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United States Government Accountability Office
Washington, DC 20548

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October 20, 2004

Hank Kashdan
Acting Associate Deputy Chief For Business Operations
U.S. Forest Service

Subject: *U.S. Forest Service-Request for relief of liability of Juanita Jimenez*

Dear Mr. Kashdan:

This responds to your letter dated May 13, 2004, requesting a determination of liability of Juanita Jimenez, a certifying officer, for duplicate payments totaling \$5,631.85. You also requested that we relieve the certifying officer of any liability if the circumstances of the erroneous payment so warrant.¹ For the reasons discussed below, we find that the certifying officer is liable for the duplicate payments; we are unable, however, to grant relief from that liability.

Background

In September 2001, the Gifford Pinchot National Forest (GPNF) experienced a rare forest fire within its boundaries. The Forest Service contracted with Evergreen Bus Service (Evergreen) for transportation in connection with its firefighting operations. Between September 18 and 24, 2001, Evergreen's bus drivers and Forest Service employees working at the fire site prepared four invoices for payment of Evergreen, totaling \$5,631.85, and transmitted the four invoices to the fiscal management office at

¹ Our office received your request on May 13, 2004. Letter from Hank Kashdan, Acting Associate Deputy Chief For Business Operations, U.S. Forest Service, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, May 13, 2004 (May 13 request). The May 13 request included the following attachments: a memorandum to the Regional Forester dated May 29, 2003 (May 29 memo); typed notes from Susan Fuller, Financial Manager, dated December 23, 2003 (Fuller notes); a document entitled Chronology of Events (Chronology); and financial documents used in the certification of the payments in question (financial documents). We requested additional information on July 22, 2004. Letter from Susan A. Poling, Managing Associate General Counsel, GAO, to Hank Kashdan, July 22, 2004 (July 22 letter). In response, the Forest Service submitted a copy of a memorandum from Susan Fuller, Acting Forest Administrative Officer, to Peter Gilmour, WO and J. Woodland, July 30, 2004 (July 30 memo), and a copy of a form entitled, "FFIS Security Access Request Form," which Juanita Jimenez signed in acknowledgment of her certifying officer statutory duties (Designation form).

GPNF headquarters for certification of payment. May 13 request, attachments. Each of the four invoices was prepared on an Agriculture Department form, "Optional Form 286," entitled "Emergency Equipment - Use Invoice," rather than on Evergreen's own invoice stock. Nevertheless, each of the four invoices was signed by an Evergreen representative, and Forest Service staff working at the fire site transmitted them to GPNF's fiscal management office for payment to Evergreen. The certifying officer manually certified the four invoices for payment on September 25, 2001.

On September 26, 2001, GPNF headquarters received from Evergreen four additional invoices.² Unlike the earlier four invoices, Evergreen prepared these four invoices on its own invoice stock and submitted them directly to GPNF's fiscal management office, not through Forest Service staff working at the fire site. Attached to two of these invoices were carbon copies of two of the earlier "Emergency Equipment - Use Invoices;" printed at the bottom of the carbons is the word "contractor," indicating that the carbon is the contractor's copy of that form. *See* financial documents. Attached to the other two of these invoices were photocopies of the other two earlier "Emergency Equipment - Use Invoices." *Id.* These invoices were for the exact amounts and for the same services as the payments that Ms. Jimenez certified on September 25, 2001. July 30 memo at 2. The certifying officer manually certified one of these four invoices on September 27, 2001. Chronology at 1. The certifying officer manually certified the remaining three of these invoices on October 5, 2001. *Id.*

According to your letter, in October 2001 GPNF discovered that the four invoices submitted on September 26, which Ms. Jimenez certified on September 27 and October 5 were for services for which GPNF had already paid Evergreen. GPNF sought repayment from Evergreen. May 13 request at 1; Chronology at 1-2; May 29 memo at 1. GPNF officials contacted the National Finance Center³ in a failed effort to stop payment on the checks and also made numerous phone calls to Evergreen to resolve the improper payments. Chronology at 1. Additionally, GPNF sent two bills to Evergreen for repayment. On April 12, 2002, Evergreen forwarded a check for the full amount of the duplicate payments, \$5,631.85; however, Evergreen did not have sufficient funds to cover the amount of the check. *Id.*

Evergreen filed for Chapter 11 bankruptcy protection in May 2002, and informed GPNF that it would resume paying its debts when the bankruptcy court so ordered. May 13 request at 2; May 29 memo at 1. GPNF consulted with the Office of General Counsel of the Department of Agriculture to determine the best manner to seek collection of the duplicate payment from Evergreen. In October 2002, the Office of General Counsel advised GPNF to cease collection efforts due to the bankruptcy proceedings. May 29 memo at 2; Chronology at 2.

² It is not clear why Evergreen submitted the additional invoices. Evergreen may have been unaware that the certifying officer had already certified payments to Evergreen and that payment checks were forthcoming.

³ The National Finance Center performs certain accounting functions for the Forest Service.

The Forest Service reviewed the actions of the certifying officer leading to the improper duplicate payment. July 30 memo at 2; May 13 request at 1. The Forest Service determined that the duplicate payments were made in good faith and there was no intent to defraud the government. May 13 request at 1. Additionally, after this incident, GPNF instituted new internal controls on fire payments, including better training of voucher examiners and certifying officers, and maintenance of an internal log of payments and individual folders for each contract, both of which the voucher examiner and the certifying officer must review before the certifying officer can certify payment. *Id.*, May 29 memo at 2; Fuller notes at 1.

Analysis

You first asked whether the certifying officer is liable for the duplicate payments discovered in October 2001. Under 31 U.S.C. § 3528(a), a certifying officer must repay any “illegal, improper, or incorrect” payment resulting from his or her inaccurate certification. 31 U.S.C. § 3528(a)(4). A certifying officer becomes liable the moment that an improper payment is made. *See* 54 Comp. Gen. 112, 114 (1974). Here, the certifying officer, on September 27 and October 5, 2001, certified four payments to Evergreen that were duplicates of payments that the Forest Service had previously made on September 25, 2001, and to which Evergreen was not entitled. *See* May 13 request at 1. The payments that the certifying officer certified on September 27 and October 5 were to the same vendor, in the same amounts, and for the same services as the payments that she certified on September 25. Because the vendor had already been paid for those services, the September 27 and October 5 payments were improper. The certifying officer certified improper payments and became liable for the repayment of these improper payments on the dates the payments were actually made, September 27, 2001, and October 5, 2001.

You also asked that we relieve the certifying officer of her liability. Section 3528(b) of Title 31 of the U.S. Code permits us to grant relief from liability in two situations. First, our office may relieve liability if the certifying officer certified the payment based on official records and the certifying officer did not know, “and by reasonable diligence and inquiry” could not have known, the correct information. 31 U.S.C. § 3528(b)(1)(A). Second, our office may relieve liability if the following three conditions are met: (1) the obligation was incurred in good faith; (2) no law specifically prohibited the payment; and (3) the United States Government received value for the payments. 31 U.S.C. § 3528(b)(1)(B). We find that the circumstances leading to the duplicate payments to Evergreen do not meet the criteria allowing us to relieve the certifying officer of liability for the duplicate payments.

Considering the first standard for relief in section 3528(b)(1)(A), we cannot find that the certifying officer, in certifying the September 27 and October 5 payments, acted with reasonable “diligence and inquiry.” If she had done so, she would have learned that, just days before, she had certified payments to Evergreen for the same services and in the same amounts. The standard of reasonable diligence and inquiry requires an examination of the “practical conditions prevailing at the time of certification, the

sufficiency of the administrative procedures protecting the interest of the Government, and the apparency of the error.” 55 Comp. Gen. 297, 299 (Sept. 30, 1975). Here, the error was clearly apparent on the face of the invoices that the certifying officer was asked to certify.

In this case, the certifying officer, shortly after having certified payment to Evergreen on the basis of the four USDA “Emergency Equipment - Use Invoices,” certified manually, on the basis of four invoices submitted by Evergreen on Evergreen’s own invoice stock, four additional payments to Evergreen in the exact amounts and for the same services she had previously certified. The certifying officer manually certified one of these duplicate payments just two days after she had already certified payments to Evergreen. Even if the name of the vendor, the services rendered, the dates of their services, and the amounts on the Evergreen invoices had not raised questions, the fact that Evergreen had attached to its invoices carbon copies or photocopies of the USDA “Emergency Equipment - Use Invoices,” should have led the certifying officer to question the validity of the payment. The attached “Emergency Equipment - Use Invoices” were either carbon copies or photocopies; the two carbon copies are clearly identified as “contractor” copies. At the very least, we would expect that a certifying officer exerting the requisite amount of care and diligence would have questioned the payments based upon the attached carbon copies and photocopies. We would not dispute that receipt of invoices from Evergreen on Evergreen invoice stock would indicate to the certifying officer that Evergreen was seeking payment for services rendered. Nevertheless, the attached carbon copies of the “Emergency Equipment - Use Invoices,” labeled “contractor” copy, and the photocopies of the “Emergency Equipment - Use Invoices” should have alerted the certifying officer to question the payments, particularly since she had certified payments just days before on the basis of the originals of those “Emergency Equipment - Use Invoices.” The certifying officer certified one of the duplicate payments only two days after certifying the first payment and certified the other three duplicate payments ten days after certifying the first payment. Therefore, we are unable to grant relief under section 3528(b)(1)(A).

We also are unable to grant relief of liability on the basis of the second standard for relief in section 3528(b)(1)(B). We do not question the determination that the certifying officer was acting in good faith when she certified the duplicate payments to Evergreen. Nor do we question the legality of making a payment for bus services rendered during a forest fire. However, in order to grant relief, we must find that the government received some value for the payments. Clearly, Evergreen had provided no additional bus services beyond those that GPNF had already paid for on September 25, 2001. Accordingly, we are unable to grant relief pursuant to section 3528(b)(1)(B).

We have considered the arguments raised in your May 13 request and your July 30 response to our July 22 letter. First, you ask that we grant relief because “the fire payment workload was overwhelming,” and the certifying officer and the voucher examiner “received minimal training, due to the heavy year-end workload, the fire situation, and the inexperience of detailed supervisors.” May 13 request at 1. We cannot grant relief based upon these factors. Heavy workload is not a consideration for relieving a certifying officer from liability for an improper payment. B-147747,

Dec. 28, 1961. A certifying officer has a high degree of responsibility and such authority is not perfunctory. 55 Comp. Gen. 297, 299 (Sept. 30, 1975). As the statutory standards for waiver reflect, the responsibility of certification must be respected; otherwise it would afford little protection of the United States against improper payments. *Id.* As her signature on her Designation of Approving Officer form evidences, the certifying officer understood the responsibility she had undertaken when she became a certifying officer. *See* Designation form. In taking that responsibility, the certifying officer agreed to exert reasonable care and diligence when making her certification.

Second, you raised the argument that we should relieve the certifying officer from liability because Evergreen submitted a payment via business check and that it was not the certifying officer's fault that this check could not be cashed due to insufficient funds. May 29 memo at 2. This argument, however, fails to take into account that the reason Evergreen submitted the check was to repay the United States for amounts that the Forest Service should not have paid Evergreen in the first place, and would not have paid Evergreen but for the certifying officer's error. The United States suffered a loss of funds because the certifying officer acted without the requisite level of care. The fact that Evergreen wrote a dishonored check does not absolve the certifying officer's liability for the original improper payment and resulting loss of government funds.

Finally, you indicated that GPNF maintained insufficient policies and procedures at the time of the improper payment that would have prevented the certification of the duplicate payments at issue here. You specifically noted that, since this incident, GPNF has instituted a log system. *See* May 29 memo at 2; *see also* July 30 memo at 3. While we agree that a log may afford extra protection from duplicate payments in the future, the remedial procedures cannot relieve the certifying officer from acting with the requisite care and diligence under the established procedures at the time of this incident. Even without the new policies and procedure, if the certifying officer acted with reasonable care and diligence, she would not have certified the improper payment.

Conclusion

We find that the circumstances resulting in the overpayment of \$5,631.85 to Evergreen for services rendered in September 2001 do not meet either of the criteria in section 3528(b)(1)(A) or (B). Accordingly, we cannot relieve Ms. Jimenez from liability for the resulting improper payment discovered in October 2001.

Sincerely,

/signed/

Susan A. Poling
Managing Associate General Counsel

cc: Juanita Jimenez

DIGEST

We deny relief for a Forest Service certifying officer who certified duplicate payments in the amount of \$5,631.85 to a vendor for emergency fire equipment during a fire emergency in Gifford Pinchot National Forest. We find that the certifying officer failed to act with the requisite amount of care and due diligence when she certified payments based upon carbon copies of original invoices that she had previously certified for payment.