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United States General Accounting Office
Washington, DC 20548

B-288166

March 11, 2003

Mr. Dale Bosworth
Chief, Forest Service
U. S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street, SW
Washington, DC 20250

Subject: Request for Relief from Financial Liability for Mick Barrus

Dear Mr. Bosworth:

This responds to a letter from the Director of Financial Policy and Analysis for the Forest Service seeking relief from this Office, pursuant to 31 U.S.C. § 3527(a), for Mr. Mick Barrus, a Forest Service Collection Officer. As explained below, we grant relief in this case.

Mr. Barrus works in the Shoshone National Forest in Cody, Wyoming. In July 1999, he was responsible for collecting fees from campground users. On July 21, 1999, Mr. Barrus placed a "Bill for Collection" and some fees that he had collected in a Forest Service business envelope that he sent to Bank of America, the Forest Service's Lockbox, using the U.S. Postal Service. The collections included numerous personal checks written to the Forest Service that amounted to \$6,433.00, and a cashier's check for an additional \$7,919.58. He included the cashier's check in place of cash collections that he had received. The envelope was neither received by the Lockbox staff nor returned to Mr. Barrus by the Postal Service as undeliverable.

In mid-August, when it became clear that the Lockbox staff had not received the collection, the Forest Service placed a tracer on the missing remittance through the U.S. Postal Service. Efforts to trace and recover the envelope and its contents proved fruitless. Mr. Barrus contacted the issuing bank to stop payment on the original cashier's check and replaced it with a new cashier's check. However, he had not kept photocopies of, or otherwise recorded specific information about, the personal checks he had enclosed in the envelope and so the Forest Service is unable to reconstruct the collection of personal checks.

Under 31 U.S.C. § 3527(a), our Office is authorized to relieve accountable officers of responsibility for a physical loss of government funds if we concur in the determination by the head of an agency that: (a) the loss occurred while the officer or agent was acting in the discharge of his or her official duties and (b) that there was no fault or negligence on the part of the officer or agent which contributed to the loss. B-241820, Jan. 2, 1991; B-230796, April 8, 1988. Generally, the standard we have applied for determining negligence is what the reasonably prudent and careful person would have done to take care of his or her own property of like description under like circumstances. 54 Comp. Gen. 112, 115-116 (1974).

The Forest Service recommends that we relieve Mr. Barrus of his liability for the amount of the personal checks (\$6,433.00) since all indications show that the loss of the checks was a result of the deposit envelope being lost in the U.S. mail and the procedures followed by Mr. Barrus at the time were acceptable under Forest Service policy. Letter from Christopher S. Osborne, Director, Financial Reports and Analysis, Forest Service, to Office of the General Counsel, GAO, May 22, 2001. At that time, Forest Service had no requirement that such collections be sent to the Lockbox by certified or registered mail nor did it require that collection officers photocopy or otherwise record information concerning the personal checks included in a remittance.¹

Accountable officers are required to acquaint themselves and comply with Treasury rules and regulations concerning the proper procedures for handling funds in their custody, as well as the applicable rules and regulations of their own agency. See, e.g., B-229207, July 11, 1988; B-193380, Sept. 25, 1979. In this regard, we note that the Treasury Department's Treasury Financial Manual (T.F.M.) applicable at the time of this loss required that records of deposited checks be kept in sufficient detail to process a stop payment and obtain a duplicate check in the event the check is lost or destroyed.² See I T.F.M. § 5-2020 (T.L. No. 530, Sept. 10, 1993). These requirements were not mirrored in the Forest Service procedures under which Mr. Barrus was operating.

¹ To preclude similar losses in the future, the Forest Service has issued a new policy requiring the collection officers to send all remittances to the Lockbox by certified mail and to photocopy personal checks that are included in the remittance.

² In October 2001, Treasury expanded this provision by endorsing the practice of retaining duplicate documentation. See I T.F.M. § 5-2020 (T.L. No. 603, Oct. 4, 2001) ("while not required, the depositing agency should make copies of check deposits before dispatch to allow for replacement if . . . lost or destroyed in transit").

This situation is similar to one we considered in B-169848-O.M., Dec. 8, 1971, where we relieved an accountable officer of liability when the employing agency's regulations were demonstrably ambiguous and led the officer to act in a way which complied with the agency regulations, but not with the Treasury regulations. There, a collection officer of the Veterans Administration (VA) had sent official collections, including a money order, to the Federal Reserve Bank of San Francisco. As in the present case, the VA collections were apparently lost in the mail. The VA collection officer had not retained a description sufficient to allow her to secure a replacement money order. Then, as now, Treasury Department Regulations required the collection officer to retain information sufficient to allow replacements to be obtained for collections shipped through the mail. Money orders were specifically included in the list of collection items covered by that regulation. However, the VA regulations, while generally consistent with those of the Treasury Department, did not list money orders within the class of items for which such information should be retained. B-169848-O.M., Dec. 8, 1971.

The VA concluded that there was no fault or negligence on the part of the collection officer because she had complied with the applicable VA regulations and requested relief for her. Since there was some ambiguity as to whether the VA manual included money orders, we concurred with the findings of the VA that the collection officer's actions did not constitute fault or negligence since she complied with the applicable VA manual procedures. Id. VA, like the Forest Service here, revised its manual after learning of the ambiguities as a result of these circumstances. We granted relief. See also B-142058, Mar. 18, 1960 (accountable officer in American Consulate in Turkey relieved of liability for loss of replenishment vouchers where it did not appear he was required to retain duplicate records).

As in the VA case, the Forest Service regulations in effect at the time of the present loss differed from those prescribed by the Treasury Department, a situation that the Forest Service has since corrected to avoid future losses of this kind. We expect all accountable officers to become familiar with and to adhere to Treasury Department regulations, notwithstanding the possibility that the accountable officer's own agency regulations or guidance might be less stringent. See, e.g., B-229207, July 11, 1988; B-193380, Sept. 25, 1979. Nevertheless, in Mr. Barrus' circumstances, applying a standard of reasonableness, we will grant relief. In our experience, many reasonably prudent and careful persons, handling their own collections of this sort, do not record the details of checks that they have collected from others before depositing them in the U.S. mail. Because this is not the common practice for many reasonably prudent persons, we would not have expected Mr. Barrus to refer to Treasury regulations for particular guidance in this instance, especially when Forest Service regulations did not require this of him.

The Forest Service should transmit copies of this decision, Treasury's regulations, and the Forest Service's revised regulations to all of its accountable officers to inform them of the specific requirements imposed on them in circumstances like this. In the future, we will expect Forest Service officers to adhere to Treasury Department regulations, as well as the new rules adopted by the Forest Service.

In conclusion, pursuant to 31 U.S.C. § 3527(a), we relieve Mr. Barrus from liability for this loss.

Sincerely yours,

/signed/

Susan A. Poling
Managing Associate General Counsel

cc: Mr. Mick Barrus
Director, Financial Policy and Analysis, Forest Service

DIGEST

GAO grants relief to a Forest Service collection officer for loss of personal checks sent for deposit by regular U.S. mail, despite the officer's failure to comply with a Treasury requirement to retain sufficient information about checks sent for deposit to enable reconstruction and recollection of the checks in the event of a loss. Because the Treasury requirement is not a common practice for many reasonably prudent and careful people handling their own collections of this sort, and because Forest service rules did not then (but now do) mirror the Treasury requirement, relief is granted based on a standard of reasonableness. In the future, GAO will expect Forest Service officers to adhere to Treasury Department regulations, as well as the rules adopted by the Forest Service.

