

Claims Report

United States Army Claims Service

Personnel Claims Notes

DOHA Decisions on the Internet

Decisions of the Defense Office of Hearings and Appeals (DOHA) are now available on the world wide web. The web site is: www.defenselink.mil/dodgc/doha. Once in the web site, the user should select "Claims Program," then select "Transportation and Contractual Decisions."

The DOHA is the agency that decides carrier appeals of off-set actions. It took over this function from the General Accounting Office on 30 June 1996.¹ The DOHA web site can be used to access all DOHA decisions relating to transportation claims that have been decided since July 1996. These decisions provide valuable insights into the requirements for adjudicating transportation claims and pursuing recovery action against carriers. Ms. Schultz.

Claims Implications of the New POV Storage Entitlement

On 1 April 1997, the Joint Federal Travel Regulation was amended, and service members are now entitled to store privately owned vehicles (POVs) in certain situations. Under the amendment, a service member is entitled to store one POV at government expense if he is: (1) deployed on a contingency mission which exceeds thirty days or (2) making a permanent change of station (PCS) to a foreign duty station to which a POV may not be transported.²

For storage due to contingency operations (short-term storage), the preferred place of storage is a secure fenced area located on the installation. When a secure location is not available, the local transportation office may contract with a commercial facility for POV storage. For storage due to a PCS move (long-term storage), the local transportation office may contract for storage at a commercial facility, or the service member may personally arrange for storage and be reimbursed for the expense.

Soldiers who are entitled to POV storage should maintain full comprehensive insurance coverage on the vehicle.³ This advice is important because, as discussed below, not all claims for loss and damage are payable. In addition, the total maximum amount allowable for loss or damage to vehicles during such storage is generally \$20,000.⁴ However, failure to maintain comprehensive insurance coverage is not, in itself, a reason to deny a personnel claim for loss of, or damage to, a vehicle.

Service members whose vehicles are stored in a secured area on the installation may file claims for loss or damage with a local claims office.⁵ These claims should be handled like any claim for loss of, or damage to, a POV stored in an area over which the command has assumed responsibility. Loss due to normal storage, such as dead batteries and flat tires, generally will not be compensable.⁶ Field claims offices should coordinate with the local transportation office to ensure that the facility will provide adequate protection for the POVs.

Service members whose vehicles are stored at a commercial storage facility contracted for by the government may also file

1. See *GAO is now DOHA*, ARMY LAW., Apr. 1997, at 164.

2. JOINT FED. TRAVEL REGS., ch. 5, pt. I (25 Mar. 1997). Paragraph 5805 of this part provides:

A member is entitled to store one POV, at a storage facility designated by the Service concerned, if:

1. the member is ordered to make a PCS to a foreign OCONUS PDS, and
 - a. the laws, regulations, or other restrictions imposed by a foreign country or the United States preclude shipment or entry of a motor vehicle at Government expense into that foreign country, or
 - b. the vehicle would require extensive modification (other than normal maintenance servicing) as a condition to entry into the foreign country, or
2. the member is sent TDY on a contingency operation, for more than 30 days.

3. Message, 142000Z Apr 97, Commander, Military Traffic Management Command, subject: POV Storage—Program Instructions, Effective 1 Apr 97 (14 Apr. 1997) [hereinafter MTMC Message].

4. See ALLOWANCE LIST DEPRECIATION GUIDE, item 7 (15 Apr. 1995) (copy on file with the author); U.S. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS, para. 11-12a (1 Aug. 1995) [hereinafter AR 27-20]. The Allowance List Depreciation Guide lists \$3000 per claim as the total maximum amount allowable for automobiles, but it increases this amount to \$20,000 for automobiles in transport. The U.S. Army Claims Service has determined that vehicles which are damaged during storage pursuant to this program are transport-related and are, therefore, subject to the \$20,000 maximum amount allowable. However, other maximum amounts allowable apply to various parts of an automobile that is lost or damaged during transport. For example, the maximum amount allowable for automobile radios, tape players, telephones, alarms, and accessories is \$750 per claim. See ALLOWANCE LIST DEPRECIATION GUIDE, *supra*, item 11. The Chief, Personnel Claims and Recovery Division, may waive the maximum amount allowable for good cause. AR 27-20, *supra*, para. 11-14b.

5. AR 27-20, *supra* note 4, para. 11-5e(4).

claims for loss or damage with a local claims office.⁷ These claims should be handled like any POV transportation or storage claim. Such claims should be paid only if the service member promptly reports the loss or damage. Generally, this means that the service member must report obvious external damage at the time he picks up the vehicle and must report other damage within a short time (normally a few days) after arriving at his or her new installation.⁸ In addition, loss due to normal storage generally will not be compensable.⁹ Field claims offices should coordinate with the local transportation office that arranges for such storage to ensure that a Department of Defense Form 788, Private Vehicle Shipping Document, or equivalent form is used to document pre-existing damage and storage-related damage.

Service members who arrange for storage at a commercial storage facility on their own must settle claims for loss and damage directly with the storage facility. Local claims offices are generally not authorized to pay such claims.¹⁰ Requests for exceptions to this policy should be sent to the Chief, Personnel Claims and Recovery Branch, U.S. Army Claims Service, with a personnel claims memorandum of opinion which explains the reasons for the request.¹¹ Exceptions usually will not be granted unless there are unusual circumstances which indicate that the government caused the loss or damage or that the claimant was clearly misinformed concerning his or her ability to obtain government reimbursement for the loss or damage.

The U.S. Transportation Command is currently working on a government contract to cover the new POV storage entitlement. The contract is not scheduled to be completed until 1998. The point of contact for the claims aspects of this new program is Lieutenant Colonel Masterton at the U.S. Army Claims Service, telephone (301) 677-7009, extension 304. Lieutenant Colonel Masterton.

An Inventory Containing Fifty-Seven Garage Items

When assisting a claimant with a claim for household goods which were lost or damaged, personnel at the claims office must examine all of the claimant's documents, including the

inventory. If the inventory reflects, for example, an unusual number of cartons containing "garage items," personnel at the claims office should ask the claimant to prepare a statement which explains why there were so many garage items included on the inventory.

The U.S. Army Claims Service (USARCS) recently prepared an appeal for the Defense Office of Hearings and Appeals (DOHA) which involved an inventory which reflected fifty-seven cartons labeled "garage items." The claims attorney who assisted the claimant was alert and noticed that there were fifty-seven garage items noted on the inventory, without any description of what was in each carton. Fortunately, the claims attorney was able to locate the claimant's wife, and she provided a logical explanation. She had a child with Attention Deficit Hyper Disorder. The family was scheduled to move to Germany, but the Army informed her that there were no facilities in Germany to treat her child's condition. After the movers had already packed fifty-seven cartons, she was ordered to remain at home with her child. While her husband was in Germany, she moved into her father's home and stored the packed cartons in her father's garage. After eight months, the claimant was transferred to Fort Bliss, Texas. When the packers arrived at the home where the claimant's wife had been staying, they merely labeled each carton found in the garage as "garage items" on the inventory.

In this case, the packers were at fault for failing to inspect and merely labeling the boxes found in the garage as "garage items" on the inventory. According to the Department of Defense Personal Property Traffic Management Regulation:

The carrier has the responsibility to inspect all prepacked goods to ascertain the contents, condition of the contents, and that only articles not otherwise prohibited by the carrier's tariff/tender are contained in the shipment. Furthermore, when it is determined by the carrier that goods require repacking, such packing will be performed by the carrier."¹²

6. Deterioration of an item that is caused by long-time storage, rather than mishandling or improper conditions of storage, is not compensable. See U.S. DEP'T OF ARMY, PAM. 27-162, LEGAL SERVICES, CLAIMS, para. 2-38c (15 Dec. 1989) [hereinafter DA PAM 27-262].

7. AR 27-20, *supra* note 4, para. 11-5b.

8. DA PAM 27-262, *supra* note 6, para. 2-41b(3).

9. See *supra* note 6.

10. See MTMC Message, *supra* note 3 (providing that "the government will not pay claims for damages incurred as a result of storage services procured by the member"). *Department of the Army Pamphlet 27-262* does not clearly indicate whether such claims are payable. Storage is considered to be "government sponsored" and, therefore, may result in a payable personnel claim if the government later reimburses the claimant for the storage. DA PAM 27-262, *supra* note 6, para. 2-26a(2). On the other hand, negligent or wrongful acts of the claimant's agent is a bar to payment. *Id.* para. 2-49b. Arguably, when a service member arranges for vehicle storage on his own, the storage facility may be considered to be the service member's agent for storage purposes, and any damage the agent causes to the vehicle will not result in a compensable personnel claim. The policy of the U.S. Army Claims Service is that such personnel claims for loss of, or damage to, vehicles which occurs during storage procured by a claimant are generally not payable unless the government causes the loss or damage.

11. See DA PAM 27-262, *supra* note 6, para. 2-55l.

There was a second problem involved in this claim. The claimants had packed a Sega Genesis CDX game, two Sega Genesis cartridges, and a toaster in a carton, and the carton was missing at the time of delivery. The carrier denied liability for these items and contended that it would normally label electronic items. As discussed above, the carrier failed to inspect each carton and to describe adequately the contents on the inventory. Thus, the carrier's contention failed in this case.

This case illustrates two important points. First, when electronic items such as a Sega Genesis CDX system, cartridges,

and a toaster are missing, the DOHA requires a written statement from the claimants which affirms that they owned these items¹³ and tendered them to the carrier. Second, if the inventory includes a number of unexplained or unusual items, personnel at the claims office must question the claimant in order to obtain a logical explanation for the items being on the inventory. The USARCS needs this type of information to convince the DOHA that these items were actually tendered and that the carrier failed to deliver them. Ms. Schultz.

12. U.S. DEP'T OF DEFENSE, DIR 4500.34-R, PERSONAL PROPERTY TRAFFIC MANAGEMENT REGULATION, app. A, para. 44a (Oct. 1991).

13. Claimants should include as much evidence as possible.