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Office of  
General Counsel

In Reply  
Refer to:

B-198453

OCT 21 1980

Kenneth E. Cohen, Esq.  
Assistant General Counsel  
for Legal Counsel  
Department of Energy  
Washington, D.C. 20585

Dear Mr. Cohen:

Subject: Richard A. Benson - [Claim for  
damage to household goods]

You ask for our advice on two issues concerning the claim of Richard A. Benson (Benson), an employee of the Department of Energy (DOE), for reimbursement from DOE for loss and damage to his household goods suffered as a result of a flood while the goods were in temporary storage in transit (SIT) originally under Government bill of lading (GBL) S-1270632. The transfer of the property was handled by the Government on behalf of the employee incident to a change of duty station.

The record indicates that DOE authorized Benson for travel and moving expenses related to a permanent change of duty station from Germantown, Maryland, to Washington, D.C. Allstates Moving and Storage (Allstates) was selected as the mover and a GBL was issued May 30, 1979, designating "Mr. Richard A. Benson, c/o DOE Washington, D.C." as consignee. In addition, the GBL provided:

"ONE LOT HOUSEHOLD GOODS. THIS SHIPMENT IS DEEMED RELEASED TO A LUMP SUM VALUE OF \$25,000. FISCAL OFFICER WILL RECOVER ADDITIONAL VALUATION CHARGES FROM EMPLOYEE. SERVICE TO INCLUDE PACKING & UNPACKING OF ALL HOUSEHOLD GOODS. DOOR TO DOOR SERVICE REQUESTED & AUTHORIZED. TEMPORARY STORAGE AUTHORIZED NTE 60 DAYS."

The GBL also stated that the "CONSIGNEE WILL NOTIFY MOVING COMPANY OF EXACT LOCATION FOR DELIVERY."



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The household goods were packed by Allstates on July 5 and July 6, 1979, and shipped to Allstates' Baltimore warehouse on the same days for storage in transit since it appears Benson's new residence was not ready at the time of the move.

According to DOE and uncontradicted by Allstates or Benson, Hurricane David struck the Baltimore area on September 5, and the flooding which caused the property damage occurred late that evening or the early morning of September 6. As of those dates, Benson had not arranged for delivery of the shipment. The damage to Benson's shipment from the flooding was extensive and Allstates' insurance carrier determined that the warehouseman's insurance did not cover "Acts of God."

After the flood, Benson arranged with Allstates to inspect the property for salvage purposes. Apparently, Benson authorized Allstates to salvage the property for him. In this connection Benson made a payment of \$750 to Allstates to cover the salvage costs. He then requested payment from DOE which refused to pay the salvage costs pending determination of whether DOE was responsible for the charges. DOE subsequently issued an advance of \$750 to cover initial reclamation costs, but this advance was subject to repayment within 90 days.

The salvage operations are apparently now complete. DOE has administratively amended the GBL to provide for the payment of the salvage costs, but apparently no further payments have been made. Allstates refuses to release the salvaged goods prior to payment of the bill and an agreement that the bill will not be subject to subsequent audit by the Government. Allstates' bill for its flood salvage services and storage costs is currently \$3,230.47. DOE has tentatively concluded that the 60-day SIT authorized had expired by the time the flooding took place and that the loss occurred when the storage was at the employee's expense and for his convenience.

It appears that under any theory which is adopted for fixing the 60 days of Government financed storage, the flood disaster occurred after the Government authorized storage

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had expired. For example, the view most favorable to Benson, that the 60-day period began July 7, 1979, the first full day after storage was complete, would result in the SIT expiring September 4, 1979. Thus, DOE states its belief that the Government cannot assume liability for costs incurred after the expiration of the period for which storage was authorized at the Government's request, but asks for further guidance on this issue.

You ask two questions. First, is Benson entitled to recover any or all of the \$70,000 for the loss and damage to his household goods under 31 U.S.C. 240, et seq. (1976) (The Claims Act).

Initially, we agree with your determination that the Government cannot assume liability for storage costs incurred after the expiration of the period for which storage was authorized at the Government's request. In response to similar questions concerning storage costs incurred after the authorized SIT period expired, this Office has consistently stated that such time limitations are not waivable and therefore the employee would be ultimately liable for storage charges or other such costs incurred beyond the allowable period. See 54 Comp. Gen. 638 (1975); 49 Comp. Gen. 145 (1969); 29 Comp. Gen. 317 (1950).

Generally, in accordance with the tariff governing the transportation, at the expiration of the SIT, the warehouse is considered the destination of the shipment, the warehouseman becomes the agent of the shipper and the property is then subject to the rules, regulations and charges of the warehouseman. The nature of the storage changes from SIT to permanent storage at the owner's expense.

However, for your guidance with regard to the Claims Act, we do not believe that a determination of the question of entitlement under the FTR or GBL precludes recovery under the Claims Act. Under the Claims Act an agency head may settle and pay a claim for not more than \$15,000 made by a Government employee "for damage to, or loss of, personal property incident to his service." 31 U.S.C. 240, et seq., supra.

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The last sentence of 31 U.S.C. § 241(b)(1), supra, provides as follows:

"\* \* \* If the claim is substantiated and the possession of that property is determined to be reasonable, useful, or proper under the circumstances, the claim may be paid \* \* \*."

The Act also provides that a claim may be allowed only if the loss or damage "was not caused wholly or partly by the negligent or wrongful act of the claimant \* \* \*," 31 U.S.C. § 241(c)(3).

We believe that regardless of our conclusion that the 60-day limit on Government-paid storage cannot be waived and that further storage costs are at the employee's expense, you may still decide that Benson was reasonable and justified under the terms of the Claim's Act in extending the SIT as long as he did, that the storage remained incident to service, that the claim did not result from Benson's negligence, and that he may therefore obtain relief for his damages to the extent allowable under the Claims Act. Based on the record available to us, we believe there is support for this determination.

The second question is whether Benson's claim of \$3,230.45 for the expenses incurred by himself and Allstates for salvage operation, handling, moving, unpacking, and repacking of the goods in storage because of the flooding can be reimbursed as allowable travel expenses.

With respect to this question, we are unaware of any statute or regulation relating to Government travel which would authorize DOR's reimbursement of the reclamation costs as part of the contract of carriage under the GBL; see 41 C.F.R. 101-41.3, et seq. (1979), or as an allowable travel expense. See 5 U.S.C. 5724 (1976); Federal Travel Regulations, part 2-8.

Sincerely yours,

MILTON J. SOCOLAR

Milton J. Socolar  
General Counsel