

April 19, 2004

In Re:

Andrews Van Lines, Inc.

Claimant

Claims Case No. 04041303

CLAIMS APPEALS BOARD DECISION

DIGEST

With respect to disputed questions of fact, the Board will accept the statement of facts furnished by a service's administrative office, in the absence of clear and convincing contrary evidence.

DECISION

Andrews Van Lines, Inc. (Andrews), appeals the March 18, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03030501, which disallowed Andrew's claim for a refund of \$889 for damage to seven inventory items in a service member's shipment of household goods. [\(1\)](#)

Background

The record indicates that the member's household goods were picked up in Fort Rucker, Alabama, on July 31, 2000, and delivered to Fort Hood, Texas, on September 1, 2000. The shipper claimed damage to the seven items at issue and submitted the required documentation, including a repair estimate and photographs, in support of his claim. The Army adjudicated the claim based upon those documents.

The carrier appealed the Army's decision to this Office, contending that the Army should have based its adjudication on an inspection and lower repair estimate obtained by the carrier on October 19, 2000. The carrier claims to have sent their estimate to the Army by letter dated October 24, 2000. However, there is no record of receipt of that estimate by the Army prior to their payment to the claimant. By letter dated July 9, 2001, the Army advised the carrier that its files did not contain a copy of the carrier's inspection and estimate. By return letter dated August 31, 2001, the carrier transmitted a copy of its October 19, 2000, inspection and estimate, and its October 24, 2000, letter. A hand written notation on the return letter states: "Not in file so FO must not have rec'd it. Carr's insp was considered in subsequent corres. w/Andrews." Other documentation in the Army's administrative report affirmatively states that the carrier's inspection was not received before the claim was paid and not used to calculate payment to the claimant, but was

considered when it was received during the carrier's appeal process.

In the Settlement Certificate, our Office concluded that the Army was not required to base its adjudication on the carrier's lower repair estimate because it had not been submitted to the Army until after adjudication of the carrier's claim and after the carrier's initial denial of liability for the items in question. The carrier now appeals that decision.

Discussion

Under section III(B)(1) of the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU), effective January 1, 1992, a claims office is required to use a carrier's estimate received within 45 calendar days after delivery if that estimate is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based on the firm's reputation for timely and satisfactory performance. In such circumstances, if the carrier's estimate is the lowest overall estimate and is not used, the claims office must advise the carrier in writing of the reason the lowest overall estimate was not used in determining the carrier's liability. Under section III(B)(2) of the MOU, the same rule applies if the carrier's estimate is received more than 45 calendar days after delivery if the service has not yet adjudicated the claim. However, under sections III(B)(2) and (3) of the MOU, if the carrier's lower estimate is received more than 45 calendar days after delivery and if the claim has already been adjudicated, then the claims office is only required to consider that lower estimate in the carrier's recovery rebuttal or appeal process, to the extent it establishes that the estimate submitted by the member was unreasonable in comparison with the market price in the area or that the price was unreasonable in relation to the value of the goods prior to being damaged.

We have previously held that with respect to disputed questions of fact, because the administrative office is in a better position to consider and evaluate the facts, we will accept the statement of facts furnished by the administrative office, in the absence of clear and convincing contrary evidence offered by the member or other claimant. *See* DOHA Claims Case No. 01060501 (June 20, 2001) *aff'd* Deputy General Counsel (Fiscal) (March 8, 2002) citing 57 Comp. Gen. 415, 419 (1978). In the current case, the record establishes that the carrier's lower estimate was not actually received by the Army until more than 45 calendar days after delivery and after the Army had adjudicated the claim. The carrier has not met its burden of producing clear and convincing evidence that the Army actually received the estimate either within the pertinent 45 day period or prior to the Army's adjudication of the claim. Because the Army actually received the carrier's lower estimate after the pertinent 45 day period had run and subsequent to its adjudication of the claim, it was only required to consider that estimate in the carrier's recovery rebuttal or appeal process. It was not required to use that estimate.

Conclusion

We affirm the Settlement Certificate.

_____/s/
 Michael D. Hipple
 Chairman, Claims Appeals Board

_____/s/
 William S. Fields
 Member, Claims Appeals Board

_____/s/_____
Jean E. Smallin
Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading AP-528,037; Army Claim No. 00-131-2329; and Carrier Claim No. 210180.