



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

B-179037

October 9, 1973

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Mr. John J. Rodder,
Authorized Certifying Officer
Philadelphia Data Collection Center
Bureau of the Census
Social and Economic Statistics Administration
United States Department of Commerce
Philadelphia, Pennsylvania 19106

D.C. 0

Dear Mr. Rodder:

Further reference is made to your letter of June 25, 1973, requesting a decision on the propriety of paying a claim submitted by Miss Cecelia Opczynski, a part-time, Schedule A, employee of the U.S. Department of Commerce, Bureau of the Census, Data Collection Center, Philadelphia, Pennsylvania. No voucher covering the claim was enclosed with your letter, as is ordinarily required with a request for a decision. However, since it appears a claim has been presented, the requirement of a voucher will be waived in this case.

Miss Opczynski is employed as a Field Supervisor on a when-actually-employed (WAE) basis. On April 19, 1973, while operating a privately owned vehicle in Glasgow, Delaware, on official U.S. Government business, she was involved in an automobile accident, in which she collided with another vehicle. The official police accident investigation report indicates extensive damage to both vehicles and serious injuries to the driver of the other automobile which included contusions of the nose and chest and a hematoma of the forehead.

Miss Opczynski was charged with violating title 21, section 41646, of the Delaware Code, requiring motor vehicle operators to obey a duly installed stop sign and was given a summons commanding her appearance in court in New Castle, Delaware, on May 16 and June 7, 1973. Miss Opczynski has submitted a claim for her time and mileage expenses from her residence in Camden, New Jersey, to New Castle, Delaware, and return, incident to her court appearances.

Miss Opczynski's entitlement to compensation for her time and travel expenses depends upon whether her appearances in court in defense of the traffic code violation was sufficiently in the interest of the United States to be regarded as official Government business within the meaning of 5 U.S.C. 6322(b)(2). That provision of law describes the status of an employee performing official duty when appearing in court as follows:

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"(b) An employee * * * is performing official duty during the period with respect to which he is summoned, or assigned by his agency, to—

* * * * *

"(2) testify in his official capacity or produce official records on behalf of a party other than the United States or the District of Columbia."

Chapter 171 of title 28, United States Code, based on title IV of the act of August 2, 1946, 60 Stat. 842, the "Federal Tort Claims Act" establishes the liability of the United States for tort claims of persons injured by negligent or wrongful acts of Government employees while acting within the scope of office or employment. Section 2679 of title 28 provides, in pertinent part, as follows:

§2679. Exclusiveness of remedy

* * * * *

"(b) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.

"(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall

promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

"(d) Upon a certification by the Attorney General that the defendant employee was acting within the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings deemed a tort action brought against the United States under the provisions of this title and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (b) of this section is not available against the United States, the case shall be remanded to the State court.

"(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect."

Pursuant to the above-quoted law tort suits against employees in their individual capacities are precluded and the injured party's exclusive remedy is against the United States. Thus, the employee is immune from suit and the Federal Government is the only party subject to liability for the employee's negligent operation of a motor vehicle within the scope of his employment, Skrocki v. Butler, 324 F. Supp. 1042 (1971), Kizer v. Sherwood, 311 F. Supp. 809 (1970).

Inasmuch as the United States is subject to suit and potentially liable for all the damages sustained by the plaintiff, as a result of the employee's negligent operation of his vehicle while in the scope of his employment, it therefore follows that the United States would have a direct interest in the disposition of the traffic charge from which

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liability might result. Consequently, we believe the appearance of the employee at the judicial proceeding to which she was summoned may be regarded as the performance of official duty within the meaning of 5 U.S.C. 6322(b)(2), cf. 44 Comp. Gen. 188 (1964).

In view of the foregoing, we are of the opinion that Miss Opczynski may be compensated for her time and reimbursed her travel expenses.

Accordingly, the employee's claim may be certified for payment in accordance with the foregoing, if otherwise correct.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States