

DATE: June 6, 2006

In Re:

Carlyle Van Lines, Inc.

Claimant

)
Claims Case No. 06050813

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

We accept an agency's finding that proof of a claimant's officially recognized absence was attached to the demand on carrier absent clear and convincing contrary evidence in the record.

DECISION

Carlyle Van Lines, Inc. (Carlyle) requests reconsideration of a Defense Office of Hearings and Appeals' (DOHA) appeal decision, DOHA Claims Case No. 06040712 (April 24, 2006).⁽¹⁾

Background

The carrier picked up the member's household goods in Beaufort, South Carolina, on October 27, 2004. The shipment was delivered to Miramar, California, on December 13, 2004. At delivery, the member noted three exceptions on the *Joint Notice of Loss or Damage at Delivery*, DD Form 1840 (shattered mirrors, broken wall unit, knob broken off washer). The record then shows that on March 4, 2005, the Senior Non-Commission Officer in Charge (SNCOTC), Marine Wing Support Squadron 3, G4, requested an extension for the member from the Traffic Management Office, Claims Section, to submit her claim because she was on temporary additional duty (TAD) to Camp Pendleton from February 14, 2005, through March 4, 2005. *The Notice of Loss or Damage*, DD Form 1840R (noting damage to an armoire and a DVD player), was signed by a claims officer on March 4, 2005, and was dispatched to the carrier on March 7, 2005.⁽²⁾

On July 19, 2005, the Navy made a demand on the carrier in the amount of \$977.28, and asserts that it attached the request for extension for the member to submit her claim because she was on TAD. The Navy and the carrier attempted to settle the matter. On August 26, 2005, the Navy revised their demand in the amount of \$798.18. However, when a settlement could not be reached, the Navy set off \$829.49 against the carrier. On February 17, 2006, the carrier requested a refund in the amount of \$659.39.⁽³⁾ The carrier denied liability for the damage to the armoire and DVD player on the basis that the DD Form 1840R (the reverse side of the DD 1840) was not dispatched to the carrier until the 84th day after delivery. The Navy subsequently denied the request for refund stating that the carrier was provided with the proof of the officially recognized absence with the demand on the carrier and the carrier never raised its objection in the attempted settlement of the claim.

On appeal to our Office, the carrier asserted that it never received a letter or statement requesting an extension for the member with the Navy's July 19, 2005 demand. The carrier further asserted that the request for extension was insufficient to establish the official absence of the member. Our Office denied the carrier's request for a refund. The carrier has requested reconsideration of that denial on the same grounds as stated in its initial appeal.

Discussion

Notice of a claim generally must be dispatched to the carrier within 75 days of delivery. Paragraph I(B) of the Military-Industry Memorandum of Understanding on Loss and Damage Rules provides that loss and damage to household goods discovered and reported by the member to the claims office more than 75 calendar days after delivery will be presumed not to have occurred while the goods were in the possession of the carrier unless good cause for the delay is shown, such as officially recognized absence or hospitalization during at least a part of the period. In the case of recognized official absences, the appropriate claims office will provide the carrier with proof of the officially recognized absence with the demand on the carrier.

In this case, the Navy asserts that the proof of the officially recognized absence was attached to the demand on the carrier. However, the carrier has submitted a statement from one of its employees stating that Carlyle has no record of ever receiving this proof and that it was not until it retained a representative after the offset that Carlyle first became aware there was such proof. 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. 04041601 (April 27, 2003) and DOHA Claims Case No. 03052001 (May 22, 2003). As the Navy points out, the carrier participated in settlement negotiations after receiving the demand on carrier but never raised the issue concerning the 75 day limit. This does suggest that the proof of the officially recognized absence was furnished with the demand.

The carrier further asserts that even if the memorandum requesting an extension for the member from the SNCOTC Marine Wing Support Squadron 3, G4, was furnished with the demand, it was inadequate proof that the member was on an officially recognized absence. The carrier contends that the Navy has not proved that the member was on TAD, and the adequate proof would be official orders and a travel voucher. First, the Military-Industry Memorandum of Understanding does not suggest the specific proof that should be furnished for an officially recognized absence. Second, we find the document in question, a certified true copy of the SNCOTC's memorandum is adequate to establish that the member was on TAD during the period in question.

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/_____

Christine M. Kopocis

Member, Claims Appeals Board

_____/s/_____

Catherine M. Engstrom

Member, Claims Appeals Board

1. On the first page of the Appeal Decision, DOHA incorrectly cited the control number as 0604712. The correct number is 06040712.
2. The record reflects that Carlyle received the DD 1840 by facsimile transmission on arch 7, 2005.

3. The request for refund consisted of \$268.09 offset for damage to the DVD player, \$359.99 offset for damage to the armoire, the administrative fee of \$25, and interest of \$6.31.