

KEYWORDS: Carrier/contractor liability

DIGEST: This Office will not question an agency's calculation of the value of damages in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency's calculation was unreasonable. Further, no language in the Joint Military Industry Depreciation Guide (JMIDG) shifts the burden to the service to rebut a carrier's application of a 50% depreciation rate where the carrier has provided no evidence nor specific argument as to why minor preexisting damage warrants application of that rate.

CASENO: 05021701

DATE: 3/29/2005

DATE: March 29, 2005

In Re:

AAA Transfer & Storage, Inc.

Claimant

Claims Case No. 05021701

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

This Office will not question an agency's calculation of the value of damages in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency's calculation was unreasonable. Further, no language in the Joint Military Industry Depreciation Guide (JMIDG) shifts the burden to the service to rebut a carrier's application of a 50% depreciation rate where the carrier has provided no evidence nor specific argument as to why minor preexisting damage warrants application of that rate.

DECISION

AAA Transfer & Storage, Inc., (AAA), requests reconsideration of the January 28, 2005, Appeal Decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 04122207. [\(1\)](#)

Background

The only issue in this Request for Reconsideration concerns the replacement cost of a computer desk, so we will limit our discussion to it. The computer desk was damaged in a household goods shipment picked up by AAA in Gulfport, Mississippi, on May 24, 2002, and delivered to Groton, Connecticut, on June 20, 2002. Damage to the computer desk was noted on the DD Form 1840, *Joint Statement of Loss or Damage*, on the day of delivery. The DD Form 1840R, *Notice of Loss or Damage*, dispatched on June 24, 2002, listed loss and damage to the computer desk and other items. On April 16, 2003, the Navy dispatched DD Form 1843, Demand on Carrier/Contractor, to the carrier for \$468.25 of which \$180 (2) was for the replacement cost of the computer desk. There is nothing in the record that shows the carrier performed an inspection or an investigation of the reported damage. AAA subsequently made an offer of \$75 for the computer desk based on information provided to it by the Navy (specifically, a listing of a similar model computer desk on-line at a office retail supplier's website for \$149.99), and AAA then applied a 50% depreciation because of "poor tender condition." The Navy offered \$149.99 in settlement for the computer desk, but did not accept the carrier's application of the 50% depreciation. On July 8, 2003, the Navy initiated an offset of \$298.24 (of which \$149.99 was collected for the computer desk).

On appeal, AAA requested a refund of \$75 of the \$149.99 offset for the computer desk. AAA asserted that language in the Joint Military Industry Depreciation Guide (JMIDG) entitled it to apply the 50% depreciation factor to the replacement cost of the computer desk, and the burden was on the Navy to prove that this was not reasonable. The Appeal Decision sustained the Navy's action in the case.

In its request for reconsideration, AAA asserts that the Appeal Decision erred by referring to the JMIDG without citing specific excerpts from it. AAA then quotes a paragraph from the JMIDG:

"The following rates of depreciation are published as a guide to indicate the rate that the HHG carrier industry will generally apply for purposes of settling loss/damage claims. The rates and maximum depreciation set forth are applied where the items have been subjected to average care and/or usage, and may be adjusted upward or downward by the carrier when it is shown by inventory annotation, inspection of goods, or other evidence that care or usage was greater or less than average."

AAA does not offer any rationale for why or how our consideration of this assertion would result in a different outcome. (3) However, it appears that AAA continues to assert that the application of a 50% depreciation factor to the replacement cost of the computer desk is appropriate.

Discussion

Carrier liability for loss or damage is governed by common law principles under which numerous factors must be taken into account. The JMIDG, a contractual agreement between the government and the industry, is used to determine the value of the items that have been lost or damaged. Some of the factors to be considered are the nature of the item, original and replacement costs, age, the extent of wear and tear, and deterioration. *See* B-266114, Apr. 12, 1996. The JMIDG permits the carrier, in settling claims against it, to increase the rate of depreciation where the carrier shows "that care or usage was greater or less than average;" however, the inventory remarks relied upon by AAA, by themselves, do not show what condition was average for this item, the exact condition of this item, or why the condition of this item required the application of 50% depreciation. We see no language in the JMIDG that supports the carrier's argument that the burden is on the service to rebut a carrier's valuation of replacement cost when the carrier seeks reimbursement of amounts offset against it. It is the carrier's burden to show that service has acted unreasonably in calculating the value of the damages. In the absence of clear and convincing evidence that an agency has acted unreasonably, we will not question the agency's valuation of loss or damage to household goods. *See* B-249072, Oct. 30, 1992.

On the inventory, exceptions were noted for the computer desk: "loose, scratched, rubbed, chipped, torn." At delivery, new and different damage was noted on the DD Form 1840; the left leg was broken and cracked. This damage was further noted on the DD Form 1840R; the leg was broken and cracked on the left side. The shipper submitted photographs of the damaged desk, stated he purchased it in 2001, and claimed \$200 for its replacement. The Navy's undepreciated replacement cost of the item was substantiated with an on-line price listing. The Navy's application of

10% deduction was for one year depreciation.

AAA has provided no evidence as to why a 50% depreciation rate should be applied to the desk. If the carrier had inspected the damage or done any type of investigation, it may have been able to substantiate its value estimate. Where a carrier provides no evidence nor specific argument as to why minor preexisting damage warrants application of a depreciation rate different than the one provided for in the JMIDG, we accept the service's rate application. *See* DOHA Claims Case No. 03062302 (July 9, 2003). In the absence of clear and convincing contrary evidence, on disputed questions of fact between the claimant and an administrative office, we accept the statement of fact furnished by the administrative office. *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).

We view the Navy's offer of \$149.99 in settlement for the computer desk as a compromise offer. A compromise offer submitted to a carrier by an agency to settle a loss and damage claim does not bind the agency unless accepted by the carrier. Upon carrier rejection, the agency may set off from the monies otherwise due to the carrier amounts up to the carrier's full contractual liability, whether or not they exceed the amount of the proposed compromise. *See* DOHA Claims Case No. 96070214 (January 6, 1997). Here, the Navy only set off the amount that it had originally offered. Thus, the carrier remains liable for the amount set off for the computer desk, \$149.99.

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 Government Bill of Lading (GBL) JP-064,754, and Navy Claim No. 0304359.
2. The Navy had assessed the replacement cost of a computer desk at \$200 with 10% depreciation, holding AAA liable for \$180.00.
3. *See* DOHA Claims Case No. 04102901 (November 3, 2004). The theory of recovery must be reasonably clear, and the Board is not permitted to guess as to possible theories of recovery that the carrier may have.