Text as published on gao.gov, https://www.gao.gov/products/b-187708, archived 2025-02-11. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-187708 April 5, 1977

Number: B-187708

Date: 1977-04-05

B-187708 April 5, 1977

Ms. Julia S. Gardner Department of Agriculture United States Forest Service P.O. Box 907 Baker, Oregon 97814

Dear Ms. Gardner:

This is in response to your request of March 8, 1977, that we reconsider our letter of December 28, 1976, in which we stated that we were unable to grant you relief from liability, as imprest fund cashier for the National Forest headquarters of the Wallowa-Whitman National Forest, for the physical lose of $1,336. You request that we obtain a copy of the Federal Bureau of Investigation (FBI) Report No. P.D. 52-5589 because it indicates that the money may have been stolen. You also say that our position was based on a misinterpretation of your testimony concerning "day lock."

As stated in our earlier letter, relief of an accountable officer from liability for a physical loss of funds may be granted by the General Accounting office (GAO) only in accordance with 31 U.S.C. Section 82a-1 (1970) which requires, as a condition precedent to granting relief, a determination by the head of the department concerned-

"* * * (1) that such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. * * *" (Emphasis added.)

There have been no such determinations by the head of your agency and, therefore, as we previously advised you, the law does not permit us to grant relief. Should the Department make the findings required by 31 U.S.C. Section 82a-1, we would then be empowered to consider the matter further.

However, concerning the other matters you raise, although we did not review the FBI reports, we were aware from the information which you submitted that there was a possibility of theft. The recommendations by Mr. Braitmeier, dated March 1, 1976, states that the primary suspect was a General Services Administration employee, but that there was not enough evidence for the FBI to pursue the case against him. The fact that the loss may have been the result of a theft is not, alone, a sufficient basis for relief of an accountable officer if the officer's negligence contributed to the theft.

Your contention is that the statement in the Breitmeier recommendation is a

misquotation and that you did not say you were unsure whether you locked the safe, but rather that you were unsure whether it was left on "day lock." You contend that even if it had been on day lock, it still was locked because the dial must be turned to the right approximately on turn to open it and if the dial is turned past the last number the safe would lock. Thus, you conclude, "it requires some knowledge about safes to know how to use the day lock."

With regard to this information, the fact that the safe may have been on day lock does not overcome the presumption of negligence. By you own admission, someone with a knowledge of safes could readily open a safe on day lock without knowing the combination.

The State Police reports on the theft conflicts in this respect with the information you now offer. According to the State Police, if the safe is on day lock--

"* * * The dial will turn to the right only until the safe is unlocked.

The dial will not turn past the last number of the combination."

If the police report is correct, it is even more evident that to leave the safe on day lock is negligence. However, we do not believe it is necessary to resolve this discrepancy. In either case, whether you or the State Police are right, it seems to us that leaving the safe on day lock would constitute negligence simply because it could then be opened by someone who did not know the combination.

Finally, the State Police report quotes you as follows:

"Mrs. Gardner stated when she started to open the safe this morning. She first attempted to open it as if it were on 'day lock." * * *"

Only when you could not do so, it is reported, did you try the entire combination. Evidently you thought that you had left the safe on day lock which, as already stated, constitutes negligence is our view.

Accordingly, we find no basis in the evidence you now cite to change the position we took in our earlier letter, that the presumption of negligence is not rebutted and that therefore we could not grant relief even if we were empowered to do so.

We regret we are unable to reach a result more favorable to you.

Sincerely yours,

Paul C. Dembling General Counsel