

DECISION



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

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FILE: B-171677.03

DATE: DEC 15 1976

MATTER OF: Mr. John C. Small

DIGEST: Army member discharged in Vietnam where he remained as a civilian was authorized shipment of 2,600 pounds of personal property at Government expense incident to discharge. However, his claim for shipment of additional 4,200 pounds 3 years after discharge as professional material may not be allowed since Army determined it was not professional material necessary in the performance of his military duties which administrative determination this Office will not question without evidence showing determination to be clearly erroneous, and such evidence has not been presented.

This action is in response to a letter dated August 8, 1976, from Mr. John C. Small, a former member of the United States Army, which in effect constitutes an appeal from a settlement by the Claims Division of this Office dated July 23, 1976. That settlement disallowed the former member's claim for reimbursement of the costs for transportation of some 4,200 pounds of his personal property incident to his separation from the Army.

The record indicates that the claimant was separated from the Army in the grade of captain in June 1972 while stationed in Saigon, Vietnam, but remained in Vietnam in a civilian capacity. During the period that the claimant was a member of the Army serving in Vietnam, the Department of the Army's policy prohibited shipment of household goods for personnel assigned there. Upon return from Vietnam, an Army member was authorized shipment of his full unaccompanied baggage allowance and any professional papers, books, and equipment required in the performance of his official duties. In addition, major overseas Army commanders were authorized to approve return shipment of personal property in excess of the baggage allowance on an individual basis when circumstances existed which warranted approval.

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The information before us indicates that before the claimant's active duty ended he submitted three separate requests for excess weight allowance, which were approved locally for a total excess authorization of 2,900 pounds, in addition to his unaccompanied baggage allowance of 600 pounds. It is further indicated that almost a year after his separation from the Army, the claimant requested authorization to ship additional excess pounds at Government expense. This request apparently was denied on the basis that the material to be shipped was determined not to be professional material. A controversy developed concerning whether any or all of the property could be forwarded at Government expense as professional books, papers, and equipment. In September 1974 by Army Directorate of Transportation and Services letter the Defense Attache Office in Saigon was requested to provide the claimant with assistance including a final review of the professional materials he had claimed, and adjustment of his authorized shipping weight, if in order.

The claimant indicates that after several verbal conferences with Army transportation personnel and after submitting requested documents including a description of his military duties and a list and description of the material he wished shipped, he was verbally advised in March 1975 that his request was denied on the basis that the material was not professional material.

The record indicates that the claimant then arranged for shipment of 4,200 pounds at personal expense in April 1975, shortly before the collapse of the South Vietnam government, almost 3 years after his separation. The claimant states that he incurred expenses for the costs of packing and shipping of that 4,200 pounds in the total amount of \$2,054.48 for which he submitted a claim to the Army, which claim was forwarded to our Claims Division for settlement.

The Claims Division settlement of July 23, 1976, disallowed the claim on the basis that the file indicated that an Army transportation officer in Saigon had inspected the materials claimed to be professional in nature, and found them not properly classifiable as professional books, materials or equipment under the pertinent regulations. It was indicated that such determinations are primarily matters for administrative determination which this Office will not question without a clear showing of error.

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It was stated that although the claimant had furnished some evidence suggesting that the determination may have been erroneous, he had not demonstrated the existence of error by a preponderance of the evidence. He was advised of the long-standing general rule stated in the case of Longwill v. United States, 17 Ct. Cl. 238, 291 (1908), that it is the duty of the accounting officers of the Government to reject those claims as to the validity of which they are in doubt.

The claimant appeals the disallowance of his claim on the basis that he believes there was error in the Army's determination that his materials were not authorized to be shipped as professional materials and he states that no inspection of his materials was made by the Army.

The pertinent statute, 37 U.S.C. 406 (1970), provides that under such conditions and limitations as the Secretaries may prescribe, members of the uniformed services shall be entitled to transportation of household effects in connection with a permanent change of station. Discharge or separation from the service is included in the definition of "permanent change of station" as set forth in Appendix J of Volume I of the Joint Travel Regulations (1 JTR). Paragraph 18007-2 of 1 JTR provides that the member shall bear the excess cost incurred in shipping household effects in excess of the authorized weight allowance.

Paragraph 18004 of 1 JTR provides that a member may ship professional books, papers and equipment required in the performance of his official duties upon change of station without charge against his weight allowance when prepared for shipment in accordance with regulations of the service concerned.

Paragraph 5-2a.(1) of Army Regulations 55-71 (May 1, 1972) in effect at the time of claimant's separation provides that military personnel may ship their professional books, papers and equipment at Government expense when such items are certified as necessary in the performance of official duties. The regulation further provides that at the time the member makes application for shipment, the transportation officer must satisfy himself that only items qualifying as professional books, papers and equipment are included in the weight cited in the itemization, as such weight must later be verified by the transportation officer. In making this verification, the regulation requires

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the transportation officer to give full consideration to duty assignment, grade and length of service of the member. Paragraph 5-2a(3) of the regulation provides that in addition to verification of professional items through inspection, transportation officers will require members to furnish a listing of professional items claimed in all cases where the weight of those items may affect assessment of charges for excess weight, which listing will be reviewed for validity by the transportation officer.

The question of whether and to what extent authorized weights have been exceeded in the shipment of household effects, and whether or not particular items may be classified as professional material necessary in the performance of a member's duty are considered to be matters primarily for administrative determination, and we ordinarily do not question an administrative determination in that regard in the absence of evidence showing it to be clearly in error. See B-158297, February 17, 1966, and compare B-162530, October 13, 1967.

In the absence of some evidence from an official source that the items submitted for shipment were professional books and papers necessary in the performance of the claimant's official duties when he was on active duty, unsupported evidence as to the accuracy of such a claim may not be accepted as a proper basis for authorizing shipment of such items at Government expense.

The record reflects an itemized list of the purported professional books and papers and a certification by the claimant that they were necessary in the performance of his official duties. However, there is nothing in the record to reflect any verification by the transportation officer as required by the regulations, nor is there any verification from the claimant's commander or any other source to support the claim that the items listed were professional books and papers and were required in the performance of claimant's official duties. Also, whether or not the listed materials were actually inspected by Army authorities at any of the times his several requests for transportation were denied during the period 1973-1975, it appears that at least the listing of materials the claimant submitted was reviewed by the Army and considered in relation to his military duties.

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We also note that although the claimant was not allowed to ship household effects to Vietnam when he was originally assigned there, upon his release from active duty he was allowed to ship 2,000 pounds of personal effects in addition to 500 pounds of unaccompanied baggage at Government expense. Accordingly, in view of all the facts presented in this case the evidence submitted to us by the claimant does not show that the administrative determination made by the Army personnel concerning the additional 4,200 pounds, which determination was apparently reconsidered several times without change, was erroneous. Therefore, there is no basis upon which we may allow his claim and, the action of the Claims Division disallowing the claim is sustained.

Paul G. Donbiring

for the

Comptroller General
of the United States