



Office of the General Counsel

B-272613

October 16, 1996

S.M. Helmrich
Director
Financial Management Division
Department of Agriculture
Agricultural Research Service

Dear Mr. Helmrich:

This is in response to your June 28, 1996 request that we grant relief from liability under 31 U.S.C. § 3527 to Dr. Quentin Jones, retired former National Program Leader for the Agricultural Research Service (ARS) Narcotics Program, for the unexplained loss of \$13,900 from his account. As explained in further detail below, based on the record before us, we cannot grant relief.

Background

Between May 6, 1987 and June 22, 1990, Dr. Jones was a designated Chief of Field Party (CFP) at international meetings sponsored in part by ARS for foreign scientists. During this time he received five field party advances which were intended to be used to cover expenses of the scientists attending the meetings. In June 1990, Dr. Jones requested his last advance of \$5,500 which, added to the remaining balance of previous advances of \$8,400, totaled \$13,900. On January 14, 1993, the National Finance Center (NFC) produced a Chief of Field Party report which showed that Dr. Jones had an outstanding unliquidated balance in his field party fund.¹ ARS contacted NFC which verified that no vouchers had been submitted or received to liquidate Dr. Jones' outstanding balance. ARS called its financial management division to determine whether it had any original receipts or vouchers to document Dr. Jones' expenses. The financial management division found copies of some hand written notes by Dr. Jones' in his file which indicated cash disbursements to persons between mid 1989 through the beginning of 1990.

¹The record submitted reflects that the discrepancy was first noted on March 31, 1992.

However, no vouchers or official documentation substantiating any of these transactions were found. A letter was sent to Dr. Jones' last known address requesting any additional documentation he might have explaining the CFP outstanding balance. There has been no response.

You advance several explanations on Dr. Jones' behalf regarding the lack of documentation for the outstanding balance in his advance account. First, you suggest that Dr. Jones' research work and trip details were highly classified. You further suggest that for security reasons it is "very possible" that some of the documentation is missing. Second, you maintain that, according to his supervisors, Dr. Jones' health was deteriorating quickly before he retired and that his poor health condition "affected his ability to organize and submit the required records and expense vouchers to liquidate the advance balance, as he had responsibly done previously."

In addition, you request that relief be granted to Dr. Jones on the theory that applicable agency regulations in effect at the time were vague and ambiguous. The applicable agency regulation in effect when Dr. Jones conducted his chief of field party activities was ARS Directive 303.6, January 24, 1985. After that date, an agency reorganization changed the responsible office for reviewing and processing field party advance vouchers. The function was transferred from the Financial Management Division to the Department of Agriculture's National Finance Center. You assert that since that directive was not amended to reflect this organizational change there was some uncertainty over whom had oversight responsibility for field party advances. Thus, since NFC did not follow-up to ensure that advances were liquidated, you conclude that its lack of action is the proximate result of the loss. You add that on March 7, 1994, a new directive was issued to supersede the 1985 directive which requires status of all field party advances to be reviewed quarterly.

Discussion

This Office is authorized to grant relief from liability upon its concurrence with determinations by the Department or agency that (1) the loss or deficiency occurred while the accountable officers or agents were acting in the discharge of their official duties, or that it occurred by reason of the acts or omissions of subordinates, and (2) that the loss or deficiency occurred without fault or negligence on the part of the accountable officers. 31 U.S.C. § 3527(a).

This shortage is an "unexplained loss". Although ARS advanced funds to Dr. Jones, there is no evidence that he in any way accounted for his use of these funds, *i.e.*, expenses he may have incurred. Such an unexplained loss of funds gives rise to personal liability on the part of the officer accountable for the funds. The accountable officer may be relieved of liability where evidence is provided that the loss occurred without fault or negligence by the accountable officer. However,

assertions of the absence of negligence, or mere administrative determinations that there was no fault or negligence on the part of the accountable officer are not sufficient to rebut the presumption of negligence when unsupported by the evidence. B-238955, April 3, 1991. The burden lies upon the accountable official to establish due care.

The record submitted with your request does not offer any accounting by Dr. Jones for the funds in his possession. Instead, you offer your speculation as to why there is an absence of any accounting for the funds entrusted to him. You assert that the unspecified but yet classified nature of some of his activities could "possibly" have affected his record keeping. This, however, has no bearing on Dr. Jones' responsibilities as CFP to properly record dollar amounts and dates of expenditures. Likewise, your second assertion, that his health affected his abilities to account for the funds, does not absolve Dr. Jones of his responsibilities as a custodian of public funds. ARS Directive 303.6 rested primary responsibility for operating and closing out the field party advances on the chief of field party, Dr. Jones. His responsibilities and liability were clearly outlined at the time, and, according to your letter, Dr. Jones was familiar with and had complied with these regulations in the past:

" . . . CFP is personally liable to the Government for any losses the Government may incur due to the CFP's actions or failure to act . . ." 303.6 G.

"[CFP's must] Maintain a daily record of field party advance fund transactions in U.S. dollars on AD-661; document all expenditures with a receipt. If it is not possible to obtain a receipt from a vendor, prepare and sign SF-1165; during field trip, prepare and submit reimbursement vouchers . . . and receipt to Chief, ASB-FMD. . ." 303.6 H.

"CLOSING OUT CFP ADVANCES

Upon completion of the field trip, return any unexpended funds with a final SF-1129 to the Chief ASB-FMD. . . The responsibility for the field party advance continues until proper accounting is made to the Chief, ASB-FMD. [Chief, ASB-FMD] examine and verify the final SF-1129 and process with NFC . . . If necessary recover field party advance balances from the CFP's salary, lump-sum leave payment, or retirement fund." 303.6 O.

Your letter explicitly states that, notwithstanding the transfer of function from ASB-FMD, the NFC did receive and process Dr. Jones', and presumably all other CFPs, "requests for field party advances, maintained records of the advances, and

processed related vouchers" Although you admit the NFC compiled all of this information, there is no evidence that Dr. Jones ever submitted any of the required official records or documentation, particularly the final close-out accountability report, either to NFC or to ASB-FMD in accordance with the ARS directive. Other than the incomplete handwritten notes discovered by your financial management division, there are no official vouchers evidencing field party advance fund transactions during 1989-1990. Moreover, there is no indication that NFC or FMD systematically lost or failed to keep accurate records of vouchers and receipts.

Your position that functions were transferred to NFC and that NFC did not follow through with a timely audit of Dr. Jones' field advance has no bearing on his apparent failure to prepare the required accountability documents prescribed by Directive 303.6. Again, your letter states that after the function was transferred the NFC did receive and process Dr. Jones' requests for field party advances, maintained records of the advances, and processed related vouchers for Dr. Jones. It is true that the overseeing Agriculture office, whether FMD or NFC, was required under 303.6 to institute the closing of a field party advance and demand an immediate refund for any violations. Directive 303.6 J4. However, it is not plausible that this delay was the proximate cause of the loss.²

Accordingly, we are unable to concur with your conclusion that the circumstances in this case overcome the accountable officers liability for funds entrusted to him. Although we sympathize with Dr. Jones' current medical condition and the difficulty that imposes on ARS and others trying to account for the funds entrusted to him, the standards for accountability of funds entrusted to accountable officers are strict. Thus, we cannot grant relief on the basis of the record presented at this time. Since Dr. Jones is a retired employee, we recommend that you obtain his explanation and accounting for these funds. If you are successful and if his explanation warrants, you should resubmit a request for relief on his behalf.

Sincerely,

Gary L. Kepplinger
Associate General Counsel

²Accountable officers may be relieved from liability even if they are found to have neglected their duties, if their negligence is not the proximate cause of the loss or shortage. E.g., 63 Comp.Gen. 489, 492 (1984); B-235147, August 14, 1991.

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DIGEST

Where record submitted by agency in an unexplained loss case does not offer any accounting by accountable officer for funds entrusted to him and in his possession, relief of liability is denied to accountable officer.