

DOHA Claims Case No. 98043011

May 13, 1998

Resource Protection

P.O. Box 3417

Tampa, FL 33601-3417

Subject: PPGBL No. VP-953,458; Army Claim No. 94-121-1917; Carrier Claim 942692

Dear Mr. Cates:

This letter refers to your April 27, 1998, correspondence requesting that I immediately review the February 23, 1998, decision of the Claims Appeals Board (Board), Defense Office of Hearings and Appeals (DOHA), in DOHA Claims Case No. 97122314. In that decision, the Claims Appeals Board reversed a November 24, 1997, Settlement Certificate issued by DOHA's adjudicators in Claim No. 97090401, which would have allowed a refund of \$284 to Allied Transportation Forwarding, Inc. for mildew damage to the contents of Descriptive Inventory Item No. 219, a red suitcase, shipped under Personal Property Government Bill of Lading No. VP-953,458 and delivered on July 13, 1994.

Our adjudicators allowed the carrier's claim because Item 219 had not been listed on either the Joint Statement of Loss or Damage at Delivery (DD Form 1840), which listed specific item numbers, or on the Notice of Loss or Damage (DD Form 1840R), which was dispatched on July 22, 1994, without reference to specific damaged item numbers but with the comment that "clothing/textiles" had "water damage/mildew." Notice of loss or damage must be dispatched to the carrier within 75 days of delivery.

On appeal, the Board rejected as untimely the Army's attempt to introduce new evidence supporting a notice of damage within the 75-day period. However, the Board did review the claims record as it existed and found the original Government Inspection Report (DD Form 1841), with a continuation page listing Item 219, in which the Installation Transportation Officer certified that he had dispatched a copy of the report to the carrier on August 10, 1994 (copy enclosed). Separately, the Board also found that the DD Form 1840R was adequate because it advised the carrier that the clothing and textiles shipped had water damage and mildew.

In requesting review, you reargue your position on appeal that the carrier did not receive a copy of the DD Form 1841 until the Army presented the claim in February 1995, and you note that on the carrier's copy of the DD Form 1841, the "Notice of Loss or Damage" Dispatched block was blank. You did not address the Board's second basis for sustaining the Army's set off.

To prevail on reconsideration the carrier must demonstrate an error in fact or law. 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 Claim Case No. 96091601 (November 7, 1996); and DOHA Claims Case No. 96070215 (October 15, 1996). You have not presented any legal authority which indicates that the second basis for the Board's decision was incorrect; therefore, for this reason alone, it would not be proper for me to reverse the Board's decision.

Your request for reconsideration essentially reargues your position on appeal that there was no evidence that the DD Form 1841 was dispatched within 75 days of delivery. But, on the face of what appears to be an original DD Form 1841, the Installation Transportation Officer certified that he had dispatched a notice of loss or damage to the carrier on August 10, 1994. The DD Form 1841 is signed by him. While I have considered the contrary evidence you provided, I must presume as a matter of administrative regularity that the Installation Transportation Officer dispatched a notice of loss or damage as he indicated.

We trust that this satisfies the purpose of your inquiry.

Sincerely yours,

Signed: Leon J. Schachter

Leon J. Schachter

Director

Encl: Copy from original DD Form 1841 (Redacted from reading file copy incl www)