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B-181466 July 10, 1974

Number: B-181466

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The Honorable Carla A. Hills Assistant Attorney General Civil Division Department of Justice

Dear Mrs. Hills:

Subject: U.S.A. v. Mary Glenn McKinney and Peerless Insurance Co. (HD Fla., Orlando Div., Civil No. 73-215-Orl.-Civ-Y)

Your letter of June 7, 1974, reference CAH:MH:JHH:cva 77-17M-31, transmitted a copy of the adverse decision of the District Court in hte captioned case and requested our comments as to whether an appeal should be taken from such decision. The suit constitutes an attempt by the Government to recover from the defendants the amount of a deficit in the accounts of Mary Glenn McKinney covering the period from April 1, 1965, through August 31, 1966, during which time she was a State Department Disbursing Officer in La Paz, Bolivia. The decision grants a motion for summary judgment by defendant McKinney contending that the Government's claim is barred by 31 U.S.C. 821 for failure of the General Accounting Office to settle her accounts within the 3-year period stipulated by the cited statute.

The act of May 19, 1974, ch. 78, 61 Stat. 101, as amended, 31 U.S.C. 821, provides as follows:

"Effective three years after May 19, 1974, the monthly or quarterly accounts of any disbursing, accountable, or certifying officer of the Government shall be settled by the General Accounting Office within a period of not to exceed three years from the date of the receipt of the account by the General Accounting Office. A copy of the certifivate of settlement in each case shall be sent to the officer involved and such settlement shall be final and conclusive on the General Accounting Office after the expeiration of three years from the date of receipt of the account to the extent that no further charges or debts shall be raised in such account thereafter except as to moneys which have been or may be lost to the United States due to fraud or criminality on the part of said officer: Provided, That nothing in this section shall be construed to prohibit recovery from any payee of public moneys illegally or erroneously paid to such payee or to preclude the recovery from the disbursing, accountable, or certifying officer of any balance found due to the Government under a settlement made within the period of three years as provided in this section: Provided further. That nothing in this section shall be contstrued to deprive may any such officer of his right at any time to clear his accounts of questioned items in accordance with the previsions of existing law: Provided further. That the

period of limitation above prescribed shall be regarded as suspended for the duration of any future was in which the United States may be engaged."

The record of this case shows that Miss McKinney filed monthly accounts as United States Disburing Officer in La Paz, Bolivia, for the period April 1, 1965, through August 31, 1966, and that her last monthly account, for the period from August 1, 1966, through August 31, 1966, was filed by her and received by the Treasury Department and Department of State some time in September of 1966. On April 8, 1968, the Treasury Department advised the General Accounting Office that said accounts showed a shortage of funds, the amount of which was not known, and that the Treasury Department and the State Department were investigating the matter to determine the exact amount. The General Accounting Office issued a Notice of Exeception against Miss McKinney's accounts on April 5, 1971, and a Certificate of Exceptions Outstanding dated April 8, 1971, reciting the deficiency, was furnished to Miss McKinney by mail. On December 15, 1972, the Government's complaint was filed, concerning this litigation.

It is apparent from the above chronology that the accounts never were actually received by the General Accounting Office, as stipulated in 31 U.S.C. 821. However, subsequent to the enactment of the legislation, which was enacted at a time when all accountable officers' accounts were required by our Office to be physically transmitted to our Office, a change was made in audit methods whereby such records were required by our Office to be retained by the agency for audit there. Our letter of October 22, 1964, B-45109, advised the Treasury and State Departments that the original documents pertaining to accountability of United States Disbursing Officers of the Department of State, which formerly were transmitted to our Office for audit and settlement, should be retained by the Bureau of Accounts of the Treasury Department where they would be subject to audit and settlement by members of our staff assigned to the site audits of the Treasury Department. Since that time, it has been the general operating policy of our Office to consider the date of receipt by the agency as the point from which the 3-year period established by 31 U.S.C. 821 begins to run. See footnote #1 to 3 GAO 37.1 and 3 GAO 37.2.

On the face of the above, and since there is no indication in the record of fraud or criminality on the part of Miss McKinney, it would appear that the 3-year period had run before our Office had made any settlement of Miss McKinney's accounts and that the adverse decision of the court is correct, unless we can find a valid basis for supporting a a letter starting date for instance. We note that the file contains a Department of State audit report on the shortage here involved, entitled "Report of Audit, United States Disbursing Officer Operations, American embassy, la Paz, Bolivia," covering the period April 1, 1965, through March 31, 1967, including adjustments through December 31, 1968, such report being dated April 23, 1969. This report contains findings that Miss McKinney's accounting records, supporting data, checkbooks, and reports covering the period of time and the deficiency here involved were not complete or current. See, for instance, page 3 and 5-8 of cited audit report.

The history of 31 U.S.C. 821 shows that as it was originally proposed by the War Department it would have make the limitation run from the end of the period covered by the account, except for fraud or criminality on the part of the officer. The General Accounting Office opposed this provision on the ground that there frequently was delay in submitting accounts so that we would not actually have the 3-year period within which to effect settlement, and proposed a substitute providing that the limitation period would run from the date of

receipt of a complete account in the General Accounting Office. Use of the word "complete" raised opposition from several sources, on the basis that many years after receipt of an account the GAO could maintain that an account was incomplete because of some more technicality such as the omission of a single form, etc., and thus defeat the purpose of the statute. The Senate Committee on Expenditures in the Executive Department, which held hearings on S. 273, 80th Congress (which ultimately was enacted as the act of May 19, 1947, ch. 78, 61 Stat. 101, 31 U.S.C. 821), agreed and after much discussion involving our Office deleted the word "complete." See the transcript of the Hearings on S. 273. However, the Committee made it very clear that--

"***this provision is to be interpreted to moan that the time shall sstart to run from the receipt of a substantially complete account, including not merely an itemized statement but a reasonable compliance with requirement of law (e.g., R.S. 3622, 31 U.S.C. 496) and of valid regulations of the Comptroller General with respect to the furnishing of vouchers and other supporting documents."

See pages 2 and 3 of Senate Report No. 99, 80th Congress, 1st Sess. dated April 11, 1947, on S. 273.

As indicated above, the Department of State audit report on this shortage unequivocally states that Miss McKinney's accounting records, supporting data, checkbooks, and reports covering the period of time and the deficiency here involved were not complete or current. In fact, the accounts were so incomplete that it took the Department of State's auditors over two and one-quarter years of auditing and investigation after the end of the period covered by the accounts to reconstruct the transactions involved therein sufficiently to permit them to state a reasonably accurate figure for the shortage. Hence, there would appear to be a sound basis to contend that the accounts involved were not "substantially complete" when received by the Treasury Department and the Department of State some time in September of 1966; that such accounts were not "substantially complete" until the Department of State's auditors had sufficiently reconstructed said accounts to permit them to state a reasonably accurate figure for the shortage, which would appear to be some time between December 31, 1968, the stated ending period of the audit, and April 23, 1969, the date the audit report was issued; and that the 3-year limitation period established by 31 U.S.C. 821 did not begin to run until that date. On the basis of that starting date, the Notice of Exception and the Certificate of Exceptions Outstanding issued by our Office were well within the 3-year limitation period.

The point here in issue is the importance to the United States insofar as the settlement of accountable officers' accounts is concerned. We recommend that the adverse decision of the District Court herein be appealed.

Sincerely yours,

Paul G. Dembling General Counsel