

DATE: September 10, 2004

In Re:

AAA Transfer & Storage, Inc.

Claimant

Claims Case No. 04082452

CLAIMS APPEALS BOARD RECONSIDERATION DECISION

DIGEST

If a claimant's request for reconsideration cites error in the appeal decision for not discussing certain topics, the claimant must offer a rationale as to why and how a discussion of the various topics would result in a different outcome.

DECISION

AAA Transfer & Storage, Inc., (AAA) requests a second reconsideration of the April 27, 2004 decision of this Board in Defense Office of Hearings and Appeals (DOHA) Claims Case No. 04041601. [\(1\)](#)

Background

AAA limits its request for reconsideration to one item in the shipment, Item 242, a large wooden rocker. AAA states that the Board erred because it failed to explain the following: the exceptions given to the item at inventory in relation to the description of the condition of the item on the DD Form 1840, the repair estimate description of the damage to the item, the repair person's failure to indicate whether or not he reviewed the inventory before making his repair estimate, the fact that the Air Force memo dated February 27, 2003, was not attached to the Air Force's February 28, 2003, claim demand, and the Board's note in the decision that the repair person could not remember the shipment. Essentially, we interpret this to mean that AAA's position is that it is not liable for the repair to the damaged rocker in the amount of \$32.50, because it contends that no additional damage resulted to the rocker during transit. Specifically it appears that AAA takes issue with the telephone interview of the repair person as establishing that additional damage occurred to the rocker while in the hands of the carrier.

Discussion

AAA's request for reconsideration of our decision was made to the Deputy General Counsel (Fiscal), by letter dated June 10, 2004. On July 6, 2004, the Deputy General Counsel (Fiscal) declined to give the case any further consideration because AAA had not offered any rationale as to why a different outcome would result in the case, but allowed AAA to

resubmit their request for reconsideration. By letter dated July 30, 2004, AAA resubmitted their request for reconsideration to the Deputy General Counsel (Fiscal). The letter was received by that office on August 11, 2004. On June 29, 2004, a new claims regulation was published in the Federal Register concerning the proper procedures for requesting reconsideration of DOHA decisions. The new regulation, which is found at volume 69, Federal Register, pages 38843 to 38848 (title 32, Code of Federal Regulations, Part 282), went into effect on May 12, 2004. With respect to appeal decisions issued before the effective date of the new regulation, a request for reconsideration by the Deputy General Counsel (Fiscal) must have been received within 60 days of the regulation's effective date. AAA's request was received after that date. Therefore, the Deputy General Counsel (Fiscal) forwarded AAA's request to our office for further action.

AAA does not offer any rationale as to why and how a discussion of the various topics would result in a different outcome, and our Office is not permitted to guess at possible theories of recovery that AAA may have had. *See Reconsideration of DOHA Claims Case No. 04042701* (April 28, 2004), *aff'd* Deputy General Counsel (Fiscal) (July 6, 2004). However, we do add the following comments.

The fact that no loss was reported on the DD Form 1840 did not relieve the carrier of liability. The DD Form 1840R provided the carrier with timely and adequate notice of the loss. The carrier could then have conducted its own investigation of the circumstances had it chosen to do so.

As noted in the Appeal Board's decision, the evidence with respect to Item 242 was more problematic than the evidence with regard to the other item in issue. However, the Board found that the evidence acquired in the telephone interview with the repair person, although minimal, was sufficient to establish a *prima facie* case of carrier liability. The carrier has not offered any evidence contradicting the repair person's statement. If AAA had inspected the damaged rocker, the inspection may have yielded substantive evidence to support their position.

We further note that the repair person only listed on the estimate, "rocking chair scratch on arm #242, touch up and blend color;" whereas, the exceptions at inventory listed multiple problems with the condition of the rocker ("left arm top marred, gouged, scratched right arm, top rubbed, front left legs marred"). This supports the repair person's stated practice of only listing new (transit-related) damage on the estimate of repair. The repair person found the estimate for repair of the rocker to be \$65. However, based on the record, the Air Force reasonably allocated the preexisting damage to the rocker by deducting 50% of the cost of repair.

It is unclear how the Board allegedly erred because it did not explain why the February 27, 2003, Air Force memo (documenting the telephone interview of the repair person) was not attached to the Air Force's February 28, 2003, claim demand. The Air Force included the memo as part of its official claim record; therefore, if AAA had requested a copy of the memo, the Air Force would be the one to furnish it to them. We do note that by memorandum dated March 17, 2003, the Air Force informed AAA that they could contact the repair person themselves. However, there is nothing in the file to indicate that AAA contacted the repair person.

Finally, although the Board did note that the repair person did not remember the specific shipment, the Board relied on the repair person's statements concerning his business practice of only noting transit damage on the estimate of repair, not his specific memory of the shipment, to establish that additional damage occurred to the rocker while in the hands of the carrier. And again, AAA has not shown any evidence to rebut the *prima facie* case of liability against it.

Conclusion

For the reasons stated, the request for reconsideration is denied, and the appeal decision is sustained. In accordance with 32 C.F.R. Part 282, Appendix E, paragraph o(2), this is the final Department of Defense action in this matter.

_____/s/_____

Michael D. Hipple
Chairman, Claims Appeals Board

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

_____/s/_____
Catherine M. Engstrom
Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading JP-065,015; AF Claim No. Scott AFB 03-437. Under former procedures, DOHA issued a Settlement Certificate under DOHA Claim 03121910 on January 30, 2004.