

DATE: September 5, 1996)

In Re: American Van Services, Inc.)

Claims Case No. 96070201

Claimant)

CLAIMS APPEALS BOARD DECISION

DIGEST

A petition for reconsideration is denied where it essentially only restates arguments in the original request for review, and presents no evidence demonstrating an error in fact or law in the prior decision.

DECISION

American Van Services (American), on behalf of itself, petitions for reconsideration of the Comptroller General's decision American Van Services, Inc., B-270725, June 26, 1996.⁽¹⁾ Pursuant to Public Law No. 104-53, November 19, 1995, effective June 30, 1996, the authority of the U.S. General Accounting Office (GAO) to adjudicate carriers' claims of amounts deducted by the Services for transit loss/damage was transferred to the Director, Office of Management and Budget who delegated this authority to the Department of Defense.

Background

The matter involved transit loss or damage to the household effects of a service member transferred from Eglin Air Force Base, Florida to Nellis Air Force Base, Nevada in October 1993. American delivered the household goods on February 17, 1994. The service member timely notified American of loss or damage on the date of delivery and on February 24, 1994. Based on the portion of the member's claim which it initially allowed, the Air Force first asserted a claim of \$227.95 against American. Although American was timely notified of the damage to them, the Air Force denied the service member payment for two items, a stereo and a table, and therefore, it did not consider them in its recovery demand on American. American paid \$227.95, as demanded, by a check with a notation on the reverse side which stated that proper endorsement of the check released American of any further liability in connection with the bill of lading. The Air Force endorsed and deposited this check on June 3, 1994. Later, the service member provided support to the Air Force for the table and stereo, and the Air Force recovered an additional \$400.41 against American. American contends that the endorsement precluded further liability.

The Comptroller General denied recovery. After discussing the shipper's right to recover additional damages if he dispatches notice to the carrier within 75 days of delivery, he discussed the holding in McDonald v. United States, 13 Cl. Ct. 255 (1987) with respect to attempts to impose an accord and satisfaction against the government. On reconsideration, American reargues its position and refers us to the definition of "claim" under Air Force Instruction 51-502 (25 July 1994).⁽²⁾ Under paragraph 1.3 of AFI 51-502, a "claim includes all damages that a claimant sustains because of an accident or incident." American also referred to correspondence in another claim in which the Air Force stated that acceptance of a carrier's offer (of settlement) is established by either endorsing and depositing a carrier's check, or by signing a release form releasing the carrier from further liability.

Discussion

We find no basis upon which the petition may be granted. To prevail on reconsideration, the carrier must demonstrate an error in fact or law, and neither disagreement with a decision nor restatement of arguments already made establishes that the decision was based on an error of fact or law. See Eckiller Transportation Corporation-Reconsideration, B-245385 & B-245385.2, May 20, 1992. There is no dispute on the facts, and American's petition for reconsideration essentially

reargues its prior legal position. This position was considered by the Air Force and at two separate levels at GAO.

American does not explain why the situation here is distinguishable from McDonald. Like McDonald, it does not appear that there was any dispute with respect to the \$400.41 at the time of the negotiation of the check. The Secretary of the Air Force has delegated settlement authority for claims such as this to the chief, branch chiefs and section chiefs of the Air Force Legal Services Agency and to staff judge advocates at Air Force bases, stations and fixed installations. See AFI 51-502, July 25, 1994. There is nothing in the record which constitutes an offer of compromise of the claim by any person, and more specifically, none offered by any person with authority to settle a claim. Nor does the record reflect that the official who had authority to cash the check on behalf of the Air Force had the authority to settle the debt at less than the amount otherwise due. Moreover, on the surface, AFI 51-502 did not apply at the time the claim accrued, and the relevancy of paragraph 1.3 to third party carrier recoveries is not explained.

Conclusion

Accordingly, the petition for reconsideration is denied.

|s| Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

\s\ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Christine M. Kopocis

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1. The decision involved the underlying claim of American Van Services involved in GAO's Settlement Certificate Z-2862118-69, dated December 7, 1995, regarding Air Force Claim Nellis AFB 94-871.

2. AFI 51-502 is a successor publication to Air Force Regulation 112-1, Claims: Claims and Tort Litigation, (31 October 1989).