


**2016-DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-190


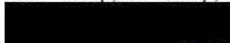
 E-6 (retired)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on September 10, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 13, 2018, is approved and 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 does not owe the Government \$2,808.75 in excess weight charges for shipping his household goods (HHG) in  before his retirement on . He explained that he should not owe the debt because the Coast Guard Finance Center never had either the inventory of his HHG or the "weight tickets." He did not receive the debt notice until 2015, and when he called the Finance Center about it, he was told by a Coast Guard employee that "they were going by the numbers punched into the DPS system [Defense Personal Property System] by the moving company." The employee told him she could not get the inventory or the weight tickets and asked him to submit them. He submitted the inventory, but when he called the moving company to get the weight tickets, he learned that the company had gone out of business and that the weight tickets had been stored in archives. The applicant stated that without either the inventory or the weight tickets, the Coast Guard cannot justify charging him for the alleged debt.

In support of his request, the applicant submitted copies of correspondence between the Coast Guard and the applicant's congressional representatives:

- In a letter dated April 11, 2016, the Coast Guard stated that a recent HHG program audit had identified active and separated members who had exceeded the authorized maximum allowable weight (MAW) for their HHG pursuant to the Joint Federal Travel Regulations (JFTR) and Joint Travel Regulations (JTR). The JTR allows the Coast Guard to pay the total transportation cost for a move and then collect reimbursement from the member for

charges for excess weight. The delay in collection of the debt was regrettable, but the Service was required to collect the debt. The Coast Guard stated that as an E-1, the applicant's MAW was 11,000 pounds and that a message is released each year reminding members about excess weight charges and encouraging them to use the HHG estimator website. The Coast Guard stated that the applicant's inventory and weight tickets had been verified and that the debt was valid.

- In a letter dated August 19, 2016, the Coast Guard replied to another inquiry from the congressman about the debt. The Coast Guard stated that to ensure that the shipping company had not erred or committed fraud, the applicant's signed inventory sheets had been reviewed, the "industry standard of 40 pounds per line item of the inventory" had been applied, and that the total had been compared to the shipping weight claimed by the shipping company, which matched. Therefore, the Coast Guard found that the recorded weight of the applicant's HHG was accurate, and his HHG had exceeded his MAW. The Coast Guard explained that approved shipping companies have been certified and that to ascertain HHG weight, the companies weigh their equipment unloaded and loaded with the HHG. The difference between the weights is the weight of the HHG. The weights are entered into the Defense Personal Property System (DPS) for billing purposes. The Coast Guard stated that there is no evidence of error or fraud on the part of the shipping company and so the debt for the excess weight for the applicant's HHG must be collected.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

The applicant enlisted on January 2, 1990. He married in 1993 and his children were born in 1996 and 2008. Documents in his military record show that he was assigned to several different duty stations during his career and moved his family with each transfer, successively, from

VIEWS OF THE COAST GUARD

On March 1, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC first argued that the case should be considered untimely because the applicant was separated in [REDACTED]. Regarding the facts, PSC explained that under JTR U5012.C., a member's MAW for HHG depends on the member's rate and dependency status. As an E-6 with dependents, the applicant's MAW was 11,000 pounds. And under JTR U5340.A.1., the member is financially responsible for all shipping costs resulting from excess HHG weight above the MAW. PSC stated that although the applicant claimed that the Finance Center never had his inventory or weight tickets, the Finance Center had both. PSC stated that the correspondence submitted by the applicant shows that the "industry standard of 40 pounds per line item of inventory was applied and matched with the shipping weight of the applicant's shipment to determine if there was reason to suspect an error or fraud" and no evidence of error or fraud was found.

PSC concluded that the applicant has not proven by a preponderance of the evidence that he did not exceed his MAW for HHG or that the debt is invalid. Therefore, PSC recommended denying relief. PSC submitted the following documents as evidence:

- A ticket from a Certified Automated Truck Scale along I-95 in [REDACTED] shows that on [REDACTED] tractor # 36836 with trailer # 14090 had a gross weight of 49,120 pounds.
- A ticket from a Certified Automated Truck Scale along I-95 in [REDACTED], shows that on [REDACTED], tractor # 36836 with trailer # 14090 had a gross weight of 65,480 pounds.
- An HHG bill of lading, which the applicant signed on [REDACTED], states that the “estimated charge” for shipping his HHG from [REDACTED] is \$5,154.91.
- A Statement of Accessorial Services Performed, signed by the applicant on [REDACTED] shows that he shipped 234 cartons of various sizes, as well as mattresses and furniture.
- Twenty inventory sheets, signed by the applicant on [REDACTED], list the applicant’s furniture, other HHG, and cartons. The contents of many of the cartons are not listed, but the described line items range from a mop to a washer and dryer and include 54 boxes of books and a lot of furniture made out of particle board. The applicant’s inventory has between 400 and 500 line items, depending on how they are counted.¹

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 7, 2017, the applicant responded to the views of the Coast Guard. The applicant first noted that his application was timely filed because he was not notified of the debt until 2015 and disputed it promptly.

The applicant also alleged that PSC’s statement that the Finance Center had the inventory and weight tickets is false because when he contacted the Finance Center, he was told that they did not have them and he was asked to submit them. He argued that his emails with [REDACTED] at the Finance Center “prove that they have never had the proof to charge me with being over my weight limit.”

The applicant also argued that the Coast Guard should not apply the industry standard of 40 pounds per line item to check whether the shipping company committed error or fraud because the contents of many of the boxes are not identified on the inventory. On many lines, only the type of box is listed and not the contents. Therefore, he argued, the Coast Guard cannot justify using the industry standard of 40 pounds per line to estimate the weight of his HHG.

The applicant alleged that the Finance Center is “trying to cover up mistakes they made and have people like [him] pay for it. They waited four years in hopes that any evidence to the

¹ Several large pieces of furniture take up more than one line on the inventory because of the detailed description of the condition of the furniture, as shown by the word “same” on repeated lines. Other pieces [REDACTED] come apart, such as beds, are listed piece by piece.

contrary would be gone and that I would have no way of fighting this.” In support of these allegations, the applicant submitted numerous emails he exchanged with personnel at the Finance Center beginning on April 17, 2015:

- On April 17, 2015, the applicant disputed the debt notice he had received. He stated that he had used the recommended weight calculator before the move, which told him that his HHG would not be over his MAW. He noted that the travel orders he had received with the debt notice were not signed.
- On April 17, 2015, Ms. H at Finance Center replied, noting that his debt had been calculated to account for the fact that he is an E-6 and she attached the calculation. Regarding the delayed debt notice, she stated that Coast Guard Headquarters had tasked the Finance Center with this project, which involved more than 500 claims since 2009 and that there is no statute of limitations on debt collection by the Government. Regarding the orders, she stated that when printed from their system, orders do not show signatures. Regarding the weight of his HHG, Ms. H stated, “The weight that was input from the moving company into the DPS (transportation system) was the weight that the moving company invoiced the Coast Guard. ... if you have any other paperwork that you can provide to show that this weight was not correct I will be more than happy to review it. ... We have been instructed by Headquarters (CG-1332) that they are not accepting waivers for any excess cost packages.”
- The applicant replied the same day, stating that he did have his inventory sheets and would copy and email them to her. He noted that the online calculator he had used did not take distance into account and he wondered whether that was a factor. He stated that he did not understand how the Coast Guard expected him to pay the debt as he lived paycheck to paycheck, has a family to support, and cannot afford to have his pay garnished. [REDACTED] inventory sheets, she would check them. She stated that the weight indicator is a tool for the members to use, but unfortunately we have to go by what the company inputs into DPS.” She noted that mileage is not a factor in the excess weight calculations and suggested he contact the shipping company to get the weight tickets. When the applicant replied asking about the weight tickets, she stated, “We do not have the weight tickets. You can inquire at the company for those tickets and I will review them. ... The weights we have to use to calculate these costs are from the DPS (transportation system). The moving company inputs these figures.” When the applicant asked how the Finance Center could justify claiming his HHG weighed over his MAW without the weight tickets, she replied, “I do not have the answer as to how they determine if fraud is committed” and encouraged him to call his shipping company to get the weight tickets. He replied, “There is no way they can justify this not being fraud,” and she responded, “I want to let you know that there is probably a system that may detect fraud, but we are the back end of the system and I do not know all the ins and outs of it.” She stated that if he gave her the name of the company, she would check “to see if they are a problem company.”
- On May 6, 2015, the applicant sent Ms. H an email stating that the “number you [tried] to pass off to me is not even [the shipping company] that number does not even match up even to the number for [another shipping company] at the top of the inventory sheets. I

checked the business card when I got home of the driver/owner of [the shipping company] gave to me back then. Now that even has me more suspicious what is going on.”

- On May 7, 2015, Ms. H replied that she had gotten the telephone number from the internet. She had called and, although it was busy for a long time, she finally reached someone. She stated that the business card had the driver’s contact information, and she had called the company directly. The applicant replied that his internet search had shown that the telephone numbers all started with a different area code than the one she had given him, which led him to believe that “something is fishy.” He also stated that the “places on the internet are not in [REDACTED] they are in [REDACTED] which is also incorrect.” The Chief of the Finance Center then replied, “As per my long voice mail, we will do everything we can here at FINCEN to help you resolve this issue. We fully recognize the challenge of revisiting a PCS HHG claim long after the fact.” She acknowledged his frustration, asked to set up a telephone call with him, and stated that another team at the Finance Center wanted to set up a conference call with him to walk him through the claim process.

SUPPLEMENTAL ADVISORY OPINION

Upon receipt of the applicant’s new evidence, the Chair forwarded his response to the Coast Guard for additional review and consideration. On April 27, 2017, the JAG submitted a supplemental advisory opinion.

Regarding the timeliness of the case, the JAG acknowledged that the applicant was notified of the debt by the Finance Center in 2015 but argued that the applicant should have been aware in [REDACTED] that he owed money to the Coast Guard because his HHG had exceeded his MAW. The JAG stated that the weight tickets clearly show a weight difference of 16,360 pounds, which was 5,360 pounds over the applicant’s 11,000-pound MAW for HHG. The JAG stated that the applicant [REDACTED] e advisory opinion.

Regarding the accuracy of the data, the JAG stated that the applicant himself provided inventory sheets that indicate that the shipping company’s report of the weight of his HHG is accurate, and the weight tickets, which the Coast Guard had, show that the weights entered into the DPS by the shipping company were correct. Therefore, the documentary evidence supports the Finance Center’s conclusion that the applicant’s HHG was 5,360 pounds over the MAW. The JAG noted that the applicant’s claim of inaccuracy is based on his claim that the Coast Guard did not have the inventory or the weight tickets. And that claim is in turn based on the claims of an accounting technician who denied having the documentation. However, the JAG argued, the accounting technician simply did not have or know how to get the documentation herself. The fact that the Coast Guard was able to produce the weight tickets for the advisory opinion, even though the applicant was unable to get them, shows that the Coast Guard did have them.

Regarding the applicant’s complaint that the contents of some of the boxes on the inventory are not described, the JAG pointed out that “the whole purpose of such an estimate is to roughly determine weight based on the number of line items and an industry average of 40 pounds per line item. It would not matter what the line item was labeled as because the calculation is based on averages.” The JAG concluded that the applicant has not submitted sufficient evidence to prove that he is entitled to relief.

APPLICANT'S RESPONSE TO THE SUPPLEMENTAL ADVISORY OPINION

On May 8, 2017, the applicant responded to the supplemental advisory opinion. He stated that contrary to the JAG's claim that he is not disputing the weight of his [REDACTED]

[he has] disputed that numerous times in letters and emails especially [its] validity because of the company that moved me went out of business and as I have said previously [REDACTED] the coast guard have gotten a valid weight ticket since there were none to get. The records as I have stated previously have gone into archives. I also am disputing the validity of the weight ticket also because with everything supposedly entering into the new supposed system the [REDACTED] gain no weight ticket to be had. [REDACTED]

The applicant stated that although the JAG assumed that he knew how much his HHG weighed in [REDACTED], he was never told. Because of the new DPS system, he only received the inventory sheets. He stated that if he had received notification that his HHG had exceeded the MAW, he would have contacted the Finance Center immediately. [REDACTED]

The applicant also stated that the Coast Guard's claim that an estimate of 40 pounds per line item should be used "sounds like more made up excuses." He noted that one of the line items on the inventory is a "plastic hamper," which would be much lighter than 40 pounds.

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 Board finds that the application was timely filed because the Coast Guard did not notify the applicant of his debt until 2015, although having had plenty of experience moving HHG in the past, the applicant could have surmised that his HHG weighed more than the MAW in [REDACTED]

2. The applicant alleged that the Coast Guard's collection of a debt of \$2,808.75 for an alleged overage in the weight of his HHG when he moved in [REDACTED] is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."³

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 59 [REDACTED] Cl. 1979).

3. The applicant alleged that the Coast Guard's claim that his HHG weighed 16,360 pounds, which is 5,360 pounds over his 11,000-pound MAW for HHG, is erroneous. The record indicates that the weight was entered in the online DPS by the shipping company, and the difference in the loaded and unloaded weights shown on the weight tickets confirms the information entered in the DPS by the shipping company. The applicant claimed that [REDACTED] were submitted by the [REDACTED] must be erroneous or fraudulent because Ms. H, a technician at the Finance Center, told him "We do not have the weight tickets," and the shipping company had gone out of business. The Board notes, however, that Ms. H also told the applicant that she was unaware of how the Coast Guard determines fraud with regards to shipping HHG and that her office was "the back end of the system and I do not know all the ins and outs of it." Therefore, the fact that Ms. H's office ("we") did not have the applicant's weight tickets in 2015 does not prove that the Coast Guard did not in fact receive them from the shipping company in [REDACTED] or that the auditors did not have them when they determined the [REDACTED] the Board finds that the applicant has not proven by a preponderance of the evidence that the weight tickets are erroneous or fraudulent or that the shipping company committed fraud [REDACTED] entering the [REDACTED] weights in the DPS.

4. In addition to checking the shipping company [REDACTED] weight tickets, the Coast Guard apparently has a second way of assessing error or fraud in the weighing of HHG: The Coast Guard states that the "industry standard" for estimating approximately how much a shipment of HHG weighs is to multiply the total number of line items on the inventory by 40 pounds. The applicant's inventory lists well more than 400 line items, which presumably included the 234 cartons shown on the Statement of Accessorial Services Performed. At least 54 of the cartons are described as containing books. The other line items range from baskets and lamps to major appliances and include a lot of furniture made out of particle board, which is heavy. Multiplying 400 times 40 pounds provides a result 16,000 pounds. Since the applicant's inventory shows more than 400 line items, and the weight tickets show that his HHG weighed 16,360 pounds, the Board cannot conclude that the Coast Guard erred in finding that the number of line items on his inventory sheets supports the overage shown by the weight tickets and in the DPS.

5. As the applicant noted and the Coast Guard admitted, the Coast Guard did not inform him of his debt until about three and one-half years after he retired on [REDACTED], and almost four years after the move. But this delay does not persuade the Board that the Coast Guard is committing an injustice by collecting the debt,⁴ and as PSC noted, collection of such debts is legally required by the JTR. [REDACTED]

6. The Board concludes that the applicant has not proven by a preponderance of the evidence that the Coast Guard's collection of the debt for shipping his excess 5,360 pounds of HHG above his 11,000-pound MAW is erroneous or unjust. Therefore, his request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ This decision is consistent with the Board's decision in BCMR Docket No. 2005-061, in which the Board found that an officer's debt of \$12,262.12 for 6,495 pounds of overage when shipping his HHG from [REDACTED] was neither erroneous nor unjust.

ORDER

The application of [REDACTED], USCGR (Retired), for correction of his military record is denied.

April 13, 2018

