

Claims Report

United States Army Claims Service

Personnel Claims Notes

Proper Procedure for the Use of Carrier-Provided Estimates

In 1992, the Military-Industry Memorandum of Understanding on Loss and Damage Rules (MOU)¹ was modified to include, in part, procedures for the use of carrier-provided repair estimates. Claims offices must note what is required of the carrier and what information the estimate must contain before a claims office is obligated to use the carrier-provided estimate. The MOU states that the military services shall evaluate an itemized repair estimate submitted by a carrier from a qualified and responsible firm in the same manner as any estimate submitted by a claimant when either of the following situations occur:

(1) the claims office receives an itemized repair estimate from the carrier within forty-five calendar days of delivery of the items, and it is the lowest estimate overall (note that this is not forty-five days after dispatch of the DD Form 1840R); or

(2) the claims office receives the itemized repair estimate more than forty-five calendar days after delivery if: (a) the claim has not already been adjudicated and (b) the estimate is the lowest overall.²

If the carrier provides the claims office with a low repair estimate after the claims office dispatches the Demand on Carrier, that estimate will be considered in the carrier's rebuttal or the appeals process if it is lower than the estimate used by the claims office and if the carrier establishes that the claimant's estimate was unreasonable in comparison with the market price in the local area or in relation to the value of the goods prior to being damaged. Additionally, if a carrier provides an estimate based on an inspection following receipt of the DD Form 1840, the carrier is entitled to make an additional inspection and to provide an additional estimate following receipt of the DD Form 1840R.³

When the carrier fulfills these requirements and its estimate is still not used, the claims office is required to provide to the carrier, in writing, a justification for not using the estimate. Claims offices have a number of acceptable responses available to justify not using a carrier-provided estimate. First, carrier estimates frequently do not meet all of the criteria set forth in the MOU. In a recent appeal to the Defense Office of Hearings and Appeals which involved the repair and replacement of damaged picture frames, the U.S. Army Claims Service (USARCS) emphasized that the carrier-provided estimate was not obtained from a responsible and qualified repair firm.⁴ The USARCS argued that, in order to be qualified, a business must have the skill to do the specialized repairs required for the specific type of property involved. The estimate obtained by the carrier was from a furniture repair shop, not a picture frame repair shop. The USARCS argued that: (1) the repair shop was not in the business of repairing that type of property; it repairs furniture, not picture frames and (2) while the furniture shop claimed it could touch-up the frames, two different frame repair shops stated that the frames could not be touched-up due to the unique finish of the frames. Moreover, the owner has the legal right to have the repair firm of his choice complete the work.⁵

A second justification for not using a carrier-provided estimate is that the carrier's estimate may be incomplete. For example, an estimate may be incomplete if the repair quote covers only a portion of the work required. In a recent case, the carrier provided the USARCS with an estimate to replace only the missing hardware from a piece of furniture when the claimed damage included scratches and gouges in addition to missing hardware. The estimate was much lower than that provided by the owner, but, because it did not cover the total extent of the damage, it was dismissed as unreasonable and therefore did not have to be used. The government has the right to reject an estimate provided by the carrier based on the finding that it is unreasonable.⁶ The Comptroller General has ruled that in the absence of competent evidence from the carrier, it will not reverse an administrative determination by the government on this issue.⁷ A lower estimate available to the carrier from a particular firm does not show that the military member's estimate is unreasonable.⁸

1. Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules (1 Jan. 1992), *reprinted in* ARMY LAW., Mar. 1992, at 45 [hereinafter MOU].

2. *Id.*

3. *Id.*

4. This case is currently still pending.

5. See *Interstate International, Inc.—Damage to Household Goods*, B-197911.6, 1989 WL 240769 (Comp. Gen. May 25, 1989); *Allied Van Lines, Inc.*, B-182696, 1977 WL 12961 (Comp. Gen. May 20, 1977).

6. See MOU, *supra* note 1.

Claims offices should also reject a carrier's estimate for many of the same reasons it would reject an owner's estimate, even if the carrier submits the estimate in a timely manner. Claims personnel should not accept estimates from firms that have reputations for being unreliable, firms that exaggerate estimates, firms that cannot perform the work in a timely manner, firms that cannot make the repairs in the claimant's home, or firms located a considerable distance from the claimant. Ms. Barto.⁹

Checking for the DD Form 1840R

When a claimant submits a personnel claim for a transportation loss, it is essential for personnel in the claims office to conduct a quick check to ensure that a DD Form 1840R or similar notice document has been dispatched.¹⁰ This is especially important if a backlog in the office prevents the claim from being adjudicated on the same day it is received. Field claims personnel should conduct this check before the claimant leaves the office, so they can ask the claimant where the DD Form 1840R was turned in, if this is not obvious.

If a DD Form 1840R has not been completed, claims personnel should assist the claimant in completing the necessary notice documents. The simplest way of doing this is to mail to the carrier the completed DD Form 1844, which will serve as a substitute for the DD Form 1840R.¹¹

If a claims office does not check to ensure that the claimant completed the necessary notice documents and if the claimant submitted the claim within seventy-five days of delivery, it may be appropriate to waive the standard deductions for lost potential carrier recovery. Ordinarily, if a claimant fails to provide timely notice to a carrier or warehouse, the amount of money that could have been recovered from the carrier or warehouse must be deducted from the amount payable on the claim.¹² However, such a deduction need not be made if the claimant can substantiate that he or she received misinformation from a field claims office.¹³ When a claimant turns in a claim within seventy-five days of delivery, failing to tell the claimant that the carrier has not been properly notified of loss and damage may

be equivalent to providing misinformation, especially if the claimant asks general questions, such as "is this all I need to do?" Lieutenant Colonel Masterton.

Clarity of Documents

When preparing demands against carriers, field claims personnel must check all documents for clarity. If the copy of the DD Form 1844, List of Property and Claims Analysis Chart, an estimate, or any other document is too light or is unreadable, claims personnel should make a better photocopy to ensure that all information is clear.

At a recent meeting of the carrier industry and the military services, representatives of the carrier industry complained that many of the documents submitted in the demand packet are illegible or difficult to read. The carrier industry indicated that the DD Form 1844 is sometimes too light, and the carrier liability portion of the form often is not reproduced on the copy.

When a claimant submits an inventory that is so light that it is virtually illegible, the claims office should contact the carrier and request a better copy. Clear original documents and copies should speed up the claims process and reduce the need for extra correspondence with carriers. Ms. Schultz.

Claims Training

1997 - 1998 USARCS VTC Schedule

The U.S. Army Claims Service (USARCS) will hold its video teleconferences (VTC) on the following dates at the times indicated:

4 December 1997	1300-1500 EST
12 February 1998	1300-1500 EST
8 April 1998	1300-1500 EST
10 June 1998	1300-1500 EST

7. See *Beach Van & Storage*, B-234877, 1989 WL 241537 (Comp. Gen. Dec. 11, 1989).

8. See *Interstate International*, 1989 WL 240769; *Allied Van Lines*, 1977 WL 12961. The Defense Office of Hearings and Appeals recently reaffirmed this position. See DOHA Claims Case, No. 96070212 (Nov. 27, 1996).

9. Ms. Barto was a summer intern at the U.S. Army Claims Services.

10. The DD Form 1840R is not the only document which may be used for this purpose. Other documents, such as a Government Inspection Report, DD Form 1841, or a personal letter from the claimant, may also constitute proper notice of loss or damage. See generally Personnel Claims Note, *What Constitutes Timely Notice?*, ARMY LAW., June 1997, at 59.

11. *Sherwood Van Lines—Loss and Damage to Household Goods—Notice of Damage*, 67 Comp. Gen. 211 (Jan. 29, 1988).

12. U.S. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS, para. 11-21a(3) (1 Aug. 1995).

13. *Id.* para. 11-21a(3)(c).

The Fort Meade VTC Center has a twenty-four hookup capacity, and the following twenty-four locations are scheduled: Fort Benning, Fort Bliss, Fort Bragg, Fort Campbell, Fort Carson, Fort Drum, Fort Eustis, Fort Gordon, Fort Hood, Fort Huachuca, Fort Irwin, Fort Jackson, Fort Knox, Fort Leavenworth, Fort Leonard Wood, Fort Lewis, Fort McPherson, Fort McClellan, Fort Pope, Fort Riley, Fort Rucker, Fort Sam Houston, Fort Sill, and Fort Stewart.

Field claims personnel are encouraged to participate through comments, presentations, and questions during the VTC. For more information, claims personnel should contact CW2 John Lawson by telephone at (301) 677-7009, extension 341, or by e-mail at lawsonjo@claims.army.mil.