

DECISION

DM



DIGEST - L - CP

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

297

AUG 6 1976

FILE: 8-183497

DATE:

MATTER OF:

- Claims Under
the Military and Civilian Employees' Claims Act
of 1964

DIGEST:

Determination of an Agency's Claims Officer,
who has been delegated authority to settle
claims under Military and Civilian Employ-
ees' Claims Act of 1964, as amended,
31 U.S.C. §§ 240-243, is final and conclu-
sive. There is no duty upon certifying
officers to question such determination or
to request advance decision from GAO.

By letter of November 25, 1975, Mr. John J. Ryan, Jr., an
authorized certifying officer of the Environmental Protection
Agency (EPA), requested an advance decision as to the propriety
of paying the claims of and
The claims were forwarded to Mr. Ryan after they had been approved
by EPA's Claims Officer pursuant to the Military and Civilian
Employees' Claims Act of 1964, as amended, 31 U.S.C. §§ 240-243,
and part 14 of title 40, Code of Federal Regulations (1975). In
addition, the certifying officer also requested a decision on
three questions pertaining to the Act which are as follows:

- "1. Is the Agency's Claims Officer the final
authority on claims under the Act,
(i.e., the Certifying Officer must pay
all approved claims submitted to him)?
- "2. Is the phrase 'incident to service'
whatever the Claims Officer determines
it to be or is there a standard
definition?
- "3. Where there is a difference of opinion
between the Certifying Officer and the
Claims Officer on a claim should the
claim be submitted for advance decision
or to the GAO Claims Division for
settlement?"

Section 3(a) of the Military Personnel and Civilian Employees'
Claims Act of 1964, Pub. L. No. 89-558, approved August 31, 1964,

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78 Stat. 767, as amended, 31 U.S.C. § 241(b), Supp. IV (1974), authorizes the head of each agency or his designee to pay claims up to \$15,000 for damages to, or loss of, personal property incident to an employee's service. In addition, 31 U.S.C. § 242 states:

"Notwithstanding any other provision of law, the settlement of a claim under sections 240 to 243 is final and conclusive."

In view of the above statutory provisions we stated, in B-180994, June 12, 1974, the following:

" * * * it is not within the jurisdiction of our office to consider claims for damages for loss of, or damage to, personal property of employees of the Environmental Protection Agency. In the absence of any overall policies prescribed by the President pursuant to section 3(a) of the act, any such claim is for consideration by the head of the agency or his designee, and, in accordance with the terms of the act, settlement of a claim under its provisions would be final and conclusive."

In his submission the certifying officer indicated that the questions on which a decision is requested resulted from uncertainty as to whether our decision B-184145, September 30, 1975, published at 55 Comp. Gen. 297, in effect, modifies the above-quoted statement from B-180994, supra. In 55 Comp. Gen. 297 we stated at page 300:

" * * * where there is doubt as to the legality of a payment, the certifying officer's only complete protection from liability for an erroneous payment is to request and follow the Comptroller General's advance decision under 31 U.S.C. § 2d (1970). Moreover in view of the certifying officer's statutory right to request and obtain an advance decision from the Comptroller General regarding

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the lawfulness of any payment to be certified we can see no reason for concluding that the agency's general counsel's conclusions of law regarding such payment are 'binding' on the agency's certifying officers."

The answer to the certifying officer's inquiry is that 55 Comp. Gen. 297 was not intended to modify the position stated in B-180994, supra, concerning the finality of settlements made under the Military Personnel and Civilian Employees' Claims Act of 1964. That Act gives the head of an agency, or his designee, authority to settle any claim of an agency employee "for damage to, or loss of, personal property incident to his service," and makes such settlement "final and conclusive." Thus, If EPA's claims officer, to whom authority to settle claims under the Act has been delegated, makes the necessary determination for settlement of a claim under the Act, that settlement is final and conclusive on the certifying officer. There is no duty upon the certifying officer to question such settlement, and the certifying officer would not be held liable for any erroneous determination made by the Claims Officer. Accordingly, questions 1 and 2 are answered in the affirmative, and question 3 is answered in the negative.

In light of the foregoing, the claims of
and are returned to the certifying officer
without action.

R.F. KELLER

Deputy) Comptroller General
of the United States