

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-214195

DATE: November 20, 1984

MATTER OF: U.S. Forest Service--Claim under
31 U.S.C. § 3721

DIGEST: Claim under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721, for loss of Forest Service employee's personal property due to burglary in rented Government housing at remote ranger station is cognizable under the statute, since housing may be viewed as "assigned" for purposes of 31 U.S.C. § 3721(e).

Mr. W. D. Moorman, Authorized Certifying Officer, U.S. Department of Agriculture, asked whether claims of Forest Service employees for loss of personal property due to burglary in Government-owned quarters rented by the employees, which occurs through no fault of the employees, are cognizable under the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721 (formerly 31 U.S.C. § 241, recodified by Pub. L. No. 97-258, September 13, 1982, 96 Stat. 973). As discussed below, we think they are.

In the representative case submitted with the decision request, personal property of a Forest Service employee residing in a Government-owned house within the forest in which the claimant was employed, was stolen during a burglary. There was no employee negligence. The Forest Service charged and deducted rent from the employee's salary for use of the Government-owned house. The employee's claim, based on the stolen items, was approved in the amount of \$178.99 by the Forest Service pursuant to 31 U.S.C. § 3721. Since the quarters were not "considered as part of the compensation in fixing the salary rate" of the claimant (the significance of this phrase will be discussed later), a question has arisen within the Forest Service as to whether the claimed loss can be considered to have occurred at quarters "assigned or provided in kind" by the Government, as provided in 31 U.S.C. § 3721(e).

Subsection (b) of 31 U.S.C. § 3721 authorizes the head of each agency to settle and pay claims up to \$25,000 for damage to, or loss of, personal property incident to an employee's service. In addition, 31 U.S.C. § 3721(e) states:

"A claim may not be allowed under this section if the personal property damage or loss occurred at quarters occupied by the claimant in a State or the District of Columbia that were not assigned or provided in kind by the United States Government or the District of Columbia Government."

Further, 31 U.S.C. § 3721(k) provides that "settlement of a claim under this section is final and conclusive."

It is not within the jurisdiction of our Office to render decisions relative to the merits of a claim under 31 U.S.C. § 3721. In the absence of any overall policies prescribed by the President pursuant to 31 U.S.C. § 3721(j), such claims are for consideration under the regulations of the employing agency. B-190106, March 6, 1978. However, it is proper for our Office to consider the threshold question of whether a claim is properly cognizable under the statute. 58 Comp. Gen. 291 (1979).

Specifically the certifying officer requests a clarification of the meaning of quarters "assigned or provided in kind" by the Government. According to the submission, the question in this case arose because of some language in one of our early decisions, 17 Comp. Gen. 207 (1937). That decision dealt with section 3 of the Act of March 5, 1928, 45 Stat. 193, which required that the reasonable value of quarters furnished to civilian employees be "considered as part of the compensation in fixing the salary rate" of the employees. The requirement to consider the value of Government-furnished quarters in fixing the employee's salary rate was in lieu of charging rent to the employee, and applied only with respect to quarters furnished without charge to the employee. See 42 Comp. Gen. 386 (1963). The 1928 statute was superseded in 1964 by Public Law 88-459, 78 Stat. 557, now codified at 5 U.S.C. § 5911 (1982), which contemplates the charging of rent for the furnishing of Government-owned quarters to civilian employees. See B-164200, May 24, 1968. The requirement to consider the reasonable value of quarters in fixing the employee's salary no longer appears in the statute--there is no longer a need for it since the employee is being charged rent--and the 1928 statute was in fact repealed by section 8 of Public Law 88-459, 78 Stat. 558. Thus, 17 Comp. Gen. 207 and similar decisions dealing with the 1928 statute are not relevant to the present inquiry.

In normal usage, the term "provided in kind" implies the furnishing of an item in lieu of a cash payment. Thus, it may

be questioned whether quarters are "provided in kind" where the employee is being charged rent. A review of the legislative history of 31 U.S.C. § 3721 fails to reveal a specific reference to this situation. However, it is not necessary to further explore this point because, in our opinion, the quarters in this case may be viewed as "assigned" for purposes of 31 U.S.C. § 3721(e).

The origin of 31 U.S.C. § 3721 is the Military Personnel Claims Act of 1945, 59 Stat. 225. This statute, in which the term "assigned or provided in kind" first appeared, was broadened to encompass the civilian agencies by the Military Personnel and Civilian Employees' Claims Act of 1964, which in turn has evolved into the present 31 U.S.C. § 3721.

The scope of the "assigned or provided in kind" language was considered in Fidelity-Phenix Fire Ins. Co. v. United States, 111 F. Supp. 899 (N.D.Cal. 1953), aff'd sub nom. Preferred Ins. Co. v. United States, 222 F.2d 942 (9th Cir. 1955), cert denied, 350 U.S. 837. An Air Force B-29 aircraft had crashed near a trailer park on an Air Force Base, causing considerable damage to personal property of Air Force personnel who lived in the trailer park. The Air Force paid property loss claims by its personnel under the Military Personnel Claims Act, to the extent that the losses were not insured.^{1/}

The trailer park was on Government property and was administered and governed by Air Force regulations. The trailers were owned by the individual members. The Air Force personnel stationed at that particular base were not required to live in the trailer park or on the base itself. Those who chose to live in the trailer park were charged a fee for use of the trailer space and received a quarters allowance in lieu of Government housing. Trailers were parked in specific locations assigned by base personnel, and were connected to utility lines and plumbing facilities provided and maintained by the Air Force.

^{1/} Normally, settlements under 31 U.S.C. § 3721 (and its predecessor legislation) are not subject to judicial review. The statute was relevant in the Fidelity-Phenix case because if the claims in question were properly paid under the Military Personnel Claims Act, then the claimants' insurers had no subrogation claim against the United States under the Federal Tort Claims Act, which was the holding of the case.

On these facts, the court found that the trailer park constituted "assigned" quarters within the meaning of the Military Personnel Claims Act. 111 F. Supp. at 906.

In a 1960 memorandum to one of our audit divisions (B-142446-O.M., June 3, 1960), we considered a Navy regulation which included a definition of "assigned quarters" based on the Fidelity-Phenix decision. We concluded that the court's interpretation of "assigned quarters" was "not an untenable one" and that a claim paid under the Navy regulation therefore need not be questioned.

Turning now to this case, the house in question is owned by the Government and located at a remote ranger station within a national forest. The employee, we have been informally advised, is not required to live in the house as a condition of employment. However, because of the remote location of the ranger station, it would be highly impractical not to do so. Also, as noted earlier, the employee is charged rent for the quarters.

Applying the rationale of the Fidelity-Phenix case, we conclude that Government-owned rental housing located at a remote ranger station within a national forest may properly be viewed as "assigned" for purposes of 31 U.S.C. § 3721. Accordingly, the claim of a Forest Service employee for a personal property loss occurring at such quarters, rented by the employee and located within the forest at which the claimant is employed, is cognizable under the statute and may be considered at the discretion of the agency. Settlement thereof, if made in accordance with the provisions of 31 U.S.C. § 3721 and any agency regulations promulgated thereunder, would be final and conclusive. 47 Comp. Gen. 316 (1967).

Milton J. Acosta
for Comptroller General
of the United States