

DECISION

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

FILE: B-220172**DATE:** March 4, 1986**MATTER OF:** Buffalo District, Corps of Engineers -
Travel Vouchers - Compromise of Claim**DIGEST:**

Three employees were determined to have filed false travel vouchers and were criminally prosecuted. The Department of Justice entered into a compromise plea agreement with each defendant, which permitted them to enter a guilty plea to a misdemeanor, and in turn they would make restitution of the fraudulent amounts. In response to the question concerning disposition of additional amounts withheld from the employees for those days tainted by fraud, the agency is advised that only the Department of Justice is authorized to compromise fraud claims and since it has done so in this case, monies administratively retained are to be repaid the defendants, without personal pecuniary liability attaching to the finance and accounting officer by virtue of such payment. 31 U.S.C. § 3711(d) (1982).

This decision is in response to a request from an Authorized Certifying Officer, Army Corps of Engineers, Buffalo District. The matter involves the personal pecuniary liability of an accountable officer, in the circumstances described in the submission, in connection with travel voucher payments which were later found to be fraudulent.

BACKGROUND

As a result of an investigation of travel voucher fraud conducted by the Army Corps of Engineers, several cases involving civilian employees of its Buffalo District were referred to the Department of Justice for criminal prosecution. Three of the cases which were accepted for prosecution involved Mr. Andrew G. Augugliaro, Mr. Michael J. Gruber, and Mr. James J. Stephens.

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Subsequent to the Department of Justice referral, the Buffalo District began to retain unrelated travel reimbursement funds due the employees for their then current travel. These funds were placed in separate accounts, one for Michael J. Gruber and one for James J. Stephens. No such account was established for Andrew G. Augugliaro since there were no agency funds otherwise due him. The amounts currently in the accounts for Gruber and Stephens total \$1,671, and \$1,818, respectively.

On February 6, 1985, the U.S. Attorney was informed by the agency as to the amounts owed as a result of the fraud. For this purpose, the calculation was divided into two parts for each employee, the fraud amount and the amount which, but for the fraud, would have been properly paid, but which was deemed to be forfeited for each day the expenses claimed were tainted by the fraud. See 59 Comp. Gen. 99 (1979).

On April 22, 1985, the Assistant U.S. Attorney handling these cases entered into plea agreements with Messrs. Augugliaro, Gruber and Stephens. These agreements provided that as an inducement to be permitted to enter a plea of guilty to a single count of violating 18 U.S.C. § 641 (1982), a misdemeanor, in lieu of more serious felony charges which could have been brought, each defendant agreed to repay the amount obtained by fraud (Augugliaro - \$6,702.13; Gruber - \$3,784.69; and Stephens - \$2,892.22). Additionally, each of them specifically acknowledged and admitted that "he wrongfully, willfully, knowingly and fraudulently submitted phony travel vouchers to the United States Government" to obtain these monies. We understand that the full amounts agreed to were paid through the U.S. Attorney's office to the Corps of Engineers.

By letter dated April 30, 1985, from the U.S. Attorney's office to the Corps of Engineers, Buffalo District, which transmitted copies of these plea agreements, the District was advised that the monies held in the retained accounts for Messrs. Gruber and Stephens were to be refunded to them. That letter further stated that if the money was not refunded, the U.S. Attorney's office would not be able to defend the Corps of Engineers in the event of a lawsuit on the issue.

Based on the above, the following questions are asked:

1. Is the Finance and Accounting Officer precluded from taking administrative action to collect additional amounts from the three defendants, based on the Plea Agreements?

2. May the Finance and Accounting Officer refund the monies retained without suffering personal pecuniary liability as a result of paying such money?

The answer to both questions is yes.

Section 3711 of Title 31, United States Code, provides in subsection (a) that the head of an executive agency "may compromise a claim of the Government of not more than \$20,000," and in subsection (d) that "[a] compromise under this section is final and conclusive unless gotten by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact."

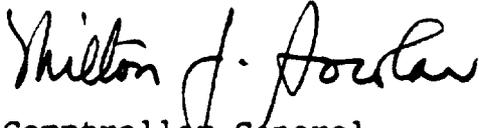
The Federal Claims Collection Standards implementing the above Code provisions are contained in chapter II of Title 4, Code of Federal Regulations (1985). Section 101.3(a) thereof provides that the Department of Justice has exclusive authority to compromise, suspend, or terminate collection action on claims involving fraud.

It is noted in the present case that the U.S. Attorney's office was given a detailed accounting by the agency's finance and accounting office of the amounts found due. That accounting included a listing of all monies obtained by fraud as well as that which was deemed to be appropriately forfeited since it represented other travel expense payments for days for which a fraudulent claim was made. Notwithstanding that, the U.S. Attorney's office chose not to attempt to recover those other amounts, limiting recovery to the specific amount fraudulently obtained in exchange for a guilty plea to a lesser charge, presumably, at least in part, to avoid a lengthy and costly trial. In fact, the Department of Justice has recommended that the additional amounts withheld be refunded.

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While the compromise in question involved an admixture of criminal charges and restitution, it is our view that it was an appropriate method of disposing of the matter, since it did establish an appropriate quid pro quo. Further, it is our view that since payment has been made under the compromise, that action has terminated all claims of the government against the individuals arising out of the admitted fraud during the period in question.

Since the amount recovered under the agreement is representative of all sums due, then such sums administratively retained from Messrs. Gruber and Stephens are to be repaid to them. Further, an accountable officer is not liable for an amount paid if the amount is not recovered because of a compromise. Therefore, personal pecuniary liability will not attach to the finance and accounting officer by virtue of such repayment. See 31 U.S.C. § 3711(d) (1982).

for 
Comptroller General
of the United States