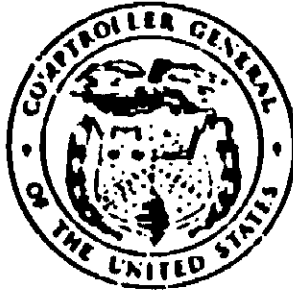


DECISION

Golden
118966

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

FILE: B-204818

DATE: July 13, 1982

MATTER OF: H.D. Flynn, Finance and Accounting Officer--
Request for advance decision concerning
payment for transportation services

DIGEST:

1. Under 31 U.S.C. § 244(a) (Supp. III, 1979), payment for transportation services for or on behalf of the United States shall be made upon presentation of bills prior to audit by the General Services Administration or its designee. The United States Army Finance Center, Europe, has been designated to perform the post-payment audit of European Command transportation bills.
2. While certifying and disbursing officers of the United States are relieved of liability for overpayments made for transportation furnished on authorized transportation forms due to improper transportation rates, the accountable officer is responsible for reviewing bills for other types of billing improprieties, for example, ensuring that the transportation services billed were duly authorized and that the bills are complete.
3. Certifying and disbursing officers of the United States Army Finance Center in Europe acting in good faith are relieved of liability for certification or payment of transportation bills made by them using agency sampling techniques consistent with the Comptroller General and the General Services Administration guidelines.
4. Transportation vouchers and supporting documents covering freight and transportation charges of settled accounts of accountable officers of the United States Army Finance Center in Europe may be destroyed after they have been

microfiched in accordance with the applicable GAO Records Retention and Disposal Schedule.

H. D. Flynn, Finance and Accounting Officer, United States Army Finance Center, Europe (USAFACEUR), requests an advance decision concerning the propriety of paying a voucher submitted by American Express for commercial passenger transportation services provided to military personnel in Europe.

Specifically, Mr. Flynn asks for our advice on the following matters: transportation bill payment requirements, certifying and disbursing officers' liability, statistical sampling applicability, USAFACEUR's audit responsibility, and the authority for original transportation document destruction after microfilming.

In 1957, after study of the issue, GAO determined that the interests of the United States were adequately protected by site audits performed by certain overseas Department of Defense (DOD) finance and accounting offices in connection with transportation documents paid by those offices, rather than referral of these transportation bills to GAO for audit. B-114435, January 9, 1957. GAO authorized the USAFACEUR in Germany to audit and retain all transportation bills paid by the European Command, contingent upon maintenance of adequate personnel complements and subject to test verifications and reviews by GAO. GAO also authorized DOD to deviate from GAO regulations by permitting the use of alternate forms for the procurement of freight and passenger transportation and related services. B-114435, supra.

In 1975, by statute, Pub. L. 93-604, January 2, 1975, the GAO's transportation audit responsibilities were transferred to the General Services Administration (GSA). In addition, under current law, 31 U.S.C. § 244(a) (Supp. III, 1979), transportation bills are to be audited after payment by GSA or its designee. In 1976, by regulation, GSA, as GAO had done in 1957, delegated authority to DOD to continue the use of currently approved freight and passenger warrants and other transportation forms used overseas and also to audit and retain transportation bills subject to GSA test verifications and reviews. Vol. 41, No. 11 Fed. Reg. page 2446-7, January 16, 1976. In light of this delegation by GSA, we asked the GSA transportation audit division for its comments on this request and

have considered its views in this response. We have also limited our reply to the transportation payment issues raised.

First, we are asked:

"Is it the intent of paragraph 7-2b, AR37-107 to authorize a Finance Officer to certify and pay bills without first establishing the existence and correctness of the facts stated on the voucher and its supporting papers for the following type bills: (1) Travel Warrants; (2) Freight Warrants; (3) miscellaneous transportation services such as storage, reweighing, local drayage, hauling, etc.; (4) POL (Petroleum, oil and lubricants) provided US Forces by NATO Forces; (5) tailor services provided by the Army and Air Force Exchange to US Army personnel; and (6) contract educational services?"

"Is it the intent of paragraph 7-3a, AR37-107 to allow a Finance Officer to make payments without first being certain as to the facts, documentation, and legality of the voucher presented to him?"

Generally, bills for transportation services must be paid on presentation by the Government. The accountable officer would be relieved of liability for overpayments due to the application of improper transportation rates. However, the bills must be reviewed prior to payment for other billing improprieties.

The Army Regulations (AR) C21, AR 37-107, paragraph 7-2b (July 15, 1978), states that:

"Bills of carriers and forwarders are normally payable upon presentation, and in the case of transportation bills, certification by the carrier that the shipment involved has been delivered in good order and condition."

This Army regulation essentially restates 31 U.S.C. § 244(a) (Supp. III, 1979), which provides that:

"Payment for transportation of persons or property for or on behalf of the United States

by any carrier or forwarder shall be made upon presentation of bills therefor prior to audit by the General Services Administration, or his designee. * * *

This provision allowed GSA to continue the delegation to USAFACEUR of the transportation bill postpayment audit function. Under the statutory scheme, transportation bills are to be paid on presentation prior to audit. Accordingly, bills for transportation services, such as travel and freight warrants, should be paid on presentation prior to audit.

Thus, by virtue of this act, transportation payment procedures are different than for other bills such as those for petroleum, oils, and lubricant (POL) purchases, tailoring services or contract educational services which are subject to detailed audit prior to payment.

AR 37-107, paragraph 7-3(a), provides that:

"No finance and accounting or certifying officer of the United States will be held liable for overpayments made for transportation furnished on Government bills of lading or transportation requests when said overpayments are due to the use of improper transportation rates, classifications, or the failure to deduct the proper amount."

This paragraph essentially paraphrases 31 U.S.C. § 82g (1976), which provides specific mandatory relief to DOD certifying and disbursing officers for certain kinds of overpayments made on bills for transportation services furnished on Government bills of lading or transportation requests. However, USAFACEUR uses travel and freight warrants, not Government bills of lading (GBL) or transportation requests (GTR's), which are the two specific forms by which the relief statute provides mandatory relief for disbursing officers from liability for overpayments due to the use of improper transportation rates. We can find no reason why the transportation warrants should not be treated the same as GBL's or GTR's, especially since the warrant form contains all the basic accounting information available on a GTR or GBL. In fact, GAO, in 1957, and GSA, in 1976, approved the use of the warrant in these circumstances.

Therefore, we would not object to relieving USAFACEUR accountable officers from liability for overpayments

due to the use of improper transportation rates, classifications, or the failure to deduct the proper amount discovered after transportation audit where warrants have been used to procure the services. See 31 U.S.C. §§ 82a-2 and 82g (1976). This approach is consistent with congressional intent in passing the relief provision contained in 31 U.S.C. § 82g.

Senate Report 1169 (March 16, 1942), to accompany S. 2305, 77th Congress, 2d Session, the bill which became 31 U.S.C. § 82g, states that:

"The mandate of this statute [section 322, now 31 U.S.C. § 244] requir[es] the payment of transportation accounts of carriers covered by section 322 upon presentation of the bills * * * and renders unnecessary a prior administrative verification of such rates, classifications * * *. The discontinuance of the administrative examination in these respects thus deprives disbursing and certifying officers of the opportunity to fully verify the accuracy of such payments, yet section 322 does not clearly protect said disbursing and certifying officers against liability for such overpayment on these accounts which may subsequently be found to exist and which cannot be collected from the carriers involved * * *. Since under the provisions of the Transportation Act it is apparently not intended that disbursing and certifying officers be held pecunarily liable for overpayments, even though silent on this point, the opportunity to determine the correctness of vouchers presented by such carriers * * * being dispensed with under the policy of the Transportation Act, it appears necessary to afford full protection to said disbursing and certifying officers, and the bill in question is designed for this purpose. * * *" See also H. R. Rep. No. 2142, 77th Cong., 2d Sess., which contains a similar statement.

However, we point out that even with respect to transportation bills, the USAFACEUR certifying and disbursing officer is not relieved of responsibility for making an administrative determination prior to payment

that the facts recited in the certificate or otherwise stated on the voucher or its supporting papers are correct, that the transportation services for which payment is claimed are duly authorized, that such services represent a legal obligation under the appropriation or fund involved, that the carrier's bill is complete and supported with required documentation, and that all extensions and computations of charges are correct. See 41 C.F.R. § 101-41.401(b)(1) (1981).

Therefore, while specific relief is afforded to accountable officers with regard to overpayments on transportation bills due to application of improper transportation rates, the accountable officer must review the bills prior to payment to ensure the bills meet the above-stated requirements.

We note that the USAFACEUR reports that all transportation invoices are subject to voucher examination prior to payment as required under AR 37-107 except for the specific exception of determination of proper transportation rates, classification and deductions. See AR 37-107, 7-3a, supra. This would be consistent with the statute and regulation requirements for auditing transportation bills. See 31 U.S.C. § 244 (Supp. III, 1979); 31 U.S.C. § 82g (1976). A review to ensure that proper rates have been charged is performed after payment and on a statistical sampling basis.

We are next asked:

"Is a finance officer relieved of accountability for [transportation] payments made in his name that are: (1) not reviewed as the result of not being selected by a statistical sample and (2) not reviewed because the effort would not be cost effective (vouchers of \$25 in value or less)?"

A certifying or disbursing officer acting in good faith in conformance with USAFACEUR sampling techniques consistent with GAO and GSA guidelines would not be liable for any certification or payment which was not subject to specific examination because of prescribed sampling techniques.

GSA, in 1976 (and GAO prior to 1976), authorized the USAFACEUR to perform the audit subject to periodic site test verifications and procedural review. GAO has approved application of statistical sampling techniques

to the rate audit of transportation payments. B-198137, April 29, 1980. By statute, 31 U.S.C. § 55(e) (1976), agencies are permitted to eliminate audit procedures which are not worth the costs involved in performing them and, under 31 U.S.C. § 82b-1 (1976), GAO-approved sampling procedures are authorized for vouchers involving low dollar amounts (currently \$500). In reviewing the submissions, GSA has not interposed any objection to the transportation bill sampling procedures used by USAFACEUR and since, under the delegation, GSA has responsibility for reviewing the USAFACEUR's transportation audit function, we are not prepared, on this record, to object to those procedures. A certifying or disbursing officer would be relieved of liability for certifications or payments made by him where USAFACEUR uses sampling techniques consistent with GSA (and indirectly GAO) guidelines.

Finally, we are asked:

"Is a Finance Officer authorized to destroy supporting documents which support a payment after they have been microfiched?"

The original records may be destroyed after microfiching in accordance with GAO guidance.

Vouchers and supporting documents covering freight and transportation charges of settled accounts of accountable officers of the Department of the Army and Navy and the United States Marine Corps may be destroyed after audit clearance when microfilm copies of the original documents and a means of retrieving data are available. GAO Records Retention and Disposal Schedule 0413.1 Sup., February 27, 1979. Thus, the original records can be destroyed in accordance with the above instruction.

Further, we point out, the legal status of micromedia as evidence is well established by Federal statutes. A statute, 28 U.S.C. § 1732(a), provides for the acceptability in Federal courts of records made in the regular course of business. Also, by statute, 28 U.S.C. § 1732 (1976), microfilmed copies which are made in the regular course of business are admissible in legal proceedings and are legally considered the same as the original records. This act also provides that the original document may be destroyed in the regular course of business unless its preservation is required by law. Also see 28 U.S.C. § 1733 (1976); 44 U.S.C. §§ 2105, 2112(a), 3302(3), and 3312 (1976).

Therefore, the transportation bills should be paid in accordance with this guidance. Our legal opinion is based solely on the written reports of the accountable officer, DOD, and GSA. In this connection, GSA, which has responsibility for reviewing the DOD transportation audit in Europe and the Far East, advises us it is making recommendations to DOD concerning how the audit is performed which may require changes in the procedures in the future.

for Milton J. Aroslan
Comptroller General
of the United States