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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-217478

**DATE:** January 2, 1986

**MATTER OF:** Walter C. Stephenson

**DIGEST:** The Forest Service assessed a claim against one of its forest rangers to recover \$1,475.15 (plus interest) for unauthorized expenditures which he directed his staff to make in order to expand and improve the building which serves as headquarters for the Jemez District of the Santa Fe National Forest. Pursuant to GAO's settlement authority under 31 U.S.C. § 3702 (1982), and the agency's regulations which provide for assessing financial liability against Forest Service employees, GAO finds that the legal basis of the claim has not been adequately established. Therefore, collection should be terminated.

We have been asked to review the determination of the United States Forest Service, Department of Agriculture, concerning a debt asserted against Mr. Walter C. Stephenson, Forest Ranger for the Jemez District of the Santa Fe National Forest. In accordance with its interpretation of its regulations, the Forest Service determined that Mr. Stephenson should reimburse the Government for some unauthorized expenditures of public funds. Prior to rendering this decision, we obtained the comments of both Mr. Stephenson and the Forest Service. For the reasons given below, we find that the Forest Service has not adequately established the legal basis for this claim, and its collection should be terminated.

**BACKGROUND**

In August and September of 1982, Mr. Stephenson, as Jemez District Forest Ranger, instructed his staff to take steps and expend funds necessary to accomplish the laying of a concrete slab which eventually would be used to support a structural addition to the building in which he and his staff worked. According to the record submitted by the Forest Service, Mr. Stephenson authorized work and expenditures, based upon his mistaken interpretation of applicable Forest Service

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regulations.<sup>1/</sup> In the view of the Forest Service, the actions taken by Mr. Stephenson and his staff violated a number of Forest Service procurement regulations which, among

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<sup>1/</sup> Mr. Stephenson was relying upon his interpretation of section 6516.31 of the Forest Service Manual (FSM) (ID No. 133, June 17, 1982), which provides:

"Minor, unforeseen construction and acquisition of buildings and other facilities may be financed from the benefiting operating and research funds under the following conditions:

1. The need was unforeseen at the time of budget preparation,
2. The work is of a higher priority than work foregone,
3. Standards fully protect the resources, and
4. The total project is estimated to be less than \$50,000."

Mr. Stephenson maintains that the work he ordered fell under the category of "minor, unforeseen construction." Among other things, he argues that the concrete slab (estimated to cost approximately \$8,000) may be considered to be a project separate and distinct from the eventual construction of the structural addition to the building (estimated to cost about \$50,000).

other things, required him to obtain official approval before undertaking a construction project of this kind and amount.<sup>2/</sup>

On or about September 9, 1982, the work and expenditures authorized by Mr. Stephenson came to the attention of higher officials in the Forest Service. Mr. Stephenson and his staff were immediately ordered to suspend work on the project, pending investigation of its propriety. In an apparent coincidence, on the next day, September 10, 1985, regional officials of the Forest Service issued a notice intended to clarify the regulation which Mr. Stephenson had misinterpreted.<sup>3/</sup> That notice stated that "[s]ome situations which have come to our

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<sup>2/</sup> Forest Service bases its position upon the provisions of a regional regulation (Region 3, PBMI, FY 1982) which states:

"Projects estimated to cost \$50,000 or more must be financed from C&LA [Construction and Land Acquisition] funds and must be approved in advance by the Regional Forester. Minor construction projects (including renovation of or additions to a building) unforeseen at the time of budget presentation and estimated to cost less than \$50,000 can be financed from benefiting funds, providing Regional Forester's approval has been obtained and documented in the financial plan records \* \* \*."

Forest Service maintains that the work authorized by Mr. Stephenson does not qualify as "minor, unforeseen construction" because, in its view, it is not feasible to treat the concrete slab and the eventual structural addition (which together are estimated to cost approximately \$60,000) as separate projects. In any event, the regulation cited by Forest Service requires that approval be obtained for such work, regardless of its size.

<sup>3/</sup> Based on notations in the notice itself, it would appear that the notice, although dated September 10, was originally drafted on or before September 2, 1985, i.e., before Mr. Stephenson's unauthorized work was discovered by higher authorities. This notice clearly indicates that Mr. Stephenson was not alone in his misinterpretation of Forest Service regulations.

attention recently indicate that regional direction may not be clear" concerning the need to obtain approval for work of the kind and amount ordered by Mr. Stephenson. According to the notice, "confusion and misunderstandings" had occurred. Forest Service officials were advised that if work had already been undertaken "without the required approval," approval should be sought as soon as possible.<sup>4/</sup>

On October 15, 1982, the Santa Fe National Forest Supervisor filed a 10-page report concerning the Stephenson incident. Among the findings in that report were the following:

"It is believed that the intent of the District Ranger [Stephenson] was to solve a problem of lack of office space the best way he could and as legally as possible. There is no doubt but what he was wrong in the approach he took.

\* \* \* \* \*

"The District Ranger exercised poor judgment in not seeking advice as to how to proceed in this project, and must be held responsible for proceeding without proper approvals from both engineering and fiscal. It appears that Ranger Stephenson committed an error (FSM 6507.2) e.g. ' . . . unintentional human errors, miscalculations, misjudgments, misinterpretations, etc.'. It is felt that he should receive punishment commensurate with this offense. [Mr. Stephenson] has had an exemplary career with the Forest Service since 1969. There is no record of wrong-doing during his career. The wrong-doing committed in this case relates to misinterpretation of policy and management direction. There has been no effort to cover up what was happening or hide any facts. Supplies were purchased and labor expended for a structure that is and will become government property. Because of these mitigating circumstances it is believed that a letter of reprimand should be levied against Mr. Stephenson.

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<sup>4/</sup> Regional Forester M. J. Hassell, "6520 Financial Management" Letter, Sept. 10, 1982.

"All of this action does not negate the need for expansion of [Mr. Stephenson's] Jemez Office. \* \* \* As soon as approval would be received completion of the slab [and the office expansion] to the approved design should be allowed so as to take advantage of the effort already expended."5/

This initial report was incorporated without criticism or dispute into the Forest Service's final decision of August 29, 1984.6/ However, despite the finding in the incorporated initial report that Mr. Stephenson had committed an "unintentional human error," the agency's final decision on the matter concluded that he should be held financially liable for the "non-salvageable" portion of the work he improperly authorized.7/ To support this conclusion, the final decision cited section 6507.32 of the Forest Service Manual (FSM) (FSM 4/81 AMEND 199) which states that "when instructions are deliberately violated, the individual shall be held financially liable when the willful act causes a pecuniary loss to the Government."8/

Consequently, on September 28, 1984, Mr. Stephenson was billed by the Forest Service for \$1,475.15 to cover

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5/ Santa Fe National Forest Supervisor James L. Perry, "1450 Investigations" Letter to Regional Forester, R-3, Oct. 15, 1982. The record also contains a number of other official documents which reached the same or similar conclusions. E.g., Santa Fe National Forest Supervisor Maynard T. Rost, "6500 Finance and Accounting" Letter, Apr. 5, 1984.

6/ Director of Fiscal and Accounting Management, R-3, Arvin L. White, "6500 Finance and Accounting" Letter, Aug. 1, 1984 (approved by Director of Fiscal and Accounting Management, WO, C. E. Tipton, Aug. 29, 1984) at 1. (We note that prior to the issuance of this final decision, in June 1983, Mr. Stephenson was suspended without pay for 2 weeks as punishment for his failure to comply with Forest Service regulations in this matter. This suspension cost Mr. Stephenson approximately \$1,320 in lost salary.)

7/ Id. at 5 (emphasis added).

8/ Id. at 4 (emphasis added).

"non-salvageable costs connected with the Jemez Ranger Office Addition (9/17/82)." Finally, we note that the Forest Service has now determined that the project that Mr. Stephenson attempted to initiate without the proper authority is, in fact, necessary and appropriate, and is scheduled for completion in the near future.

### GAO JURISDICTION & SCOPE OF REVIEW

The General Accounting Office is authorized to review this matter under its general authority to settle "all claims of or against the United States Government." 31 U.S.C. § 3702(a) (1982).

In Government employee liability cases resulting from loss or damage to Government property, our Office engages in a narrow review of agency actions. We determine, first, whether the agency asserting a claim against its employee has statutory authority to do so, or is acting under appropriate administrative regulations. See, e.g., 25 Comp. Gen. 299 (1945); B-208108, July 8, 1983.

Our Office then asks whether the agency followed the regulations in the individual case. As we stated in B-208108, July 8, 1983:

"If an agency has held an employee liable consistent with its regulations - for example, by finding him negligent - we will not substitute our judgment for that of the investigating authority, and will overturn the finding only if we conclude that it lacks a rational basis."

See also B-212502, July 12, 1984. Cf. 54 Comp. Gen. 310, 312 (1974); 57 Comp. Gen. 347, 350 (1978).

### DISCUSSION

#### 1. Does Forest Service have sufficient regulations?

The Forest Service clearly has administrative regulations that satisfy the requirements of our previous decisions, as discussed above. The Forest Service Manual (FSM) provides that:

"[i]ndividuals will be held financially liable for their willful or unauthorized acts which result in monetary or other personal gain to which they are not entitled under the

regulations. Also, when instructions are deliberately violated, the individual shall be held financially liable when the willful act causes a pecuniary loss to the Government." FSM, § 6507.32 (FSM 4/81 AMEND 199).

At the same time, however, the FSM also provides for:

"\* \* \* another category of actions that are unintentional human errors, miscalculations, misjudgments, misinterpretations, etc. These result from employees not being fully and adequately advised, not fully knowledgeable of the subject or specific regulations concerning their action, \* \* \* or other actions that may result from human error and are not intentional. Employees should be advised and/or assisted concerning how these types of errors can be corrected.\* \* \*" FSM, § 6507.2 (FSM 4/81 AMEND 199)

The FSM states that "[e]rrors as described in FSM 6507.2 are not to be administered under [section 6507.32]." FSM, § 6507 (FSM 4/81 AMEND 199). In view of this last provision, it would appear that the FSM does not authorize the assessment of pecuniary liability against Forest Service employees for errors of the kind described in section 6507.2.

## 2. Has Forest Service followed those regulations?

Our review of the record leads us to conclude that the Forest Service did not properly apply its regulations in this case.

There is no contention that Mr. Stephenson profited financially from his actions. Therefore, in order to hold Mr. Stephenson liable (pursuant to FSM, § 6507.32) for the costs incurred by the Government, the agency must conclude that his actions constituted a "deliberate violation" of the applicable regulations. Giving this phrase its plain and ordinary meaning, we find that the words "deliberate violation of instructions" refer to actions willfully taken, either with full awareness that they were not consistent with the applicable orders and regulations of the agency, or with complete and reckless disregard of whether they were consistent.

As we noted earlier, the Santa Fe National Forest Supervisor investigated the incident and, on October 15, 1982, filed a lengthy and detailed report. In that report, the Supervisor concluded that Mr. Stephenson had "exercised poor

judgment" and had committed an error of the type covered by FSM, § 6507.2 ("unintentional human errors, miscalculations, misjudgments, misinterpretations, etc."). There is no suggestion in this report of any "deliberate violation" by Mr. Stephenson. Consistent with his findings, the Supervisor recommended issuance of a letter of reprimand.

The Forest Service continued to review the matter and issued its final decision on August 29, 1984. The final decision quoted at length from the Santa Fe National Forest Supervisor's October 1982 report, but stopped short (literally in the middle of a sentence) of the conclusion in that report that Mr. Stephenson's error had been an unintentional one within the scope of FSM, § 6507.2. The final decision then went on to quote various regulations, including FSM, § 6507.32 but not 6507.2, and without further discussion, determined Mr. Stephenson to be liable in the amount of \$1,475.15. The final decision contained no support for its conclusion, nor did it make any attempt to refute the contrary findings and recommendations of the Santa Fe Supervisor's report upon which it heavily relied.

When we wrote to the Forest Service in response to Mr. Stephenson's appeal, the Forest Service replied that:

"In view of all the procurement, fiscal, and engineering instructions and/or regulations that were violated, this evidence appears sufficient to support a conclusion of deliberate action. It is also relevant to note that Mr. Stephenson could have easily obtained technical advice from the Forest Service Supervisor's Office employees regarding the propriety of the construction project he was initiating. In view of the ultimate size and permanency of the project, it appears reasonable to expect that such technical advice should have been requested and followed. Since it apparently was not, this too indicates deliberate action."

We do not agree that the mere number of rules violated is evidence sufficient to find a "deliberate violation." In the absence of other evidence to corroborate such a conclusion, it seems more likely that those violations resulted from ignorance, judgmental error, improper training and supervision, or simple negligence. The same may be said of the other factors cited by the Forest Service. In view of the factual record and investigative reports compiled by the Forest Service in this matter, we think that the Forest Service's comments amount to after-the-fact justifications, and we do not accord them much weight.

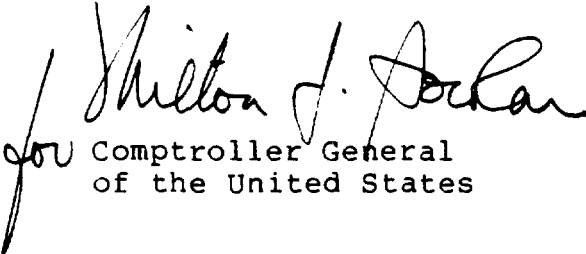


The record compiled by the agency is certainly sufficient to permit the Forest Service to conclude (as it has) that Mr. Stephenson exercised "poor judgment" and should have sought additional guidance from his superiors. However, the record does not establish either a willful intent to circumvent the applicable regulations, or a motive for Mr. Stephenson to do so. To the contrary, there is ample evidence that Mr. Stephenson was simply attempting to carry out his official duties, and remedy a problem (the existence of which is now acknowledged by his agency) in an expeditious, though procedurally improper, fashion. His actions do not appear to have been intentional, willful violations of the governing regulations; but rather "unintentional human errors, miscalculations, misjudgments, [and] misinterpretations \* \* \*," as is noted in the agency's record. The fact that regional officials felt it necessary to simultaneously issue a clarification of the regulation which Mr. Stephenson misinterpreted (as well as the admissions contained in that notice to the effect that other Forest Service employees had similarly misinterpreted it), before they had become aware of Mr. Stephenson's actions, lends credence to the conclusion that his actions were "unintentional" and resulted from an honest misinterpretation of the Forest Service regulations.

For these reasons, it seems more reasonable to conclude on the record presented that Mr. Stephenson's actions fall within the scope of FSM, § 6507.02, rather than FSM, § 6507.32--the former of which does not afford a basis for assessing pecuniary liability for losses suffered by the Government. FSM, § 6507.

#### CONCLUSION

In view of the foregoing, we find that the Forest Service has not properly applied its regulations in this case, and has not adequately established a legal basis for the debt it has asserted against Mr. Stephenson. The Forest Service should therefore terminate its efforts to collect its claim for \$1,475.15 (plus interest and all other related charges) in connection with the Jemez Ranger Office Addition. See FSM, §§ 6507.35a, 6507.6 (FSM 4/81 AMEND 199); 4 C.F.R. § 104.3(d) (1985).

*for*  Milton J. Parker  
Comptroller General  
of the United States