montalbano, B-197046, February 19, 1980.

In support of his position that the weight of the goods transported was not correct, Mr. Olson indicates that for several moves prior to 1983 he had never shipped as much as the 15,560 pounds here involved. He acknowledges that an audit of a 1981 move, which was completed after his 1983 move, did result in his being charged for excess costs based on a shipment of 12,194 pounds. Additionally, he stresses that prior to the move Balkwill gave him an estimate of 10,000 pounds. He has also provided two statements from carriers indicating that his goods were estimated to weigh 10,700 pounds and 12,000 pounds. These estimates were done on April 25, 1984, approximately 18 months after his goods were picked up by Balkwill.

Mr. Olson also states that the weight ticket obtained by Balkwill was at the point of origin and that the carrier ignored his request for a reweigh at the point of destination. He is not satisfied with the Navy's explanation that a Sunday delivery of his goods precluded a reweighing since no certified scales were open on Sunday. Indeed, Mr. Olson strongly suggests that a Sunday delivery was deliberate so as to avoid a reweigh.

Throughout the various documents submitted by Mr. Olson is one common thread. This is his belief that the carrier's

^{2/} "Bumping" is the practice of illegally adding weight to the actual weight of a shipment. See Captain Roger L. Reasonover, Jr., B-213543, December 7, 1983.

weights were fraudulently inflated. Although Mr. Olson concedes that perhaps his household goods may have weighed 12,000 pounds, he argues that the goods could not have weighed in excess of that amount.

Analysis

Authority for transporting the household effects of transferred employees at Government expense is found at 5 U.S.C. § 5724(a), which also at the time in question established the maximum weight of the household goods authorized to be transported as 11,000 pounds. The implementing regulations are found in the Federal Travel Regulations, (FTR) incorp. by ref., 41 C.F.R. § 101-7.033 (1985). Paragraph 2-8.4e(2) of the FTR provides that the employee is responsible for the payment of costs arising from the shipment of excess weight. The implementing regulations are in accord with the statutory limitation and, thus, have the force and effect of law. Therefore, regardless of the reasons for the shipment of the excessive weight of household goods, the employee is required to pay the Government the charges incurred incident to the shipment of the excess weight. Roger J. Furey, B-193397, February 22, 1980.

The question of whether and to what extent authorized weights have been exceeded is a question of fact primarily for administrative determination which ordinarily we will not question in the absence of fraud or clear error. Joseph S. Montalbano, B-197046, February 19, 1980. The question is resolved by the shipping documents of each particular shipment. Roger J. Furey, B-193397, supra. The burden of establishing fraud rest upon the party alleging it. Circumstantial evidence is competent if it offers a clear inference of fraud and amounts to more than a mere suspicion or conjecture. Dennis O. William, B-207393, May 23, 1983.

We have consistently held that estimates of the approximate weight or evidence of the weight of prior shipment of goods are not relevant to determining the weight of a disputed shipment since the inclusion and exclusion of goods may occur. See e.g., Charles L. Eppright, B-210713, May 17, 1983. In Mr. Olson's case, we have merely conjecture and suspicion that the net weight was fraudulently

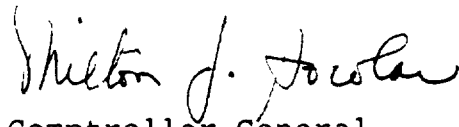
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obtained. The requisite evidence to establish fraud has not been presented.

Regarding the failure of the carrier to reweigh the shipment, this is no basis to alter the Navy's determination that the employee exceeded his weight allowance. Applicable administrative regulations do provide for reweighing household goods shipments when requested by an employee. However, these regulations are instructional or procedural and do not provide a basis for relieving an employee from excess weight charges when the weight of the household goods was properly established at the origin by weight certificates. Charles Gilliland, B-198576, June 10, 1981.

Finally, Mr. Olson recently has sent a letter alleging that Balkwill was suspended from further activity with the Navy. Even if this is correct, later suspension of a carrier for unauthorized practices does not by itself provide evidence of fraud in an individual prior case. Reasonover, B-213543, supra.

Accordingly, we conclude that Mr. Olson's arguments do not provide a basis for us to overturn the Navy's administrative determination that he exceeded his weight allowance. He has failed to produce sufficient evidence to show that the weight of 15,560 was clearly in error.

for 
Comptroller General
of the United States