



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Rodger E. Cotting -- Loss of Government Property

File: B-258325

Date: April 19, 1995

DIGEST

An employee who had custody of government property, placed it in his locked and unattended van parked on the street for overnight storage prior to returning the items to his agency the following morning. The van was broken into and the items stolen. On hearing by a Board of Survey, the employee was found negligent and liable for the value of the stolen goods. The employee appealed claiming denial of due process based on a number of technical and procedural points. The agency Ad Hoc Board of Appeals rejected his claim and upheld the earlier determination, basing the assessment of liability on the fact that the employee chose to move the items from a position of safety in his locked residence to a more risky environment, i.e., a locked and unattended van parked on the street overnight. On appeal here, we conclude that there was sufficient evidence to show negligence on the employee's part, that he was treated fairly, and that such technical or procedural errors as there may have been constituted harmless error, not amounting to a denial of due process.

DECISION

This decision is in response to a request from the Office of Surface Mining, U.S. Department of the Interior.¹ We have been asked to review the finding of the agency that Mr. Rodger E. Cotting was negligent and thus, personally liable to reimburse the government the value of government property in his custody that was stolen from him. On review, we conclude that the determination and finding in his case was appropriate and collection action should proceed.

BACKGROUND

Mr. Cotting, an employee of the Office of Surface Mining, properly checked out a laptop portable computer and an external floppy disc drive in March 1991 to do agency budget work at home on evenings over a two to three week period. On the evening of April 1, Mr. Cotting placed the computer and external drive in his van for the purpose of returning

¹Mr. Roy E. Morris, Certifying Officer, Denver, Colorado.

the items to the office the following morning. The locked van was parked on the street in front of his residence. The next morning he discovered that the van had been broken into and the items stolen. The incident was reported to the police. The police determined that entry had been gained by breaking one of the van windows. Mr. Cotting orally reported the theft to the agency on April 2, and followed up with a written report on May 23, 1991.

A Property Board of Survey team was appointed to review the facts of the case and to confirm the accuracy of the facts presented by Mr. Cotting in his written report and those contained in the police report. By report of investigation dated May 1, 1992, the members of the Board formally found Mr. Cotting guilty of simple negligence, in that he failed to exercise the degree of care, precaution, and vigilance required to protect government property assigned to him. As a result, the Board recommended that he be held financially liable for the depreciated value of the two items, a total of \$1,527.85. A memorandum of those findings was sent to Mr. Cotting by the Chairperson of the Board of Survey.

On September 25, 1992, Mr. Cotting appealed that ruling alleging that the Board committed a number of procedural errors, which he viewed as resulting in a denial of due process. On November 5, 1992, the Board rejected his arguments, reiterated its opinion that he had not exercised reasonable care and prudent precautions in the safeguarding of government property, and continued to recommend that he be held financially liable for the stolen goods. The results of that appeal were later transmitted to him by memorandum from the Chairperson of the Board of Survey.

On October 19, 1993, Mr. Cotting further appealed the earlier ruling. On November 1, 1993, an Ad Hoc Board of Appeals was appointed under authority of 43 C.F.R. § 4.1(b)(4) (1993) to consider and make a final decision in Mr. Cotting's case. By written opinion dated May 2, 1994, the Board of Appeals upheld the earlier determinations by the Board of Survey. In so doing, it stated in part:

"There was no reason indicated by Mr. Cotting as to why he took the equipment from his house that night and placed it into his vehicle which was parked on the street as opposed to placing it there the next morning. . . . Given a choice a reasonable and prudent person would have kept the government equipment inside the house until the next morning and taken it to the car on the way to work. . . . Clearly, Mr. Cotting did not exercise the degree of care, precaution, attention and vigilance necessary for protecting the interests of the Government. Mr. Cotting's negligence resulted in the loss for which he is properly being held responsible. . . ."

Mr. Cotting requests our review of his case, with specific reference to whether he was treated fairly and in accordance with established precedent in similar cases.

OPINION

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) (1988). We have held that where an agency has investigated and found an employee negligent in the loss or destruction of government property and liable for the loss, we will not substitute our judgment for that of the investigating authority, and will overturn that finding only if we conclude that it lacks a rational basis.²

Mr. Cotting has claimed that the agency has committed error on several technical and procedural points, ranging from misidentification of the location of his residence in the Board of Survey's conclusion to the lack of notice in writing that he could submit the facts in writing or that he could present witnesses at the hearings, and the lack of speedy resolution. We do not deem it necessary to analyze and discuss each of the errors alleged. The Board provided him a full opportunity to present his case. In our view, such procedural errors as may have occurred were not of a type that might have affected the outcome of the Board's proceeding, and therefore constituted harmless error.

The facts central to the finding of simple negligence were that Mr. Cotting chose to move the items from a position of safety in his locked residence, and place them in a more risky environment (his locked but unattended van parked on the street) the night before he was to return the items to his agency. Given these facts, the Board's finding of simple negligence was not without a rational basis, in our view.

With regard to the question as to whether Mr. Cotting has been treated in accordance with agency precedent, we are not aware of other cases similar to his where a different conclusion was reached. Accordingly, the agency should proceed with the collection action against Mr. Cotting to recover the value of the items stolen.

/s/ Seymour Efros

for Robert P. Murphy
General Counsel

²Joseph S. Onechyk, B-208108, July 8, 1983.