



Decision

May 26, 1994

Mr. Darold D. Foxworthy
Director
Fiscal and Public Safety
Forest Service
United States Department of Agriculture

Dear Mr. Foxworthy:

This responds to your letter of July 20, 1993 concerning the request of Mr. [redacted] for relief from pecuniary liability pursuant to 31 U.S.C. § 3528(b). In January, 1992, Mr. [redacted] was billed \$69,215.35 for a debt arising from an erroneous payment he certified to "The Caterer's Inc." (TCI). You speculated that the statute of limitations, 31 U.S.C. § 3526(c), may have run, automatically settling Mr. [redacted] account and, thus, obviating the need to address his request for relief from liability. As explained below, we find that Mr. [redacted] account with respect to this payment has been settled by operation of law under 31 U.S.C. § 3526(c). For this reason, collection may not be pursued against him on account of this erroneous payment and relief, pursuant to section 3528(b), need not be considered.

According to the record, Mr. [redacted] certified the payment at issue here on November 17, 1988. At the time of that certification, Mr. [redacted] had been working in the Budget and Accounting Section of the Boise National Forest (BNF) for about two years. Although Mr. [redacted] was initially assigned to help convert BNF's accounting systems to a format compatible with that used by the National Finance Center, he was reassigned, in 1988, to certify payment vouchers when BNF experienced an "unusually severe" forest fire season, creating an "abnormally large payment workload" that BNF was ill-equipped to handle. Apparently, Mr. [redacted] was provided no formal training concerning his duties as a certifying officer.

One of the payment vouchers given to Mr. [redacted] to certify was for a bill (in the amount of \$69,251.35) received from TCI. The voucher did not indicate (and Mr. [redacted] did not notice from the file) that TCI had previously assigned its rights to payment under the governing contract to the Valley Bank of Nevada. How and why this error occurred is unclear. All of BNF's payments to TCI under that contract, both

before and after this one transaction, properly took that assignment into account. There is some speculation in the record that, owing to the hectic work load and substantial backlogs then prevailing, TCI's voucher may have been intentionally removed from the contract folder in which the assignment was filed so that this voucher could be certified while another TCI voucher was simultaneously prepared for certification. In any event, on November 17, 1988, Mr. [redacted] certified payment to TCI rather than to the bank legally entitled to receive it.

In December 1988, BNF was informed that the bank had not received payment. At that time, TCI denied having received the check certified by Mr. [redacted]. BNF deferred action on the bank's request for a replacement check, it seems, until it could ascertain what became of the original check, and whether it was legally obligated to issue a second check. In April 1989, BNF learned from the Treasury Department that TCI had received and cashed the original check. At some point thereafter, TCI went into involuntary bankruptcy. The record indicates that BNF has been unable to recover any of the amounts improperly paid to TCI.

The record is silent with respect to what, if anything, happened for nearly 2 years. On March 12, 1991, BNF's contracting officer requested an opinion from the Agriculture Department's Office of General Counsel on whether BNF was legally required to make a payment to the bank notwithstanding the earlier erroneous payment to TCI, and whether payment (if any was owing) could continue to be deferred until such time as collection might be had from the TCI bankruptcy settlement. Agriculture's counsel responded on August 9, 1991, that the bank was entitled to immediate payment of its claim. Cf., e.g., B-214273, June 21, 1984. In view of this advice, BNF made a new payment to the bank.

On December 23, 1991, Agriculture notified Mr. [redacted] for the first time² that his certification of the TCI payment was erroneous and that he was expected to reimburse the government for the resulting loss, pursuant to 31 U.S.C.

¹The record states that TCI has assets of \$115,594.65, but faces claims in excess of \$2 million.

²In response to our informal inquiries, we were advised by the Forest Service that prior to this letter, Mr. [redacted] had only been told that "there was a dispute concerning the payment and [TCI's] bank and that it was being handled by the contracting officer through the Contract Disputes Act." This information was conveyed to Mr. [redacted] in an informal conversation with "an accounting technician."

§ 3528(a)(4). In response to this demand, on February 19, 1992, Mr. requested relief from liability pursuant to 31 U.S.C. § 3528(b).

Section 3528(b) authorizes this Office to relieve certifying officers from pecuniary liability where certain criteria are satisfied. At the same time, however, we are required to settle and adjust all accounts within 3 years after the date that we "receive" them. 31 U.S.C. § 3526(c). Section 3526(c) deems an account legally settled and conclusive upon us if we have not settled the account within that period. As you know, agency accounts are no longer routinely transferred to this Office. Instead, each agency retains the records pertaining to its own accounts and audits of them. Cf. GAO, Policy and Procedures Manual for Guidance of Federal Agencies (GAO-PPM), tit. 7, §§ 8.4, 8.5 (TS No. 7-42, Feb. 1980).

In view of this, we consider the 3-year statute of limitations prescribed in section 3526(c) to begin to run on the date that an account is substantially complete and ready for audit. B-213720, Sept. 26, 1986. See also 7 GAO-PPM § 8.7. Generally, this occurs on the latter of the date when (1) the accountable officer certifies his or her periodic statement of liability, or (2) the agency has in its possession all of the information and documents necessary to raise a charge against the account. B-239483, Apr. 15, 1991; B-226393, Apr. 29, 1988. In order to preserve and protect the government's rights with respect to the 3-year period specified in section 3526(c), agencies are required, with certain exceptions not relevant here, to report all unresolved irregularities to this Office within 2 years after the date that the relevant account is substantially complete and ready for audit. 7 GAO-PPM § 8.4C.

The Forest Service had in its possession all of the information necessary to raise a charge against Mr. account at the time that he certified this payment in November 1988. The record shows that, prior to the date of the improper certification, BNF had received appropriate notice of a valid assignment of TCI's rights under the governing contract. As pointed out in the opinion of the Agriculture General Counsel, once a valid assignment of rights under a contract has been made and notice to the government has been properly delivered, the government has a duty to make payment directly to the assignee for work performed by the assignor. Any failure to fulfill this duty is legally actionable. Cf. B-214273, June 21, 1984. Consequently, the Forest Service had all of the information and documents necessary to determine the impropriety of the payment to TCI and to raise a charge against Mr.

account at the time of his certification of the payment in question.

Thus, the 3-year period specified in 31 U.S.C. § 3526(c) began to run at the end of the accounting period for November, 1988. There is no indication in the record that Agriculture made any attempt to notify this Office of this irregularity prior to your submission of the matter to us, dated July 20, 1993, and received on July 22, 1993.

Clearly, under these circumstances, Mr. account was settled in his favor, by operation of law, more than 2 years before it was submitted to this Office. Accordingly,

has no pecuniary liability for this loss and there is no occasion for us to consider his request for relief pursuant to 31 U.S.C. § 3528(b).

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel

B-254218

May 26, 1994

DIGEST

Since certifying officer's account has been settled by operation of law, 31 U.S.C. § 3526(c), Forest Service may not pursue collection against him for his erroneous payment, and we need not consider his request for relief from liability.