



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-240091.2

August 6, 1992

Dear Mr. :

This further responds to your February 28, 1992, letter seeking reconsideration of our decision Department of the Navy - Fraudulent Travel Voucher, B-240091, Nov. 6, 1990, which upheld the Navy's action in collecting back the full amount paid you for subsistence expenses for each day tainted by a fraudulent lodging receipt. You now seek refund of the amount collected from you on the basis that our decision in 70 Comp. Gen. 463, decided on May 6, 1991, overruled the "tainted day" rule on which the collection action in your case was based.

Our 1991 decision overruled prior cases that had applied the "tainted day" rule to determine the amount of accountable officer liability for improperly paying fraudulent travel claims. That rule holds that if any part of a single day's claim for subsistence expense is tainted with fraud, the entire day's claim should be denied. We concluded in our 1991 decision that an accountable officer should not be held responsible for any non-fraudulent amounts paid to the employee; liability should be restricted to the amount fraudulently claimed and paid. With respect to the fraudulent payee, we stated that any action to recoup the amount of the payment should be taken in light of the False Claims Act or similar statutes instead of the tainted day rule. Under these statutes, an employee who submits a fraudulent claim to the government becomes liable for damages and penalties.

Thus, we do not believe that the amount of travel payment recouped from you under the tainted day rule was excessive. In any event, our 1991 decision was given prospective effect only. 70 Comp. Gen. at 468. Since in your case collection of the payments occurred before 1991, the new rule does not apply.

Accordingly, we see no basis to disturb the holding in our prior decision on your case.

Sincerely yours,

*for* *Seymour E. Hinchman*  
James F. Hinchman  
General Counsel

cc: Department of the Navy  
Navy Accounting and Finance Center  
Washington, D.C. 20376-5001