

vlink="#551A8B" alink="#FF0000">

May 4, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 99112919

CLAIMS APPEALS BOARD DECISION

DIGEST

On disputed questions of fact between the claimant and the administrative officers of the government, we accept the statement of fact furnished by the administrative officers in the absence of clear and convincing contrary evidence. When a transportation management office (TMO) maintains logs with summaries of service members' contacts with its office for purposes of scheduling deliveries, and the record for one service member fails to indicate that he contacted the TMO to re-schedule delivery of his household goods, the absence of an entry is indicative of the member's failure to contact the TMO for that purpose.

DECISION

A member of the United States Army appeals the decision of the Defense Finance and Accounting Service (DFAS) denying his claim of \$713.70 for the refund of a collection made against him for attempted delivery of his household goods at destination after a permanent change of station (PCS) move. We are directly settling this matter for administrative convenience.

Background

The member was reassigned to a new duty station in Mississippi effective in 1999, but incident to the move, his household goods were stored in non-temporary storage (NTS). According to the records⁽¹⁾ of the Traffic anagement Office (TMO) at Columbus Air Force Base (CAFB), ississippi, the member talked to a named representative of the TMO at 1404 hours on April 23, 1999, and among other things, requested delivery out of storage because he was experiencing many problems with the storage company. The storage company's representative was unable to deliver on July 15th, the date requested by the member, but confirmed delivery for July 16th. The TMO's records next indicate that at 1400 hours on July 16, 1999, an agent of the storage company contacted the TMO and advised the TMO that its driver had arrived at the residence at 1100 hours and that no one was there to receive the shipment. The TMO attempted to locate the member without success, and they left a voice mail concerning the attempted delivery. At 1625 hours on July 16, 1999, the member's spouse responded to the voice mail messages, and she stated that she thought that her

husband had changed the dates of delivery. The delivery had to be re-scheduled, and the agent charged the TMO \$713.70 for attempted delivery. This amount was collected from the member's pay by DFAS in November 1999.

The member disputes his liability. His submission states that he was charged approximately \$750 for the attempted delivery out of storage. He indicates that initially he coordinated with his TMO in Korea for delivery on July 15, 1999, and upon his return to CONUS in April 1999, he telephoned the CAFB TMO and talked to the same named representative as mentioned in the TMO's records. He says that he confirmed his delivery date with that representative, but he also advised her that he may be deployed on the requested delivery date and that the delivery date was subject to change. The member says that he signed into his new unit on May 5, 1999, and he was advised that he would be deployed to the National Training Center during the period from July 10-30, 1999. The member states that he telephoned the named representative and instructed her to cancel the July 15th delivery. He also advised her that he would contact her when he returned from the NTC. The member contends that he did not receive any other calls from the TMO until July 15th when the TMO representative left a message on his answering machine.⁽²⁾ The member claims that the named representative's failure to annotate his conversation with her in ay 1999 led to the unsuccessful attempted delivery.

In March 2000, our Office asked the member to provide any evidence indicating that he placed a call to CAFB in early May to cancel the delivery out of storage. We specifically suggested telephone records as evidence. The member advised us that he was unable to develop such records from his unit, the state (apparently he was assigned to a National Guard unit), or the telephone company. He also advised that other unit members would have called CAFB during that period of time using the phone he used. The member asked that we consider his word as an officer, and again noted that the TMO did not attempt to confirm the delivery before they delivered.

Discussion

The only issue here is which side has the burden of proof. ilitary tradition recognizes the significance of an officer's word, but in settling claims, we must follow applicable regulatory provisions. Title 4 of the Code of Federal Regulations, paragraph 31.7 (4 C.F.R. § 31.7) provides in part that: "The burden is on claimants to establish the liability of the United States and the claimants' right to payment. The settlement of claims is based upon the written record only." Additionally, the Comptroller General has held that when there is a dispute between the claimant and the administrative officers of the government involving a question of fact, the claim settlement authority will accept the statement of fact furnished by the administrative officer in the absence of clear and convincing contrary evidence. *See McNamara-Lunz Vans and Warehouses, Inc.*, 57 Comp. Gen. 415, 419 (1978).

The TMO provided us an original document summarizing contacts, as they transpired, with this member concerning his move. The TMO officially reported to us that the same process occurs for all similarly situated members. The TMO's records appear to be competent evidence of contact (or lack of contact) with a service member concerning the rescheduling of a delivery, and it appears that such records would even be admissible in a court of law for that purpose. *Compare Air Land Forwarders, Inc. v. United States*, 38 Fed. Cl. 547, 555-556 (1997). Against this evidence, we cannot hold that the member's statement is clear and convincing contrary evidence.

Conclusion

We disallow the member's claim.

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

Jean E. Smallin

Member, Claims Appeals Board

1. The record in this instance is a brown folder labeled with the member's name and other personal information containing handwritten notes on the inside surfaces prepared by a TMO clerk which were contemporaneously written to record the nature of a contact with a service member. The folder is accompanied by an administrative report from the Chief of Transportation at CAFB who stated in writing that the office practice is that any calls from a member to request delivery or changes to delivery date be logged into the member's folder. A log of the call will not be recorded if the member's only purpose in calling was to determine the name of the carrier or time of arrival. The Chief of Transportation also consulted with members of his staff to determine whether the service member had called to change delivery dates but a staff member had failed to properly record this event. No one remembered a call from the member to do so.
2. The TMO's records show that the actual date of attempted delivery was July 16, 1999.