



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

Report, per OIA: From Liability per Loss of Funds

D-194416

SEP 14 1979

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Ms. Tita E. Santini
c/o Department of Agriculture
Forest Service
Willamette National Forest
Eugene, Oregon 97440

2602795

Dear Ms. Santini:

This is in response to your letter to our Office appealing a decision rendered by the Director of Fiscal Management for the Pacific Northwest Region of the Forest Service. This decision held that you and Ms. Gayle A. Klever, as accountable officers, were individually liable for the loss of funds resulting from theft from a locked cabinet in the office the two of you share. It is your contention that the loss was the direct result of management's failure to provide you with the proper training, supervision and equipment necessary to prevent a loss such as this.

Our Office is not authorized to grant relief to an accountable officer unless the agency concerned requests it and determines that the accountable officer was acting in the scope of his or her employment and that the loss occurred without fault or negligence on the part of the accountable officer. 31 U.S.C. § 92a-1 (1976).

In your particular situation, the Forest Service has not requested that we grant relief. We therefore are unable to substantively review the Forest Service's determination that you and Ms. Klever were liable for the loss of the funds. We generally hold, however, that an accountable officer is presumed to be negligent where there is an unexplained physical loss of funds, because the accountable officer is considered to be an insurer of the funds. 54 Comp. Gen. 112 (1974). There are a number of exceptions to this rule, however. For example, if the loss resulted from the agency's failure to provide adequate security, we usually relieve the accountable officer from liability because in such a case, the negligence of the accountable officer, if any, was not the proximate cause of the loss. See E-189658, September 20, 1977 (copy enclosed), in which we relieved an accountable officer from liability for the loss of funds by theft because, although there was no evidence of forced entry into a safe which contained the money, the safe had not been rated for burglary protection and could have been easily opened by manipulating the combination.

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We are uncertain what the basis is for the Forest Service determination that you and Ms. Klever were liable for the loss of the funds. The record does indicate that you and Ms. Klever had been orally instructed to place funds in the unit collection officer's safe on the third floor at the end of each day. Assuming this is correct, the failure to follow these instructions could be deemed "fault" which was the "proximate cause" of the loss; that is, if the instructions had been followed, the money would not have been in the unsecured cabinet from which it was stolen over the weekend. On the other hand, if the loss resulted from the agency's failure to provide you with the proper facilities, or if you had received no instructions on proper safeguarding of funds, or if for some reason it was not possible to comply with such instructions as you may have received, then there might be a basis for granting relief.

Because we have no authority to review your case and grant relief even if the situation warrants it without a recommendation to this effect from the Forest Service, your most practical recourse in this instance would be to present any new evidence you may have to the Forest Service for reconsideration of its unfavorable decision. Should the Forest Service change its position, then, since the loss is under \$500, it is authorized to resolve the matter administratively without the need to request relief from the General Accounting Office. 54 Comp. Gen. 112 (1974).

We are sending a similar reply to Ms. Klever and a copy of both letters to the Director of Fiscal Management, Pacific Northwest Region. We hope that we have been helpful to you.

Sincerely yours,

Rollee H. Efros

Mrs. Rollee Efros
Assistant General Counsel

Enclosure