

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-061

FINAL DECISION

AUTHOR: Andrews, J.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application on February 10, 2005, upon receipt of the completed application.

This final decision, dated January 5, 2006, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his record to show that he owed the Government \$5,304.00, instead of \$12,262.12, for the expenses incurred in moving his family's household goods (HHG) when he was transferred from Xxxxxx to Alaska in 2004. (The applicant's household includes his spouse and three xxxxxxxx.)

The applicant stated that when planning the move, he knew that his family's HHG would exceed 17,000 pounds, which was the allowed weight for someone of his rank with dependents. Therefore, he asked the Transportation Office at xxxxxxxxx AFB about how much the overage would cost him. They said that "there was no way to give him a cost estimate" but that "normal overage costs were around \$1.00/lb." He decided he was willing to pay this much. However, he was ultimately billed \$12,262.12 for 6,495 pounds of overage (or about \$1.89 per pound).

The applicant stated that his belief that \$1 per pound was correct was reasonable, given the military's "Do It Yourself," or DITY, program, under which members are supposed to receive 95% of what it would cost the Government to move them if they move themselves. He stated that under the DITY program, members are being paid

about 90 cents per pound. The applicant alleged that personnel at the Air Force Transportation Office also directed him to a DITY web site that allows members to calculate their moving costs. When he visited this military web site, the calculator showed that the Government's cost for moving 6,500 pounds of HHG from his old location in Xxxxx, Xxxxxx, to his new location in Kodiak, Alaska, was \$5,304.00.¹

The applicant stated that no one at the Transportation Office would give him a written statement about what they had advised him. He further stated that he understands that he is responsible for the full amount but believes that he and other transferring members should receive more accurate counseling. He asked the Board to reduce the total cost of his HHG overage charge to \$5,304.00.

The applicant submitted a copy of the Pay Adjustment Authorization, which shows that the total cost of the move was \$55,212.59 and that the total weight shipped (including a packing tare) was 29,245 pounds (which suggests a cost of about \$1.89 per pound). It further shows that the applicant was charged for 6,495 pounds of overage, which resulted in a cost to him of \$12,262.12. The applicant also submitted a copy of the bill of lading for his move. The bill shows that the total weight of his HHG, including packing materials, was 29,245 pounds; that the charge for line-haul transportation was \$8,369.92; that the charge for packing/unpacking was \$13,816.14; and that there were other/accessorial service charges of \$2,286.06 and \$418.50, for a total of \$24,890.62. It further shows that there was a tariff or special rate authority of 190%. The bill of lading does not state that the total cost of the move was \$55,212.59; nor is it clear from the bill of lading how the total cost amounted to that figure. A "Statement of Accessorial Services Performed" indicates that the applicant shipped 351 cartons, "dish packs," "wardrobes," and mattresses; 46 corrugated containers of special construction; and 3 crates with a total of 325 cubic feet.

VIEWS OF THE COAST GUARD

On May 23, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board dismiss the case for lack of jurisdiction.

The JAG argued that the Board lacks jurisdiction because the applicant failed to exhaust his administrative remedies, as required under 33 C.F.R. § 52.13(b) by seeking waiver of his debt pursuant to Article 11.F. of the Pay Manual. He submitted a copy of

¹ The web site in question, <<<http://symposium.navtrans.navy.mil/pptacalc>>> is owned by the Navy, and it purports to allow servicemembers to calculate how much they will receive from the Government if they move their own HHG instead of having the Government move it for them. However, the maximum estimated weight one may enter into the calculation is 18,000 pounds. Therefore, it is not possible to enter the full amount that the applicant moved. If one enters just 6,500 pounds (the applicant's approximate overage), the calculator does show the Government's cost as \$5,304.00.

an e-mail message from a chief warrant officer (CWO F) in the Military Compensation Branch, who stated that the branch has no record of the applicant applying for a waiver during the past two years.

Furthermore, the JAG argued, the applicant “does not contest the weights recorded for his household goods shipment; therefore, there is no error for the Board to correct.” The JAG argued that the record shows that the applicant knew the weight of his HHG was over the limit, knew that he would be responsible for the cost, and admitted that Air Force personnel told him that there was no way to give him a cost estimate.

The JAG also argued that the applicant’s request for a reduced debt would be “an inappropriate remedy for the Board to entertain. When applicants receive monetary payments as a result of Board action, it is always as a collateral consequence of the Board’s correction of an error or injustice in their records. The Board is not empowered to forgive debts to the government. That said, there is no injustice present that should even cause the Board to entertain such a course of action.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2005, the applicant responded to the views of the Coast Guard. He stated that he had tried to apply for a waiver but that his unit’s Personnel Division Senior Chief told him that the waiver process did not apply to his situation. He stated that the waiver process would apply only if the amount charged by the moving company had been in error. In his case, it was the pre-move information he received from the Transportation Office about the cost per pound he would be charged that was erroneous. In support of this allegation, the applicant submitted an e-mail message from CWO F of the Military Compensation Branch, who wrote that the applicant’s “situation is not appropriate for relief through the waiver or remission process. Remissions are available only to enlisted personnel, and waivers (and remissions) only apply in instances where a member was erroneously overpaid funds. A waiver is NOT proper recourse for situations where a member [is] ... in debt to the government for services or supplies rendered.”

The applicant stated that he now knows that the Transportation Office should have told him to contact directly the mover that the Government would hire to transport his goods. Instead, the Transportation Office told him that even the movers “would not know the cost until the move was delivered to its destination.” He argued that although he received the bad advice from Air Force personnel, the Coast Guard directed him to seek counseling from the Air Force Transportation Office.

The applicant further argued that the excessive debt is an appropriate injustice for the Board to correct because he tried to get accurate information from the office to

which he was directed by the Coast Guard but was miscounseled. He stated that his sworn statement that he was told that the cost would be about \$1 per pound and the web site calculator's calculations are strong evidence of the injustice of the debt. He argued that having to pay more than \$6,000 above what he expected to pay for the overage because of misinformation he received from the Transportation Office is a significant injustice given that he "used an authorized government supported web site to calculate my overage cost as directed by a government expert."

APPLICABLE LAW

Article 11.F. of the Coast Guard Pay Manual states that under 10 U.S.C. § 2774, the Secretary may waive "claims for erroneous payments of pay and allowances and travel and transportation allowances, when collection of the claim would be against equity and good conscience, and not in the best interest of the United States." A "waiver" is defined as "cancellation of an indebtedness to the U. S. Government which resulted from erroneous payments of pay and allowances made to or on behalf of the member or former member. Waiver applications may also be considered for erroneous payment of travel and transportation allowances paid on or after 28 December 1985."

Article 11.G. of the Pay Manual provides that under 14 U.S.C. § 461, the Secretary may remit or cancel the debt of an enlisted member to the United States "when recovery would be against equity and good conscience." Subparagraph 4. states that the following:

Remission or cancellation of indebtedness will be granted by Commandant (G-WPM) only when it is determined that such action is in the best interest of the United States. In making this determination, the following are among the factors which will be considered:

a. Injustice. Remission or cancellation of the indebtedness may be granted in order to correct obvious wrongs or misrepresentations on the part of the Government which are caused by individuals acting in an official capacity. When an enlisted person has received an overpayment in good faith, without fault or knowledge, but because of error on the part of the Government, enforced collection of the resultant indebtedness may amount to an injustice. However, error on the part of the Government will not, of itself, be a basis for granting remission or cancellation.

b. Hardship. Hardship in this sense may exist when collection of indebtedness would cause a financial hardship on an enlisted member or the member's family.

Article 4.H.9.e. of the Personnel Manual concerns transferring HHG pursuant to a transfer to a unit outside the continental United States (OCONUS) and states the following in pertinent part:

The pamphlet "It's Your Move," COMDTPUB P4050.5, contains guidance for members proceeding overseas. It is in the public interest to avoid spending public funds unnecessarily in shipping privately owned household goods to and from overseas. Additionally, it is in the member's interest to prevent unneeded wear and tear on his or her goods resulting from such shipments. Members receiving orders to an overseas duty station are

strongly encouraged to seek counseling from their local transportation officer regarding overseas entitlements, restrictions on POV size, and communicate with their new command well in advance of transfer date. ...

“It’s Your Move,” COMDTPUB P4050.5, notes that under the Joint Federal Travel Regulations (JFTR), the HHG weight allowance for a LCDR/O-4 transferring with dependents is 17,000 pounds. It also states the following in pertinent part:

1-2. Entitlements

- a. Your weight allowance is established under provisions of the Joint Federal Travel Regulations and is the maximum weight you can move at government expense. This allowance includes the weight of household goods you ship, place in storage or send as unaccompanied baggage.
- b. You—not your transportation officer or the carrier—are responsible for staying within the weight allowance. If the weight of items packed, shipped or stored exceeds your weight allowance, you must pay all charges connected with the excess weight.

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1-4. Excess Weight Can Cost Big Money

- a. The total weight of property shipped and stored cannot exceed your authorized weight allowance. Exceeding your authorized weight allowance on a domestic or international move can cost you a lot of money. Charges for excess weight can range from several hundred to several thousand dollars.
- b. Notification of overweight charges can take several months after your move has been completed. ... If you have any questions, contact your transportation office.

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2-2. Who to See

- a. The Army, Navy, Air Force, Marine Corps and Coast Guard operate transportation offices. Regardless of which branch of service arranges your move, you will get the entitlement and service authorized by your branch.

ALCOAST 195/05 notes that “[d]uring the 2004 shipping season, numerous members experienced personal inconveniences and were held financially responsible for substantial excess costs in conjunction with their HHG shipments.” The ALCOAST directs members to consult a local transportation office for counseling concerning HHG or DITY moves and notes that members doing DITY moves are reimbursed “95 percent of what the government constructed cost would have been, based on the weight of HHG and distance moved.”

The Department of Defense’s Surface Deployment and Distribution Command issued a “Domestic Personal Property Rate Solicitation” on November 1, 2001, which indicates that the line haul rate paid by the Government for moving a member’s property depends on many factors, including distances, diesel fuel prices, special handling and packing of bulky or special items, staircases, road tolls, waiting time, etc.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. Although the JAG argued that the applicant did not exhaust his administrative remedies, the Board disagrees. Article 11.G. of the Pay Manual allows only enlisted members to seek remission of a debt to the Government and so does not apply to the applicant because he is an officer. Article 11.F. of the Pay Manual allows enlisted members or officers to seek a waiver of a debt collection when they have been erroneously paid money to which they were not actually entitled. As indicated by CWO F of the Military Compensation Branch, Article 11.F. does not apply to the applicant's situation because he has not been overpaid any money with respect to his move from Xxxxx, Xxxxx, to Kodiak, Alaska. Therefore, the Board concludes that the applicant has exhausted his administrative remedies.

3. The applicant alleged that he was misled by personnel at his local Transportation Office about the likely cost of his move to Kodiak and therefore unexpectedly and unfairly incurred a debt that was approximately double what he had anticipated. He alleged that he was told that normal moving charges were about \$1.00 per pound, but he was ultimately charged about \$1.89 per pound for his 6,495 pounds of overage. The bill of lading submitted by the applicant does not clearly indicate a monetary amount per pound and shows, instead, charges of \$8,369.92 for line-haul transportation; \$13,816.14 for packing and unpacking; and \$2,286.06 and \$418.50 for "other/accessorial" service charges, for a total of \$24,890.62. The applicant alleged that his belief that he would have to pay only about \$1.00 per pound of overage was reasonable based on the DITY move calculator, which shows the Government's cost for moving 6,500 pounds from Xxxxx to Kodiak as \$5,304.00. The applicant also admitted, however, that personnel at the Transportation Office told him that "there was no way to give him a cost estimate" for his overage.

4. According to the Surface Deployment and Distribution Command's "Domestic Personal Property Rate Solicitation," the line haul rate paid by the Government for moving a member's property depends on myriad factors, including distances, diesel fuel prices, special handling and packing of bulky or special items, staircases, highway tolls, ferry costs, waiting time, etc. Although the applicant submitted a bill of lading for his move, the exact make-up of the total cost of the move is not clear. However, Kodiak is about 3,X00 miles from Xxxxx, Xxxxx, and the last leg of the journey by truck (if a truck rather than a ship was the primary means of transportation) is a 200-mile ferry ride from Seward, Alaska, to the island or a 150-mile ferry ride from Homer, Alaska. In light of these facts, it is not clear to the Board why the applicant expected "normal"

overage costs to apply. Moreover, the Board notes that according to the Department of Energy, from mid February 2004 to early June 2004, diesel fuel prices in Xxxxxx rose sharply from about \$1.65 per gallon to about \$2.20 per gallon.² This increase and many other factors that could not have been known to or predicted by the personnel of the Transportation Office may have greatly affected the cost of the applicant's move.

5. The applicant has not proved his allegation that he was misadvised about the potential costs of his overage. Although he alleged that he was directed to use the Navy's on-line DITY move calculator to estimate the cost of his overage, he has not proved this allegation, and the web site itself does not indicate that it should be used for that purpose. Assuming *arguendo* that the applicant was misadvised and/or insufficiently advised, he has not suggested or proved that anyone in the Transportation Office acted in bad faith in responding to his questions. Nor has he shown that on the day he consulted them, they knew or should have known that the ultimate overage cost to him would amount to about \$1.89 per pound instead of "around \$1/lb." In addition, the Board notes that the Government is not estopped from repudiating the wrong or insufficient advice of its employees, including the wrong or insufficient advice of Transportation Office personnel,³ and under 14 U.S.C. § 461, Congress has intentionally limited the Secretary's power to remit a debt to the debts of enlisted members.

6. The booklet "It's Your Move" does warn members that "[e]xceeding your authorized weight allowance on a domestic or international move can cost you a lot of money. Charges for excess weight can range from several hundred to several thousand dollars." The applicant exceeded his weight allowance of 17,000 pounds by about one-third and therefore owed \$12,262.12 for the overage. The Board agrees with the applicant that, given his allegations about the insufficient and inaccurate advice he received from the Transportation Office and given the statement in ALCOAST 195/05 about the substantial and presumably unanticipated increase in overage costs, the Coast Guard could and should do a better job of ensuring that members have better access to information about the potential costs of overages and the variety of factors that may greatly affect that cost. However, in light of all the circumstances of this case, the Board finds that the applicant has not proved by a preponderance of the evidence that his debt of \$12,262.12 for his 6,495 pounds of overage was either erroneous or so unjust as to "shock[] the sense of justice."⁴

7. Accordingly, the applicant's request should be denied.

² See <http://tono.eia.doe.gov/oog/info/wohdp/diesel.asp#graph_buttons>.

³ See 1980 U.S. Comp. Gen. LEXIS 2081 (B-197948, Dec. 29, 1980); *Goldberg v. Weinberger*, 546 F.2d 477, 481 (2d Cir. 1976), *cert. denied sub nom. Goldberg v. Califano*, 431 U.S. 937 (1977); *Montilla v. United States*, 457 F.2d 978, 987 (Ct. Cl. 1972).

⁴ See *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (finding that for purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is treatment by military authorities that "shocks the sense of justice").

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Stephen H. Barber

Harold C. Davis, M.D.

David Morgan Frost