



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Captain Eric W. Burch, USAF—Waiver of Debt—Excess Household Goods Weight

File: B-258964

Date: July 12, 1995

DIGEST

An armed services member indebted to the United States for excess weight charges and excess costs incident to his permanent change-of-station household goods shipment requests relief from the debt on the grounds that he received erroneous advice from a travel management counselor concerning the cost of shipping his boat and that the carrier artificially inflated the weight of the shipment. The request is denied. There is no basis for the General Accounting Office to overturn an agency's determination of excess weight where there is no evidence of clear error to rebut the weight certificates provided by the carrier upon which the agency's determination is based. Also, the record does not show that the excess weight and costs were incurred due to an erroneous authorization, nor does it establish that the member's misunderstanding of the cost of shipping the boat (a 28-foot cabin cruiser) was based on erroneous information provided by the agency. Therefore, the debt does not qualify for waiver under 10 U.S.C. § 2774.

DECISION

Captain Eric W. Burch, USAF, appeals our Claims Group's settlement, Z-2925944, May 27, 1994, denying his request for waiver of a \$9,928.55 debt arising from charges for excess weight and to recoup excess costs incurred in his household goods shipment incident to his permanent change-of-station from Clark Air Force Base, Philippines to Davis-Monthan Air Force Base, Arizona. We affirm the settlement.

BACKGROUND

The Air Force issued Captain Burch orders dated October 5, 1990, authorizing the shipment of the full household goods (HHG) weight allowance for an Air Force captain with dependents, 14,500 pounds. Under these orders, Captain Burch arranged to have his boat, a 28-foot cabin cruiser with trailer, shipped from the Philippines to Arizona as part of his HHG shipping entitlement. Upon completion of

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the shipment, the agency determined that, based on the carrier's weight certificates, the total weight of the goods shipped was 17,436 pounds, including 5,320 pounds for the boat with trailer, and after allowing for packing weight, 969 pounds of unaccompanied baggage and 11,147 pounds of household goods. The Air Force has paid the carrier for the total weight shipped and now seeks to recover \$9,928.55 in excess costs from Captain Burch.

To determine the amount of the excess charges, the agency followed detailed guidelines, published in the Joint Federal Travel Regulations (JFTR), paragraph U5310. The agency first determined the maximum authorized entitlement by applying the lowest applicable tariff rates to the member's maximum HHG weight entitlement, plus authorized storage-in-transit costs. This resulted in a maximum authorized cost of \$14,127.46; that is, the maximum cost Captain Burch was entitled to have borne by the Air Force for his HHG shipment.

When a member has a boat with trailer included with his HHG shipment, the JFTR makes special provisions for allocating the costs. JFTR para. U5310-F4. Under these provisions, if the boat with trailer fits into a standard size overseas container and is accepted on this basis by the carrier, its weight may be included with the HHG and the applicable tariff rate is applied to the entire shipment. However, when, as in this case, the boat with trailer is not shipped in a standard overseas container, it is charged for separately under a negotiated one-time-only flat rate, which in this case was \$11,468.13. This figure is then added to the actual cost of shipping the HHG, which was \$12,587.88. Thus, the total cost the government paid for the shipment of Captain Burch's HHG and boat with trailer was \$24,056.01, which was \$9,928.55 over his maximum authorized cost of \$14,127.46.

Captain Burch asserts that prior to shipment, a Travel Management Office (TMO) counselor told him that he would not be liable for any excess charges to ship his boat and trailer if their total weight combined with his household goods was less than his maximum weight allowance. He also asserts that he was told his boat and trailer would be shipped in a fully enclosed container at no extra cost. In a letter to the agency, Captain Burch stated that, based on this advice, he and his wife weighed every item in their house and estimated that their household goods weighed 7,200 pounds. He states that they also liquidated some personal property to ensure that the total weight of their shipment would be less than the maximum allowable to provide for the possible extra cost of shipping the boat, the weight of which they estimated was 5,000 pounds. Captain Burch stated that after his goods were picked up by the carrier, he contacted the carrier's office and was told the total weight was 12,400 pounds. In fact, the documents before us show that this figure represented the weight of the HHG exclusive of the boat with trailer.

In his request for reconsideration, Captain Burch asserts that he received erroneous advice from the TMO concerning the boat, and he believes that the carrier

artificially inflated the weights. Captain Burch states that he could have shipped his boat by commercial carrier from Manilla to Los Angeles at a cost of \$3,500, and had he been counseled properly, he would have done so and recouped that cost from the agency because of the resulting savings on the shipment of his household goods. He further states that the carrier negligently allowed 740 pounds of water to accumulate in the boat during shipment, which he suggests contributed to the excess weight.

OPINION

The Comptroller General may waive a service member's debt arising out of an "erroneous payment" of transportation allowances where collection would be "against equity and good conscience and not in the best interests of the United States." 10 U.S.C. § 2774 (1988).

It is the long-standing and standard practice of the services to ship a qualifying member's HHG at government expense and to then collect from the member any charges for weight or service in excess of his or her entitlement under the law and regulations. See JFTR, para. U5340; Dr. John M. Dyer, 67 Comp. Gen. 171 (1988), aff'd, B-223799.2, May 13, 1991; and 67 Comp. Gen. 484, 486 (1988). As the Claims Group noted, a member's debt arising from such excess charges normally may not be considered for waiver because the government's payment to the carrier for the amount due for the shipment under a government bill of lading, made with the understanding that the excess weight charges and excess costs will be collected from the member, is a valid payment. Thus, the member's debt does not arise out of an erroneous payment for purposes of the waiver statute. Colonel Rodney M. Atack, USA, B-239661, June 4, 1990; and 67 Comp. Gen. 484, supra. However, we have found that a debt for excess weight qualified for waiver where it was shown that a member shipped excess weight based on the erroneous authorization of agency officials. See Gunnery Sergeant Robert S. Jackowski, USMC, B-229335, Oct. 21, 1988, in which excess weight was shipped in reliance on a written authorization of an erroneous weight allowance.

In this case, however, Captain Burch's orders contain no weight allowance errors. Furthermore, the statement he attributed to the TMO counselor—that there would be no extra charge for shipping the boat and trailer if the total weight did not exceed the member's maximum weight allowance—is correct for boats that can be shipped in standard overseas containers. However, if that cannot be done, as explained above, the cost of shipping the boat is based on a negotiated flat rate, which is then added to the separate cost of shipping the household goods. JFTR, para. U5310-F4, supra. The sum of these two amounts is then compared to the amount derived from applying the applicable HHG rates to the member's maximum HHG weight allowance to determine the excess weight charges, as was done in Captain Burch's case.

Although Captain Burch states that he was told the boat would be shipped in a fully enclosed container at no extra cost, he does not provide the name of the person who gave him this information nor has he shown that such advice was given with the full knowledge that Captain Burch intended to ship a 28-foot cabin cruiser with trailer, the total weight of which exceeded 5,000 pounds. Also, none of the documents in the record before us support Captain Burch's assertion. Instead, they are consistent with the provisions of JFTR para. U5310-F4, discussed above, applicable if a boat with trailer will not fit in a standard overseas container¹ or will not be accepted by the carrier on that basis, in which case a one-time-only rate is to be negotiated. A Uniform Tender of Rates and/or Charges for Transportation Services in the record shows that the special lump-sum rate was negotiated for Captain Burch's boat separate from the "per cwt" rate applied to the HHG. The government bill of lading covering the shipment shows the boat with trailer (weighing 5,500 pounds) as a separate "lot" from the "lot" consisting of 10 containers of personal effects (weighing 12,450 pounds).²

On this record, the most that can be surmised from Captain Burch's statements is that he may have received some incomplete advice from a TMO representative as to the possible methods of shipping a boat. It is regrettable that Captain Burch did not pursue the prudent course of obtaining a written statement from the TMO as to the method and costs that would be applicable for his particular boat prior to including it for shipment with his HHG nearly half-way around the world. In any event, the record before us does not establish that the excess charges resulted from erroneous advice provided by an agency official so as to be considered a debt arising out of an "erroneous payment" within the purview of the waiver statute.

Finally, as to Captain Burch's allegation that the carrier inflated the weight, the determination whether and to what extent authorized weights have been exceeded is primarily for the agency and we will not question such a determination unless clear error is shown. Atack, supra. In this case, the agency states that the carrier submitted properly executed weight certificates showing the weights determined at the origin of the shipment and upon reweigh at the destination. The amount of variance between the weights is insignificant (see note 2), and based on the lower of those weights the carrier was paid and Captain Burch was assessed excess weight charges. Captain Burch has not submitted evidence to substantiate his claim that the carrier artificially inflated the weights or included the weight of water in

¹We informally queried the Military Traffic Management Command, and were advised that a typical overseas HHG container's dimension are 4 feet x 7 feet x 7 feet, which would not contain a 28-foot boat.

²The shipment was reweighed at destination and the reweigh showed these weights as 5,320 pounds and 12,400 pounds, respectively.

the shipment weight, which it would have been necessary to do at both the origin weighing and the destination reweighing, and the record before us does not do so.

Concerning Captain Burch's assertion that he was told the total weight of the shipment was 12,400 pounds, as noted, this apparently referred only to the weight of the household goods and did not include the weight of the boat. Erroneous information of this sort from a HHG carrier does not provide a basis to relieve a member of excess weight charges based on certified weight tickets. See Dr. John M. Dyer, supra, at page 174, and decisions cited therein.

Accordingly, we find no basis to relieve Captain Burch of his indebtedness arising from the excess charges.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel