

DATE: November 28, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00103009

CLAIMS APPEALS BOARD DECISION

DIGEST

A member and his spouse forfeited their security deposit to their landlord after a household goods carrier, under contract to the Army to perform the move for the member, damaged the landlord's premises while moving the member's personal property. A recommendation for relief under the Meritorious Claims Act, 31 U.S.C. 3702(d), is not appropriate because the claim is not extraordinary and does not involve equitable circumstances of an unusual nature which are unlikely to recur.

DECISION

The service member and his spouse appeal the February 24, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99120613 in which DOHA disallowed their claim for reimbursement for the loss of their security deposit to a landlord (1,500 DM). On behalf of the member and his spouse, the Army Claims Service requests that we consider their claim under the provisions of the Meritorious Claims Act.

Background

The U.S. Army Claims Service reports that the claimants made an intra-theater, door-to-door, official move from Koenigstein, Germany, to Memmelsdorf, Germany, under Personal Property Government Bill of Lading No. WP-424,400. On May 25, 1999, the household goods movers, Enrico Forster Umzuga of Nurnberg caused 1,628DM worth of damage to the landlord's stairwell and steps while carrying the claimants' furniture downstairs. The landlord filed a claim with the moving company, but after three weeks without a response from the company, the landlord seized the claimants' security deposit. [\(1\)](#)

The Claims Service notes that the claimants explored every avenue of redress available to them to recover the value of the forfeited security deposit. The Claims Service found that the Military Personnel and Civilian Employees Claims Act, codified at 31 U.S.C. § 3721, did not apply because the premises did not belong to the claimants. It also found that the Military Claims Act, codified at 10 U.S.C. § 2733, did not allow payment for incidental or consequential damages such as loss of rental deposits. The claimants tried to recover from the mover, but the Claims Service reports that the mover is bankrupt and cannot be located. Finally, the Claims Service explained why a possible claim against the mover's insurance carrier would be unavailing.

Discussion

When we recommend relief under the Meritorious Claims Act, 31 U.S.C. § 3702(d), we do so in accordance with the practices and procedures applied by the General Accounting Office until 1996. *See* 61 Fed. Reg. 50285 (September 25, 1996). The practice of the Comptroller General was to report to the Congress only those claims containing elements of unusual legal liability or equity. This remedy is limited to extraordinary circumstances, and the cases reported by the Comptroller General generally involved equitable circumstances of an unusual nature and which were unlikely to constitute a recurring problem. *Compare Marvin K. Eilts*, 63 Comp. Gen. 93 (1983); and 53 Comp. Gen. 157 (1973).

In the *Eilts* claim, the Comptroller General believed that the problem was likely to recur, and for that reason, among others, the Meritorious Claim remedy was not appropriate. ⁽²⁾ The claim involved a forfeited security deposit for the purchase of a house by an employee selected to head a new field office. The employee chose to withdraw from the purchase after uncertainty arose over whether the government office would be relocated to the area in which he purchased the house. Just as a change in relocation plans is not unusual, we believe that a carrier damaging leased quarters while it is picking up or delivering household goods is a problem that is likely to recur.

Conclusion

For the reason stated above, we find that it is inappropriate to report the claimants' claim to Congress.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Member, Claims Appeals Board

1. The Claims Service notes that Section 278 of the German Civil Code provides that a tenant's liability to the landlord is not limited to damages the tenant personally causes but also includes damages caused by persons acting on the tenant's behalf.
2. The Comptroller General also believed that Mr. Eilts had another remedy available under 5 U.S.C. 5724a(b) as a miscellaneous expense. It does not appear that uniformed service members have a similar remedy. *See Major Ronald W. Giddens, USA, B-256298, July 18, 1994.*