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B-191594, December 20, 1978

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B-191594, DECEMBER 20, 1978

DIGEST: ALTHOUGH SKI BOOTS ARE NOT LISTED AS A COMPONENT OF THE AUTHORIZED FOREST SERVICE WINTER UNIFORM, IMPREST FUND CASHIER'S REIMBURSEMENT VOUCHER FOR THE AMOUNT REIMBURSED A UNITED STATES FOREST SERVICE SNOW RANGER, MAY BE CERTIFIED FOR PAYMENT SINCE, IN ACCORDANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND FOREST SERVICE REGULATIONS, THE DISTRICT FOREST RANGER DETERMINED THAT SKI BOOTS ARE PERSONAL PROTECTIVE EQUIPMENT NECESSARY TO PROTECT SNOW RANGER FROM INJURY.

YVONNE C. OLIVER - IMPREST FUND CASHIER:

THIS DECISION RESPONDS TO A REQUEST FROM THE AUTHORIZED CERTIFYING OFFICER, NATIONAL FINANCE CENTER, UNITED STATES DEPARTMENT OF AGRICULTURE (USDA), ASKING WHETHER THE REIMBURSEMENT VOUCHER ENCLOSED THEREWITH MAY BE CERTIFIED FOR PAYMENT. THE VOUCHER IS FOR THE SUM OF $140 IN FAVOR OF YVONNE C. OLIVER, AN IMPREST FUND CASHIER EMPLOYED BY THE USDA FOREST SERVICE. IT REPRESENTS REIMBURSEMENT FOR A PAYMENT MADE FROM THE IMPREST FUND TO MR. LARRY MILLER FOR THE COST OF ONE PAIR OF SKI BOOTS PURCHASED BY MR. MILLER ON NOVEMBER 15, 1975, FOR USE IN CONNECTION WITH HIS DUTIES AS SNOW RANGER IN THE POCATELLO RANGER DISTRICT OF THE CARIBOU NATIONAL FOREST.

A QUESTION REGARDING THE PROPRIETY OF THE PAYMENT AROSE BECAUSE SKI BOOTS ARE NOT LISTED AS A COMPONENT OF THE WINTER UNIFORM AUTHORIZED BY PARAGRAPH 6159.45D, AMENDMENT 96, FOREST SERVICE MANUAL, APRIL, 1974 AND BECAUSE CERTAIN USDA OFFICIALS QUESTIONED WHETHER THE BOOTS COULD PROPERLY BE CATEGORIZED AS PERSONAL PROTECTIVE EQUIPMENT.

THE SKI BOOTS WERE NOT PURCHASED AS A UNIFORM ITEM. THEY WERE APPARENTLY PURCHASED AS PERSONAL PROTECTIVE EQUIPMENT AUTHORIZED BY AGRICULTURE PROCUREMENT REGULATIONS 4-4.5066(A), AUGUST, 1973, WHICH PROVIDES AS FOLLOWS:

"EXPENDITURES FROM APPROPRIATIONS AVAILABLE FOR THE PROCUREMENT OF SUPPLIES AND MATERIALS OR EQUIPMENT MAY BE MADE FOR THE PURCHASE AND MAINTENANCE, IN ACCORDANCE WITH AGENCY POLICIES AND PROCEDURES, OF SPECIAL CLOTHING AND EQUIPMENT FOR THE PROTECTION OF PERSONNEL IN THE PERFORMANCE OF THEIR ASSIGNED TASKS. 'PROTECTION,' AS USED IN THIS SECTION, MEANS PROTECTION FROM PHYSICAL INJURY OR OCCUPATIONAL DISEASE."

THE QUESTION IS THUS WHETHER THE BOOTS MAY BE PROPERLY CONSIDERED ITEMS OF "PROTECTIVE EQUIPMENT" RATHER THAN PERSONAL ATTIRE.

IN DISCHARGE OF HIS RESPONSIBILITY UNDER SECTION 6 OF THE OCCUPATIONAL SAFETY

AND HEALTH ACT OF 1970 (OSHA), 29 U.S.C. 665(1976), THE SECRETARY OF LABOR HAS SET GENERAL STANDARDS FOR PERSONAL PROTECTIVE EQUIPMENT. ALTHOUGH SKI BOOTS ARE NOT SPECIFICALLY MENTIONED, THE GENERAL REQUIREMENT IS THAT PERSONAL PROTECTIVE EQUIPMENT FOR EXTREMITIES MUST BE PROVIDED, USED, AND MAINTAINED WHEREVER HAZARDS OF PROCESSES OR ENVIRONMENT OR MECHANICAL IRRITANTS MAY CAUSE INJURY OR IMPAIRMENT IN THE FUNCTION OF ANY PART OF THE BODY THROUGH PHYSICAL CONTACT. 29 C.F.R. 1910.132(A)(1977). PURSUANT TO SECTION 19 OF OSHA, 29 U.S.C. 668, EACH FEDERAL AGENCY MUST ESTABLISH A SAFETY PROGRAM CONSISTENT WITH THE SECRETARY'S STANDARDS. ACCORDINGLY, WE HAVE HELD THAT PROTECTIVE CLOTHING AND EQUIPMENT MAY BE FURNISHED BY THE GOVERNMENT IF THE HEAD OF AN EXECUTIVE AGENCY OR DEPARTMENT OR OFFICIAL DESIGNATED BY HIM DETERMINES THE ITEM TO BE NECESSARY UNDER OSHA AND ITS IMPLEMENTING REGULATIONS. 57 COMP.GEN. 379 (1978; 51 COMP.GEN. 446 (1972); B-187507, DECEMBER 23, 1976.

FOREST SERVICE MANUAL 6740.4(SEPTEMBER, 1975) PROVIDES IN PART:

"THE OCCUPATIONAL SAFETY AND HEALTH ACT REQUIRES THAT PERSONAL PROTECTIVE EQUIPMENT (PPE) AND CLOTHING REQUIREMENTS BE DETERMINED AFTER CONSULTATION WITH EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES. LOCAL LINE OFFICERS HAVE RESPONSIBILITY FOR MAKING JOB-HAZARD ANALYSES AND ESTABLISHING PPE REQUIREMENTS FOR THEIR LOCAL JOB SITUATIONS. THE BASIS FOR PROVISION OR NONPROVISION OF PROTECTIVE ITEMS SHALL BE A SIMPLIFIED JOB-HAZARD ANALYSIS AND A HAZARD EVALUATION. APPROVAL FOR ACQUISITION OF ITEMS OF PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING SHALL BE RETAINED AT FOREST, STATION AND AREA LEVELS. * * * "

THE UNITED STATES FOREST SERVICE SAFETY AND HEALTH MANAGER HAS INFORMALLY ADVISED US THAT IN THIS CASE THE DISTRICT FOREST RANGER WAS THE LOCAL LINE OFFICIAL RESPONSIBLE FOR MAKING THE JOB-HAZARD EVALUATION AND ESTABLISHING PPE REQUIREMENTS. THE RECORD SHOWS THAT A JOB-HAZARD ANALYSIS AND EVALUATION WERE CONDUCTED ON NOVEMBER 3, 1975, IN ACCORDANCE WITH THE ABOVE REGULATIONS AND THAT, AS A RESULT, THE DISTRICT FOREST RANGER DETERMINED THAT SKI BOOTS ARE REQUIRED TO PROTECT SNOW RANGERS ADMINISTERING THE SKYLINE SKI AREA IN THE CARIBOU NATIONAL FOREST FROM BRUISES AND BROKEN BONES CAUSED BY FALLS, COLLISION AND SNOW SLIDES ENCOUNTERED WHEN SKIING ON HAZARDOUS SLOPES. THE RECORD ALSO INDICATES THAT THE RANGER MUST SKI IN ORDER TO DO HIS JOB, AND MUST WEAR SKI BOOTS IN ORDER TO SKI.

WE DO NOT BELIEVE THERE IS SUFFICIENT BASIS FOR US TO CONCLUDE THAT THE HAZARD EVALUATION, CONDUCTED IN ACCORDANCE WITH USDA REGULATIONS, WAS UNREASONABLE OR ERRONEOUS.

ACCORDINGLY, WE CONCLUDE THAT IN THESE CIRCUMSTANCES APPROPRIATED FUNDS MAY BE EXPENDED TO PROCURE SKI BOOTS FOR USE BY SNOW RANGERS ADMINISTERING THE SKYLINE SKI AREA. THEREFORE, IF THEIR ACQUISITION WAS APPROVED IN ACCORDANCE WITH AUTHORIZED PROCEDURES, THE REIMBURSEMENT VOUCHER MAY BE CERTIFIED FOR PAYMENT IF OTHERWISE CORRECT.