

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-038**

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**FINAL DECISION**

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. After receiving the applicant's completed application on December 3, 2018, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 20, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a [REDACTED] on active duty, asked the Board to correct his record so that he will be reimbursed for damage to his gun safe. He explained that he was transferred from one unit to another unit in April 2017 and

as part of the move the government shipped some of my HHGs [household goods] through a commercial carrier. During the move five items were structurally damaged beyond the normal cosmetic bumps of moving furniture; I was compensated for four of the items based on depreciation value. The safe was damaged during shipment to the extent which was immediately apparent upon opening the safe during delivery to ... by the movers. The vertical divider was dislodged from its anchors in the fireproofing, the screw anchors were yanked out of the fireproofing, and there was fresh dust from the damaged anchor points. Based on the new large scratch on the right side of the safe and the repacking damages to other furniture, I opined the 700 lbs safe was most likely dropped during transit or repacking at the storage facility. The safe was inspected and displayed to the government movers prior to releasing it to their custody for the move and they notated minor scratches on the exterior prior to moving the safe. The safe divider is no longer able [to] support weight or hold firearms and replacement parts are not made.

The applicant stated that he has exhausted all other avenues of redress for this claim. He noted that in his nineteen years of military service, he has "never filed a moving damage or repair claim before as minor damage is part of life." But the contractor and the government "have refused to provide fair or any compensation at all for the destruction of gun safe," even though "the government move process lauds to members and senior management all damage is insured for full replacement cost." In fact, he alleged, "not only are members only paid prorated

compensation for their damaged personal property but there is a practice of not paying at all and using excessive forms and processes to dissuade fair claims.” To support his claims, the applicant submitted the following:

- Several photographs show damage to the interior of the applicant’s Stack-On Total Defense gun safe, which has a space for long guns on the left, a center wall (vertical divider), and shelves for handguns on the right. The photographs show powdery yellowish debris that is the same color as the fireproofing on the gun rests and floor below the brackets that anchor the vertical divider to the ceiling of the safe. They also show that the brackets that anchor the vertical divider have been loosened and broken up the hardened foam fireproofing and that one of the brackets is missing a screw, which the applicant found on the floor of the safe. To show the loosened brackets in the photographs, the applicant had to cut and pull back the dark gray felt lining, which he stated had been slightly loosened during the move.
- An Order Confirmation print-out dated June 16, 2013, shows that the applicant ordered a “Total Defense 21 cu ft. 36 Gun Fire/Waterproof Combo Lock Safe with Door Storage” to be delivered to his home for \$1,259.71, including sales tax.
- Travel orders show that the applicant was required to report for duty at a new unit in another state on May 8, 2017, and that shipment of HHGs was authorized.
- A moving company’s Household Goods Bill of Lading shows that in April 2017 the company was to pick up the applicant’s HHG on April 21, 2017, and deliver them to a moving and storage facility on April 26, 2017.
- Inventory sheets signed on April 20, 2017, show on line #142 that a “large gun safe” was received. The condition of the gun safe begins on line #142 and continues on line #143 as follows: “HANDLES PACKED – W[the w is circled] – SCRM CHG ALL 9s + 12d.”
- A moving company’s Customer Check-Off Sheet was signed by the applicant on June 14, 2017, and lists four items as missing: #147, a fan; #161, a car crawler; and ## 169 and 170, two pieces of plastic shelving. These entries were bracketed and annotated with the words “DID NOT CHECK OFF” and the check-off chart shows that ## 169 and 170 were ultimately checked off.
- An email to the applicant from a moving company claims department, dated August 2, 2017, asks him to send photos of damaged items. The applicant responded on August 7, 2017, by sending three photographs of the gun safe.
- An email from the moving company’s claims adjuster dated September 5, 2017, states, “the attached offers for your claim have been posted in the DPS Program. Further action on your claim is pending your response to that offer. The attached offer letter will advise you as to the next steps in the process. Once offers are accepted we will proceed with issuing your settlement check.”
- The applicant’s response, also dated September 5, 2017, states that he would “accept the settlement for items 86 and 47. I do not however accept the settlement for item 150-151 as I purchased the item used for \$300; however, I will accept \$250 because I do not have a receipt of purchase.” Regarding the gun safe, he wrote the following:

For item 142 I find your denial not accurate as the item was purchased new four years ago and with a weight of 700 lbs it's not like the item was moved around or worn out. Additionally, not only was the item inspected inside and out by the movers and found to be in almost new condition. I have the damaged threaded bolt which tore out during the shipment and thus proves the damage occurred during shipment. If the damage occurred during the previous four years at my house when the safe was at rest and unmoved how would I be in possession of the damaged bolts? I would seem to reason if I had damaged the safe during the last four years I would not have retained the bolt. I am not looking for full replacement but for repair of the water tight and fire tight integrity of the safe which was intact when I placed it in the care of the movers who inspected the exterior and interior of the safe prior to moving.

- On September 7, 2017, the applicant sent an email to a Coast Guard Claims Settlement Officer with copies of documentation and emails about the claim, who replied that she would contact his transportation service provider.
- On September 28, 2017, the Claims Settlement Officer advised him that the inventory showed that the gun safe had pre-existing damage before it was moved. She also stated that the photographs showed that he had to pick up the inside felt to show the area where the screws came out and that the packers would not normally look under the felt when preparing an item to move. "They are only required to view the interior of the gun safe and note the condition of the interior of the gun safe. They are not required to lift the fabric to check for loose screws, loose brackets or any other hidden damage." She stated that she did "not have any solid evidence to use to ask them to compensate you for the claimed damage."
- In an email dated November 6, 2017, the applicant sent the Claims Settlement Officer additional photographs of the interior of the gun safe. He wrote that they showed that the interior damage "was readily apparent upon opening the safe door" so if the damage had existed before the move, "it would have been noted on the condition sheet." He stated that he did show the interior of the safe to the movers, so "if there is damage that was not listed on the inventory then the damage occurred during the move and the movers are liable." He also wrote, "I did not damage a brand new safe four years ago and hold on to the dust and broken hardware to submit during a move four years later."
- The Claims Settlement Officer responded on November 7, 2017, and asked if there was any new damage, such as dents, to the outside of the safe. She also asked whether the interior felt had already been pulled away, as shown on the photographs, or whether he had had to pull the felt back to see the damage, and whether a screw was lying on the floor of the safe when he opened it, as shown in the photograph. The applicant replied that the "felt was hanging down slightly and the vertical support was angled away from the shelf side"; that the "screw and plastic bushing was laying on the floor of the safe"; and that the only new scratch he found was on the right wall of the safe. He included a photograph of a large scratch that appears new.
- A letter from a company claims adjuster dated January 11, 2018, which was emailed to the applicant on February 7, 2018, states that his claim for loss and/or damages to four items on the inventory had been agreed: #47, a bookcase valued at \$55.98; #86, a bookcase valued at \$24.92; and ##150-151, a wall unit valued at \$150.00. But the letter states the following about the gun safe:

Line #1 INV #142 Safe: DENIAL MAINTAINED: We asked for an estimate and to date the estimate has not been received. Per received photos, there is no evidence the claimed damage was transit related. We deny liability for this item.

- On a “Claim to Loss or Damage to Personal Property Incident to Service” form DD 1842, which the applicant completed on April 26, 2018, he claimed damage in the amount of \$1,260.00 to the gun safe.
- On an attached form DD 1840R, “Notice of Loss or Damage,” the applicant reported that the property damaged was item #142 on the inventory, a gun safe, and he described the damage as “vertical divider dislodged from anchors in roof causing loss of fireproofing and stability to shelves inside safe.” He noted that it had been delivered to his new home on June 14, 2017.
- On an attached form DD 1844, “List of Property and Claims Analysis Chart,” the applicant stated that he had paid \$1,260.00 in June 2013 for a “Stack-On Water/Fire Gun Safe” and described the damage as “internal shelf and fireproofing damaged during move.” He noted that the “pick-up date” for this item was April 20, 2017, and wrote in the block for remarks that the “company does not sell replacement fireproofing panel as of 02/20/2018.”
- In a memorandum dated May 21, 2018, the Coast Guard Claims Settlement Officer advised the applicant that she had reviewed his claim under 31 U.S.C. § 3721 and Coast Guard regulations and determined that it “claim must be denied”:

The claimed damage, screw falling out, damage to the firewall and internal shelf, cannot be substantiated as transit related. When the packing crew at origin inspects for shipment, they are not required to pull back fabric on any item to check for loose or missing hardware, nor are they required to check shelves for stability. The packing crew is only required to do a visual inspection of the item so they may annotate any obvious pre-existing damage on the descriptive inventory prior to taking custody of the item for shipment to the member’s next duty station. ... If you are dissatisfied with this decision, you may submit a request for reconsideration in writing and it should be submitted within 60 days of the date of this letter. ...

- On July 18, 2018, the Claims Settlement Officer advised the applicant that his claim for damage to or loss of personal property incident to his service had been considered under 31 U.S.C. § 3721 and COMDTINST M5890.9, but it was being deferred pending receipt of an estimate of repair of the gun safe from a firm that is in the business of repairing such items. If the firm found that it was “beyond economical repair,” the estimate should say so and provide an estimated replacement value. She noted that he could use any such firm he wanted but that she had contacted one in his area, which had offered to “charge you a non-refundable inspection fee of \$149.00 to inspect the damage to the safe, and provide a written report to you that you will need to forward to this office for review and consideration.” But he could be reimbursed for the fee by submitting a receipt showing that he had paid it.
- A work order dated July 25, 2018, shows that a different lock and security company inspected the applicant’s “Stack On” gun safe for \$194.00, which the applicant had paid. The inspector wrote, “Found the safe damaged. Indications of possible drop or fall. The interior fire protection lining has holes where the partition was mounted.” The inspector

recommended “Replacement of safe or interior fire seal” but did not provide an estimate of how much replacing the interior fire seal would cost.

- In an email dated July 24, 2018, the company that manufactured the gun safe advised the applicant that the safes “are assembled overseas and therefore we do not offer either in-factory repair services or replacement materials. We are sorry but there is nothing we can do to repair the damage to your safe or get you the materials and we hope you can understand the situation.”
- In a memorandum dated October 18, 2019 (sic), a Senior Claims Settlement Officer of the Coast Guard advised the applicant that his claim for reconsideration had been reviewed pursuant to 31 U.S.C. § 3721 and COMDTINST M5890.9 but that only the \$194.00 that he had paid for the inspection would be reimbursed. He stated that

[a]fter discussing the estimate of repair with [the inspector], reviewing the pictures of the claimed damage, and comparing them to the descriptive inventory at origin, it is determined that the damage to the interior of the safe is not transit related. The descriptive inventory taken at origin lists worn all, scratched, rubbed, marred, chipped on all sides and edges. The inspector did not note any new damage to the exterior of the safe that would indicate mishandling by the TSP. Additionally, when I contacted [the inspector] regarding his statement in the estimate, he indicated that he did not witness dents, gouges or scrapes that would indicate mishandling by the Transportation Service Provider (TSP). Your request for reconsideration for the replacement cost of the safe is denied.

### VIEWS OF THE COAST GUARD

On June 4, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The JAG claimed that the BCMR does not have subject matter jurisdiction over the case because the applicant “is seeking reimbursement from the commercial carrier for his household goods (HHG) move. This claim is not for correction of a ‘record’ within the meaning of 10 U.S.C. § 1552.” The JAG stated that 10 U.S.C. § 1552 was “intended to provide correction of an individual’s service record which has entries resulting from the actions of general courts martial and of statutory bodies, such as Boards of Review, and to provide reimbursement of any compensation which the individual had been denied due to an incorrect or unjust entry. 40 Ops. Att’y Gen. 504 (1947),” citing *Larionoff v. United States*, 365 F. Supp. 140, 144 (D.D.C. 1973), *remanded on other grounds* 533 F.2d 1167, *certiorari granted* 429 U.S. 997, *affirmed* 431 U.S. 864. The JAG argued that such “compensation” meant “back pay and bonuses” and that the Board “cannot award money damages,” citing *Von Hoffburg v. Alexander*, 615 F.2d 633, 640-41 (5<sup>th</sup> Cir., 1980). The JAG also stated the following:

The general purpose of a BCMR is to correct a military record, not a court of inquiry in which to file an affirmative claim for monetary relief sounding in personal property (tort) damage. Although a BCMR may award monetary damages, these damages are generally limited [to] back pay, allowances, and (re-)enlistment bonuses. Applicant’s claim, conversely, seeks remuneration for damages allegedly sustained when the government allegedly mishandled his personal property during a government-contracted HHG. The BCMR does not have jurisdiction to hear this application based upon the jurisdictional limits set forth in 10 U.S.C. § 1552 and the cases that interpret it. The application should be denied.”

**APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On June 5, 2019, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a written response within thirty days. No response was received.

**APPLICABLE LAW AND POLICY**

Title 31 U.S.C. § 3721 states the following about members’ claims:

(a) In this section--

(1) “agency” does not include a nonappropriated fund activity or a contractor with the United States Government.

(2) “head of an agency” means--

(A) for a military department, the Secretary of the military department;

(B) for the Department of Defense (except the military departments), the Secretary of Defense; and

(C) for another agency, the head of the agency.

(3) “settle” means consider, determine, adjust, and dispose of a claim by disallowance or by complete or partial allowance.

(b)(1) The head of an agency may settle and pay not more than \$40,000 for a claim against the Government made by a member of the uniformed services under the jurisdiction of the agency or by an officer or employee of the agency for damage to, or loss of, personal property incident to service. ...



(f) A claim may be allowed under this section only if--

(1) the claim is substantiated;

(2) the head of the agency decides that possession of the property was reasonable or useful under the circumstances; and

(3) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant.

***Claims and Litigation Manual, COMDTINST M5890.9***

Chapter 6 of COMDTINST M5890.9, the Claims and Litigation Manual, includes rules for handling claims under 31 U.S.C. § 3721. Chapter 6.C.1.a. states that a claim may be presented by an individual member. Chapter 6.D. defines a “cognizable claim” as follows:

1. Cognizable Claims. A cognizable claim is for damage to, loss of, or destruction of personal property of a military member or civilian employee sustained incident to the service of the military member or civilian employee. The following is a nonexclusive list of claims that are presumed to be incident to service unless such a presumption would be unreasonable under the particular circumstances:



2. Property damaged or lost in transportation or storage pursuant to orders, in connection with travel under orders, or in performance of official duties, including property:

a. In the custody of the claimant or while in a private or public conveyance in which the claimant is traveling in performance of official duties;

b. In the custody of the claimant, while awaiting imminent assignment to government quarters; or

c. In private storage when necessitated by military reasons, such as extended continuous temporary duty periods for which no entitlement for storage at government expense exists.

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12. Reasonable fees for obtaining estimates or appraisals in connection with presenting a claim if:  
a. An estimate or appraisal (3-A-7-b) is required by this Manual;

Chapter 6.H. provides the procedures for claims arising from the shipment of HHG pursuant to permanent change of station (transfer) orders. It states that claimants should first notify the carrier within 75 days of the delivery date and may submit a claim directly to the carrier and negotiate a settlement with the carrier before submitting a claim to the Coast Guard.

Chapter 6.H.9. states that a Claims Investigating Officer ensures that all required documentation is submitted, including an estimate of repair or appraisal of value; examines the documentation; and compares descriptions of pre-existing damage shown on the inventory with claimed damage. Chapter 6.H.9.b.(3) notes that the Coast Guard “does not pay for preexisting damage. See note 2 to enclosure (1) concerning internal damage.” Enclosure (1) states the following about internal damage:

Internal damage to appliances when no external damage to the cabinet or transportation container is evident[:] Consideration should be given to paying for such damage if there is evidence of rough handling of other items in the shipment, the item is relatively new in comparison to its useful life, the claimant is apparently honest based upon an examination of the entire claim, and/or a qualified repairman is able to state that the damage was the result of rough handling in transit. In such cases, evidence suggesting transit damage should be viewed in the light most favorable to the claimant.

Chapter 6.H.9.c. states, “Repair of preexisting damage is not compensable unless the repair of that damage is not separable from the repair of the new damage.” In addition, if an item cannot be repaired, “Coast Guard liability is limited to depreciated replacement value.”

Chapter 6.I. states that a settlement authority must determine, *inter alia*, whether the loss or damage occurred as alleged and, if the claim is approved, an appropriate settlement, including offset by any insurance proceeds. Chapter 6.J. provides that a settlement authority shall reconsider a claim upon the claimant’s timely request.

## FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant’s military record and submissions, the Coast Guard’s submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The JAG’s claim that the Board lacks jurisdiction over this case is clearly erroneous. Paragraph (a) of the statute authorizes the Board, on behalf of the Secretary, to correct “any military record of the Secretary’s department when the Secretary considers it necessary to correct an error or remove an injustice.” Paragraph (j) explains that in § 1552, “the term ‘military record’ means a document or other record that pertains to (1) an individual member or former member of the armed forces ....” And paragraph (c) states that the Secretary “may pay, from applicable current appropriations, a claim for the loss of pay, allowances, *compensation, emoluments, or other pecuniary benefits*, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant ....” (Emphasis added.)

Thus, with two exceptions,<sup>1</sup> the Board may correct any Coast Guard record that pertains to a member or former member, including Coast Guard records showing that the Coast Guard denied a member's claim for compensation for damage to his HHG pursuant to 31 U.S.C. § 3721. Also contrary to the JAG's claim, the Secretary's authority to pay amounts owed as a result of a correction by the Board clearly extends well beyond "back pay, allowances, and (re-)enlistment bonuses."<sup>2</sup>

2. The record shows that the applicant has exhausted his administrative remedies and that the application was timely filed within three years of the applicant's discovery of the alleged error and injustice.<sup>3</sup>

3. The applicant alleged that the Coast Guard's denial of his claim for damage to his gun safe under 31 U.S.C. § 3721 is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>4</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>5</sup>

4. Pursuant to PCS orders in the spring of 2017, the applicant's HHG were moved from his home to storage and from storage to his new home near his new unit, a few hundred miles away. The carrier's inventory sheets show that upon receiving the applicant's 700-pound Stack-On Total Defense gun safe on April 20, 2017, there were some scrapes and scratches around the outside. The carrier wrote on the inventory "W[the w is circled] – SCRM CHG ALL 9s + 12d," and the Coast Guard's Senior Claims Settlement Officer translated these notes as "worn all, scratched, rubbed, marred, chipped on all sides and edges." According to the Claims Settlement Officer, the carrier was required to visually inspect the inside of the gun safe as well and to note any visible damage. The inventory sheets show that the carrier made no notation of any damage to the inside of the safe. Therefore, presumptively, there was no visible evidence of internal damage when the carrier collected the gun safe on April 20, 2017.

5. An Order Confirmation print-out that the applicant submitted shows that the gun safe was delivered new to his home near his prior unit on or about June 16, 2013. The applicant

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<sup>1</sup> 10 U.S.C. § 1552(f) limits the Board's authority over members' records with respect to convictions by court-martial, and the Constitution requires a commission by the President with the advice and consent of the Senate to promote an officer. U.S. CONST. art. 2, § 2, cl. 2.

<sup>2</sup> See, e.g., *Verplanck v. England*, 257 F. Supp. 2d 182 (D.D.C. 2003) (concerning a BCNR decision on a disenrolled cadet's debt for tuition at the U.S. Naval Academy); *United States v. Olson*, 25 M.J. 293, 298 (C.M.A. 1987) (noting that the accused could contest alleged overpayments due to false travel claims through the BCMR or the Claims Court); and *Mansfield v. Orr*, 545 F. Supp. 118 (D.C. Md. 1982) (concerning the Air Force BCMR's determination that the Air Force did not owe an ROTC student for tuition or travel).

<sup>3</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. §§ 52.13(b) and 52.22.

<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).



has signed official statements claiming that thereafter, the safe remained in his home unmoved for almost four years until it was collected with the rest of his HHG on April 20, 2017.

6. Photographs that the applicant submitted with his claims to the carrier, the Coast Guard, and the Board show that after the gun safe was delivered to his new home on June 14, 2017, there was powdery yellow debris on the gun rests and on the dark gray, felt lining below at least one of the brackets that anchored the vertical divider in place. The color of that powder matches that of the hardened foam fireproofing in the ceiling of the safe. The yellowish powder stands out clearly on the dark gun rests and against the dark gray felt lining of the safe.

7. The applicant's photographs also show that each bracket anchoring the vertical divider to the ceiling has two screws that go up through the hardened foam fireproofing into the ceiling of the safe and that the brackets and screws have shifted and crumbled the fireproofing around the screws, which produced the powder below. The applicant stated that upon opening the safe at his new home in 2017, he found the vertical divider dislodged from its position, a screw lying on the floor of the safe, and some of the felt lining loosened a bit around the brackets. The applicant has retained the screw that he found. The photographs show that he had to cut and/or pull back the safe's felt lining to reveal the full damage to the brackets. In addition, they show that one of the ceiling brackets is missing a screw—presumably the one found on the floor of the safe. The applicant stated that because the brackets are no longer anchoring the vertical divider, it is now not strong enough to stay in place with the weight of long guns leaning against it from the left side and handguns on the shelves on the right side. According to the representative of the lock and security company who inspected the gun safe in July 2018, as required by the Coast Guard, the damage to the brackets anchoring the vertical divider is consistent with the safe falling or being dropped.

8. Following the move, the applicant submitted timely claims to the carrier for damage to the gun safe, two bookcases, and a two-piece "wall unit." The carrier agreed to settle the claims for the wall unit and the bookcases but denied the claim for damage to the gun safe. The Coast Guard likewise denied the applicant's claim for damage to the gun safe, finding that it was not "transit related," despite the lack of any notation of internal damage on the inventory and despite the evidence of the large new scratch on the outside of the safe. The memorandum from the Coast Guard Claims Settlement Officer dated May 21, 2018, shows that his claim was first denied because a visual inspection of the safe's interior would not have revealed any instability in the shelves or any loosened brackets above the felt. The memorandum from the Senior Claims Settlement Officer dated October 18, 2018, shows that upon reconsideration, the applicant's claim was denied because there was no "new damage to the exterior of the safe that would indicate mishandling by the TSP."

9. Based on the Coast Guard's rules regarding internal damage in Enclosure (1) to COMDTINST M5890.9, the evidence of record, and the applicant's official statements on his DD 149, the Board finds that he has proven by a preponderance of the evidence that his gun safe was damaged while in transit with his other HHG in 2017:

a. The safe was bought and delivered new to his home in June 2013, and he has signed official statements, which the Coast Guard has not contradicted, showing that he used

the safe to store his gun collection for almost four years and that the safe was not moved again until it was received by the carrier along with his other HHG on April 20, 2017. Therefore, while the outside surface of the safe suffered scrapes and scratches during the four years—as noted on the carrier’s inventory—there was no opportunity during the four years for the safe to have suffered substantial interior damage of the sort apparent in the applicant’s photographs.

b. Given the structure of a 700-pound steel safe, daily living and use would cause scrapes and scratches to the outside surface of the sort recorded on the carrier’s inventory but would not break the brackets loose from the ceiling in the interior as shown in the photographs.

c. The carrier inspected the interior of the safe upon receipt and recorded no damage to the interior. Therefore, the interior of the safe was presumptively not damaged at that time. But interior damage was obvious when the safe was delivered to the applicant’s new home because (a) the vertical divider was dislodged from its position, (b) a screw had fallen to the floor, and (c) hardened foam fireproofing in the ceiling had crumbled and fallen as a light yellow powder onto the gun rests and the dark gray felt lining on the floor of the safe. This is interior damage that the inspector for the carrier would have noticed and recorded on the inventory if it had existed when the safe was received.

d. The fact that the applicant had to cut and/or pull back the felt lining to be able to photograph the damage to the brackets is not evidence that the damage existed before the move. Even though the inspector for the carrier would not have seen the brackets beneath the felt lining upon a quick visual inspection, the inspector would or should have noticed a dislodged vertical divider, a screw on the floor, and light yellow powdered fireproofing on the dark gun rests and dark gray lining on the floor.

e. As the inspector for the lock and security company noted in July 2018, only a drop or fall would have caused the ceiling brackets anchoring the vertical divider to loosen and break up the surrounding fireproofing. And given the structure of a safe, a short drop or fall—such as occurs when a very heavy object that has been tilted onto a dolly for transport is not slowly and carefully lowered to the ground—could damage the relatively lightweight interior elements of a safe without causing any noticeable additional damage to the exterior steel surface, especially if the exterior was already scratched, like the applicant’s safe. Therefore, the lack of a big new dent on the exterior surface of the safe is not evidence that the safe was not dropped in transit, as it might be for wooden furniture or a household appliance.

f. The carrier substantially damaged four other large pieces of the applicant’s furniture and reimbursed him for them. This other damage is evidence of rough and careless handling by the carrier in the transport of the applicant’s HHG.

10. Because the applicant has proven by a preponderance of the evidence that the interior of his gun safe was damaged during the carrier’s transport of his HHG in 2017, the Board finds that the Coast Guard’s records should be corrected to show that the interior damage to his gun safe was found by the Coast Guard’s Senior Claims Settlement Officer to have been damaged in transit (i.e., transit related) during the shipment of his HHG pursuant to his PCS in 2017, and the applicant should receive any amount he is legally due as a result of that correction pursuant to 10 U.S.C. § 1552(c), 31 U.S.C. § 3721, and COMDTINST M5890.9. The Board expresses no opinion regarding the feasibility of repair or the depreciated value of the safe.

**ORDER**

The application of [REDACTED] USCG, for correction of his military record is granted in part:

The Coast Guard shall correct his records to show that the interior of his safe was damaged in transit during the transportation of his household goods pursuant to his permanent change of station in 2017.

December 20, 2019

