

DATE: January 31, 1997

In Re:

American International Moving Corporation

Claimant

)

Claims Case No. 96082104

CLAIMS APPEALS BOARD DECISION

DIGEST

To prevail on reconsideration, a party 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.

DECISION

The Air Force Legal Services Agency requests reconsideration of the limited distribution decision of the Comptroller General in B-270345, June 20, 1996. The Air Force contends that the proper rate of depreciation in calculating carrier liability for a video disk player lost in transit was 7 percent. The Comptroller General found it to be 10 percent. In support of its position, the Air Force cites Settlement Certificate Z-2609168(20), February 27, 1991, in which a General Accounting Office (GAO) official settled a claim by upholding the Air Force's application of 7 percent in settling a claim against a carrier for a lost VCR.

Pursuant to Public Law No. 104-316, October 19, 1996, title 31 of the United States Code, Section 3702 was amended to provide that the Secretary of Defense shall settle claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at government expense. The Secretary of Defense delegated this authority to this Office.

Background

Like the VCR, the Joint Military/Industry Depreciation Guide contains no specific agreement between the industry and the government with respect to depreciation of video disk players. The Depreciation Guide was last amended before these products entered the main stream consumer market. The Comptroller General noted that in the Depreciation Guide electrical appliances generally depreciate at a rate of 10 percent per year, to a maximum of 75 percent, assuming average care and usage, for major appliances (over \$200). GAO's research also indicated that the insurance industry generally uses a 10 percent per annum depreciation rate to compensate insured clients for loss of appliances.

Discussion

To prevail on reconsideration, a party 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 DOHA Claims Case No. 96070201 (September 5, 1996) and Eck Miller Transportation Corporation-Reconsideration, B-245385.2,

May 20, 1992.

Our review of the Depreciation Guide indicates that the recommended depreciation for many of the major, and almost all of the minor, electrical appliances that are listed is 10 percent per year, with a maximum of 75 percent. Under the category of major electrical appliances, the recommended depreciation for phonographs, including stereos, is 7 percent

per year to a maximum of 75 percent, while the recommended depreciation for televisions is 10 percent per year to a maximum of 75 percent. The Air Force argues that a video disk player is used less than a television, but the record does not contain detailed evidence of whether there was more than average, or less than average, usage with respect to this video disk player. Also, to the extent relevant, there is no evidence concerning average wear with respect to video disk players generally. It can be argued that a video disk player is more related to a television than a stereo.

In Table 6-1 (item 64) of Air Force Regulation (AFR) 112-1 (October 31, 1989), an internal regulation which applied at the time of movement, the Air Force indicated that for purposes of carrier recovery, except for specified appliances, major electrical appliances (over \$200) should be depreciated at 10 percent per year to a maximum of 75 percent. There was no separate category for video disk players.

The Comptroller General was not persuaded that the settlement involving depreciation of the VCR was precedent for the video disk player now in dispute, and the above discussion indicates that the Comptroller General's finding was reasonable. Settlements of the GAO are not binding precedent for any other claim pending before that agency. See DOHA Claims Case No. 96070204 (September 5, 1996) citing the Comptroller General's Decision in B-239199.2, July 9, 1991. The Air Force has not clearly demonstrated an error of fact or law.

Conclusion

We deny the Air Force's petition for reconsideration and affirm the Comptroller General's prior decision. Because the Comptroller General's original decision was a limited distribution decision, our decision will not be widely distributed or cited as precedent.

/s/ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ Joyce N. Maguire

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Member, Claims Appeals Board

/s/ Christine M. Kopocis

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