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DECISION

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

FILE: B-208108 **DATE:** July 8, 1983

MATTER OF: Joseph S. Onechyk

DIGEST:

Employee of Office of Inspector General, Interior Department, had accident while driving Government motor vehicle on official business. Agency found that employee was not "grossly negligent" and declined to hold him liable for damage to vehicle, but assessed resulting towing charges against him. Assessment of liability was based on employee's abandonment of vehicle at scene of accident. GAO concludes that assessment was not in conformity with applicable regulations because there was no showing that abandonment caused or increased towing expense to Government. Employee's indebtedness should therefore be removed.

Mr. Joseph S. Onechyk has asked us to "waive" a claim of $519 asserted against him by the Office of the Inspector General (OIG), Department of the Interior. The claim represents towing charges for a motor vehicle damaged while Mr. Onechyk, then an OIG employee, was driving on official business. While we have no authority to waive indebtedness of this type, we conclude, for the reasons discussed below, that the OIG has not adequately established the legal basis for its claim.

Facts

On October 31, 1980, Mr. Onechyk was involved in a one-car accident while driving a General Services Administration motor pool vehicle on official business on the Quinault Indian Reservation in the State of Washington. At the time, he was employed as an auditor in the OIG's Western Region, Sacramento, California. He left the vehicle at the accident scene to seek medical help and subsequently returned home. Somehow (the record is not entirely clear on this point), the vehicle was towed back to the GSA motor pool in Seattle.

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In accordance with its regulations, 1/ GSA billed Interior for the damage resulting from the accident. The regulations authorize GSA to bill the agency employing the driver if GSA determines, based on its review of the accident reports and other available documentation, that the damage was caused by negligence or misconduct on the part of the driver. Interior accepted the billing in the amount of $3,027, consisting of $2,508 damage to the vehicle plus $519 towing charges.

The OIG then convened a Board of Survey to investigate the matter. On August 6, 1981, the Board made the following recommendation:

> "Based on the fact that this was a one-car accident and there were no other witnesses, it is difficult to prove that Mr. Onechyk was grossly negligent in causing the accident and as a result should not be made to pay the entire $3,027 in damages. However, we do believe that Mr. Onechyk did exercise poor judgment and did act in less than a prudent manner. As a result, we recommend that Mr. Onechyk be required to reimburse the Department $519 for the cost of towing the GSA automobile * * *."

On August 20, the Assistant Inspector General for Administration accepted the Board's recommendation and notified Mr. Onechyk. Mr. Onechyk appealed and, on October 26, 1981, the Inspector General sustained the Board's determination. Several months later, Mr. Onechyk submitted the matter to us.

GAO Jurisdiction and Scope of Review

First, we must emphasize that we have no authority to "waive" Mr. Onechyk's indebtedness. Waiver of a claim may be accomplished only pursuant to statutory authority, and we have no such authority for this type of debt. However, we may review the matter under our general authority to settle all claims by or against the United States, 31 U.S.C. § 3702(a) (former 31 U.S.C. § 71).

1/ 41 C.F.R. §§ 101-39.704 and 101-39.807, approved in 59 Comp. Gen. 515 (1980).

A Government employee is not automatically liable for loss or damage to Government property, even if caused by his fault or negligence. (This question is separate and distinct from the agency's liability to anyone else.) He may be held liable only if the agency has issued administrative regulations providing for such liability. E.g., 25 Comp. Gen. 299 (1945). If an agency has issued regulations, the scope of our review is relatively narrow. We will review the regulations to determine if they are reasonable, and we will review the extent to which the agency followed its own regulations. 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.

Discussion and Conclusion

The Interior Department does have regulations establishing employee liability for loss or damage to Government property. Department-wide regulations are the Interior Property Management Regulations, found at 41 C.F.R. Part 114-60. Subpart 114-60.9 provides for establishing the Board of Survey and outlines its procedures. In addition, 41 C.F.R. § 114-60.001 authorizes bureaus and offices within the Department to issue supplemental regulations "as deemed necessary for proper implementation of Interior Property Management Regulations." The Office of the Inspector General has issued supplemental regulations. They are found in Chapter 170 of the Inspector General's Manual (IGM).

As relevant to this discussion, the regulations (IGM § 170.1.5.1.c) provide as follows:

> "* * * In determining whether the employee's act or failure to act was negligent conduct, the Board shall consider:
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> "(c) if the employee did not take reasonable action, was the failure to do so a material and substantial factor in bringing about the loss; and

"(d) if it is determined that the employee failed to take reasonable action under the circumstances to prevent a loss of property which the employee should have anticipated and that the failure to do so was a material and substantial factor in bringing about the loss, the Board shall find the employee liable and shall determine the amount to be charged the employee for the loss."

The Board of Survey's specific findings, accepted by the Assistant Inspector General for Administration and sustained by the Inspector General, are summarized below together with Mr. Onechyk's rebuttals:

(1) Mr. Onechyk "exercised poor judgment" in his selection of the route taken. Mr. Onechyk argues that the route he selected, although gravel rather than paved, was straighter than the alternate paved route and, he had been advised, safer in rain.

(2) Mr. Onechyk was "less than prudent" in driving at 40-45 miles per hour on a gravel road in heavy rain. Mr. Onechyk counters that his speed was less than the posted speed limit of 50 miles per hour.

(3) Mr. Onechyk "exercised poor judgment again" by abandoning the GSA vehicle without returning to the accident scene or taking steps to safeguard the vehicle. According to Mr. Onechyk, he called the emergency GSA number provided with the vehicle and reported the accident. Although towing was apparently not discussed, he assumed GSA would attend to it. He left the scene because he needed immediate medical attention.

While the Board cited three items of alleged negligence, the third item, Mr. Onechyk's abandonment of the vehicle, appears to have been the only basis on which he was ultimately held liable. This seems clear from the Inspector General's October 26, 1981 letter to Mr. Onechyk sustaining the liability. The letter stated:

"Your appeal offers no eyidence contradictory to the Board's statement that you left the vehicle to seek medical help and never

> returned to the accident site, or that you took any steps to determine if the automobile was removed from the site or ensure that the government property was safeguarded. * * *
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> "[A]bsent any information in your appeal that you, after obtaining required medical treatment, took any steps to determine if the automobile was removed from the accident site or ensure that the government property was safeguarded, it is my decision that the recommendation of the Board of Survey * * * in the assessment to you of the $519 towing charge be sustained."

We do not question the Board's finding that Mr. Onechyk may have been negligent in "abandoning" the vehicle. However, even accepting this finding, there is no showing that the negligence was a "material and substantial factor in bringing about the loss" for which he was charged, specifically the towing charge. The vehicle was already damaged when Mr. Onechyk abandoned it. If it could have been driven, he presumably would not have hitch-hiked to seek medical help. It had to be towed in any event. The record does not establish that the abandonment caused the Government to incur any greater expense than it would have incurred had he pursued any other course of action. 2/

2/ Applying traditional tort law, it may well be that the OIG could have found that Mr. Onechyk's negligence in driving too fast for existing conditions proximately caused the accident and all related foreseeable damages, including the towing charge. This would have presented us with a different issue. However, as noted in the text, this does not seem to have been the OIG's theory.

The OIG also cited 43 C.F.R. § 20.735-34 to support the determination of liability. This regulation, part of the Interior Department's standards of employee conduct, requires employees to protect and conserve Government property entrusted to their use. Again, however, there is no indication that Mr. Onechyk's failure to "protect" the vehicle caused or in any way exacerbated the towing expense.

In view of the apparent lack of causal connection between abandonment of the vehicle and the towing charge, we conclude that the OIG's assessment of liability against Mr. Onechyk was not in conformity with applicable regulations. Accordingly, the Interior Department should make no further attempt to collect from Mr. Onechyk and should refund to him any part of the $519 already collected.

for Milton J. Socolar
Comptroller General
of the United States