DATE: September 5, 1996

In Re:

American International Moving, Corp.

Claimant

Claims Case No. 96070206

CLAIMS APPEALS BOARD DECISION

DIGEST

The Defense Office of Hearings & Appeals will not question an agency's calculation of the value of the damages to items in the shipment of a service member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. The Air Force's acceleration of depreciation of a one year old mattress and box spring to 25 percent to reflect the preexisting damage noted by the carrier on the descriptive inventory that they were both "soiled, stained and badly worn" is not unreasonable unless the carrier provides additional evidence demonstrating that 25 percent depreciation was clearly unreasonable. The inventory description, by itself, does not justify the 90 percent (maximum) depreciation advocated by the carrier.

DECISION

American International Moving, Corporation (American) appeals the General Accounting Office's (GAO) Settlement Certificate Z-2866798-13, dated October 25, 1995, which denied its claim for reimbursement of $1,455.69 deducted by the Air Force for transit loss and damage to the household goods shipment of a service member.[(1)] Pursuant to Public Law No. 104-53, November 19, 1995, effective June 30, 1996, the authority of the GAO to adjudicate carriers' reclaims of amounts deducted by the Services for transit loss/damage was transferred to the Director, Office of anagement and Budget who delegated this authority to the Department of Defense.

Background

American obtained the service member's property on June 1, 1992, in Montgomery, Alabama, and delivered it to his new duty station at Holloman Air Force Base, New Mexico on August 11, 1992. American prepared a descriptive inventory prior to the move. On the day of delivery, the member and American's agent prepared a Joint Statement of Loss or Damage at Delivery (DD Form 1840), which noted, among other things, that a plastic toy box (inventory item 3), a double box spring (inventory item 27), and a 4 X 6 mattress (inventory item 28) were missing and that parts of an upholstered furniture set (inventory items 83, 84, 86 and 91) were soiled. On October 6, 1992, the service member dispatched a Notice of Loss or Damage (DD Form 1840R) which indicated, among other things, that a Magnavox television remote control was missing.

When the service member filed his claim, he included several missing toys, along with the missing toy box. In the chair-Ottoman-sofa-love seat set (items 83, 84, 86 and 91 respectively), the service member claimed that the love seat had been marked with a black marker and other items were soiled. An Air Force claims examiner, who was a technical sergeant (E-6) in the United States Air Force, informed American by letter dated March 24, 1995, that the television was damaged (in some unspecified way), but he also stated to American that the remote control was not missing. On March 10, 1995, the claims examiner agreed not to access liability against American for the toys, television, or the upholstered furniture. The service member's Claim for Loss of or Damage to Personal Property Incident to Service (AF Form 180) did not involve a claim for damage to the television, only the loss of the remote control.

American disputes its liability for each of these items. Generally, American contends that the claims examiner in his March 10, 1995, correspondence admitted that American was not liable for the toys, television, or the upholstered

furniture. Specifically, American contends that the tender of a toy box is not evidence of tender of the toys; that the Air Force did not prove to American's satisfaction that the carrier's depreciation of the mattress and box spring by 90% each (the maximum depreciation) was inappropriate where the descriptive inventory stated that both were "soiled, stained and badly worn;" that it is not responsible for internal damage to the television and that the television had extensive preexisting damage (PED); and that it should not be held liable for reupholstering the pieces of furniture items when they had extensive PED and no effort was made to clean the mark and stain on the two items that American admits it marked or stained.

Discussion

While the claims examiner stated to American that it was not liable for the television, furniture or toys, the record also indicates that he advised American shortly thereafter that the official who had authority to settle the claim against American did not agree with such dispositions. Our review of Air Force regulations indicates that as an E-6, the claims examiner had no authority to settle such a claim.(2) Without proof that the claims examiner had authority to settle the Air Force's claim, the Air Force did not lose its claim against American.

The Air Force's final position on the television is that the television was damaged, but that a claim should not have been asserted against American. As explained above, there is no indication that a claim was ever filed against American for damage to the television, irrespective of the merits of such a claim. Accordingly, American should be refunded an additional $169.16.

There is authority which permitted the Air Force to find that toys were tendered with the toy box. In American Vanpac Carriers, B-247876, Aug. 24, 1992, the Comptroller General found that it was reasonable for the Air Force to find that tools were tendered with a container described as a "tool box" on the descriptive inventory. In a similar manner, we believe that it is just as reasonable to believe that toys are tendered with a toy chest unless otherwise indicated.

Based on the repair estimate of an upholstry firm, the Air Force found that the only way to repair the ink placed on item 91 by the carrier was to reupholster it. American has not demonstrated that such a repair was unreasonable. Item 91 was part of a matched set, and the claims examiner found that the original fabric was not available to repair one piece. Thus, all items had to be reupholstered to match. The Comptroller General found such remedy to be reasonable in this situation. See Resource Protection, B-266119, Jan. 25, 1996. The courts also recognize the propriety of this remedy. See Gugert v. New Orleans Independent Laundries, Inc., 181 So. 653, 656 (La. App. 1938). The Air Force reasonably considered the condition of this furniture prior to the move by deducting 30 percent for PED.

Finally, we see no basis for reversing the Air Force's findings with respect to the mattress and box spring. The parties agree that both were reported missing on the DD Form 1840; that each had a replacement value of $156.75; and that each was about a year old. The only question was the applicable depreciation where each was "soiled, stained and badly worn." The Air Force reports that under the Joint Military/ Industry Depreciation Guide, a 5 percent depreciation rate would have applied to items like these that had been subject to average care or usage for one year. The Air Force applied 25 percent depreciation to reflect the PED of these two items. American contends that 90 percent depreciation (the maximum depreciation under the Depreciation Guide) was reasonable based on the description of these items as "soiled, stained and badly worn" at origin.

From this inventory description alone, we cannot conclude that the Air Force was clearly incorrect in finding that the depreciation rate should have been 25 percent. During the time when the Comptroller General had jurisdiction to review disputes between government agencies and carriers on liability for loss or damage to government shipments, it was the Comptroller General's practice not to question an agency's calculation of the value of damages unless the carrier presented clear and convincing evidence that the agency acted unreasonably. See Andrews Forwarders, Inc., B-255697, Apr. 22, 1994; and American Van Services, B-249833, Jan. 14, 1993. We see no reason to change this practice. Further, the rate of depreciation is a question of fact, and we believe that it would be inappropriate to disturb the Air Force's findings on the proper depreciation rate here. See the Comptroller General's decision McNamara-Lunz Vans & Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978) in which the Comptroller General found that because the administrative office is in a better position to consider and evaluate the facts, it was the rule of his office, on disputed questions of fact between the claimant and the administrative officers of the government, to accept the statement of fact

furnished by the administrative officers, in the absence of clear and convincing contrary evidence.

Conclusion

Except for the refund of $169.16 for damage to the television, GAO's settlement is affirmed.

\s\ Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Joyce N. Maguire

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Joyce N. Maguire

Member, Claims Appeals Board

\s\ Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

1. See Air Force Claim File 1C/F/KWRD/92/00893/CR, JACC File No. 9304208 involving a shipment under Personal Property Government Bill of Lading RP-874,965.

2. Under the Air Force Regulation (AFR) in effect at the time of movement, the settlement authority could have redelegated his authority to settle, compromise, suspend, or terminate action on claims only to a subordinate judge advocate or civilian attorney. See para. 6-47b of AFR 112-1 (31 October 1989). Under the successor regulation in effect at the time the letters were written, a settlement authority could have redelegated claims authority only to a paralegal at a 7-level or higher with at least 6 months of claims experience. See para. 1.2.7 of Air Force Instruction 51-502 (25 July 1994).