January 27, 2005

In Re:

AAA Transfer & Storage, Inc.

Claimant

Claims Case No. 05010602

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

A shipper offers sufficient proof of *prima facie* liability against a carrier for damage to an electrical appliance when he offers evidence that the appliance was in good working order prior to tender to the carrier and the nature of the internal damage is consistent with its having been mishandled or dropped, *e.g.*, physical damage to otherwise sturdy components.

DECISION

This is in response to a request for reconsideration of a Defense Office of Hearings and Appeals (DOHA) appeal decision, DOHA Claims Case No. 04112903 (December 27, 2004). In that appeal, DOHA denied a claim for refund of $263.99 which was collected from AAA Transfer & Storage, Inc. (AAA) for damage to a washer.

Background

The shipment of household goods (HHG) was picked up from Pascagoula, Mississippi, and delivered to Panama City, Florida, on June 7, 2002.[(1)] The only item still in issue is item 52, a General Electric (GE) washer. The HHG inventory listed pre-existing damage (PED) to the exterior of the washer.[(2)] On DD Form 1840R, which was dispatched on July 8, 2002, the shipper noted internal damage ("leaks water from underneath machine on fill-up and rinse cycle"). The Navy initially did not allow reimbursement for the washer. The shipper submitted two statements, dated July 8, and August 8, 2002, stating that the washer worked properly and did not leak the day before pick-up and leaked immediately after delivery. The shipper also submitted two forms from an appliance company-an invoice stating no apparent problem with the washer and a repair form stating that the leakage was due to a broken bearing and brake assembly and that the damage could have been caused by rough handling. The repair form stated that the damaged appliance was not worth

repairing. Upon reconsideration, the Navy allowed $263.99 for the washer and demanded that amount from AAA by offset. AAA denies liability for the damage, on the grounds that there is no evidence that the damage was transit-related.

Discussion

Under federal law, in an action to recover from a carrier for damage to a shipment of HHG, the shipper establishes a *prima facie* case of carrier liability by showing tender in good condition, failure to deliver or delivery in damaged condition, and the amount of damages. Thereupon, the burden shifts to the carrier to show that it was free from negligence and that the damage to the HHG was due to one of the excepted causes relieving the carrier of liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). If a carrier challenges an element of the *prima facie* case, such as absence of damage caused during transit, it must offer clear and convincing contrary evidence or such evidence must be clear from the record. *See* DOHA Claims Case No. 04110201 (November 10, 2004). When there is internal damage to working parts of an appliance or piece of electronic equipment, and the nature of the damage is consistent with its being mishandled or dropped, *i.e.*, physical damage to otherwise sturdy parts, the shipper's statement that the item was in working order shortly before pick-up and did not work properly upon delivery is generally sufficient proof of the second requirement for *prima facie* liability. *See* DOHA Claims Case No. 98020215 (February 10, 1998); and DOHA Claims Case No. 96070220 (September 5, 1996).

A *prima facie* case was established in the situation before us. The shipper signed a statement in July 2002 to the effect that the washer worked properly the day before pick-up and leaked immediately after delivery. There is a similar statement from August 2002 signed "Mr. And Mrs. [Redacted]," which was apparently written by the shipper's wife. The record indicates that the washer was only 1.5 years old, and the nature of the damage is consistent with mishandling or dropping of the washer, because the damage involves what appear to be otherwise sturdy parts. As AAA points out, the record contains an invoice from Independence Appliance, Inc., which says "did not show problem @ this time/would like to talk to user about machine," but a repair form signed by the same person of the same company on the same day notes damage to the bearing and brake assembly that would cost over $331 to repair. The clear and unequivocal statements by the shipper and his wife satisfy the second requirement for *prima facie* liability (delivery in a damaged condition), and the invoice from the appliance company, by itself, does not change the outcome. *See Id.*

Once *prima facie* liability was established, the burden shifted to AAA to prove by clear and convincing evidence that it was not liable. Here, AAA has presented no evidence to rebut its liability. Rather, AAA questions facts presented in the record-*e.g.*, whether there were two statements from the shipper regarding the condition of the washer or only one, and what the exact nature of the damage to the bearing and brake assembly was.[(3)] Such questions do not constitute evidence, and mere allegations or speculations are not sufficient to rebut a *prima facie* case of liability. *See* B-193182, Dec. 12, 1978. It appears that AAA did not avail itself of its right to inspect the washer, nor did it do anything else to gather and present clear and convincing contrary evidence. While a carrier is not required to inspect damaged HHG, its ability to present evidence may be hampered by lack of an inspection. *See* DOHA Claims Case No. 98082504 (October 7, 1998).

As to the amount set off for the washer, the Navy began with the cost of the replacement purchased by the shipper and then depreciated by twenty percent-ten percent per year (even though the washer was only 1.5 years old). The carrier objects to the fact that the damaged washer was a GE, while the replacement was a Whirlpool. There is no indication that the replacement was not comparable in value, and it was depreciated, perhaps more than necessary. We see no reason to question the Navy's calculation. We accept the Service's calculation of damages in the absence of clear and convincing contrary evidence. *See* DOHA Claims Case No. 96070221 (October 7, 1996), *aff'd* Deputy General Counsel (Fiscal), December 21, 2001.

Conclusion

For the reasons stated, the request for reconsideration is denied, and the appeal decision is sustained. No further action is required by the Navy. 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/

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ichael D. Hipple
Chairman, Claims Appeals Board

/s/

_____
William S. Fields
ember, Claims Appeals Board

/s/

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Jean E. Smallin
ember, Claims Appeals Board

1. The shipment involved GBL No. JP-064,762, and Navy Claim No. 0300828.

2. The inventory entry noted that the mechanical and electrical condition of the item was unknown.

3. The carrier also questions the relevance of DOHA and Comptroller General decisions cited in our Appeal Decision. While in each case the fact pattern may not be exactly the same as the case before us, each cited decision is relevant as to the principle for which it was cited.