

clearly stated that this section is intended to be applicable when no criminal proceeding takes place. Legislative intent is clear that the reason for the creation of this statute was the inability or unwillingness to criminally prosecute these charges and that, therefore, this civil remedy was made available as an alternative. There is no reason for cumulative action when the criminal proceeding went forward with full restitution of an agreed upon amount.

4. The evidence in this case is clear that there was no intent to defraud anyone. Mr. Zerr was never advised of any provisions concerning travel regulations for long term travel, when his only prior travel experiences had been short term travel arrangements. This failure on the part of the Government to have proven that he was given any knowledge whatsoever concerning long term travel arrangements is fatal to the Government's case and requires a finding in favor of Lloyd Zerr.

5. Simply by indicating that the regulations are a matter of record is an insufficient basis for proving knowledge. The travel office witnesses were unable to provide quick recitation of the meaning of language on questions of either direct or cross examination. Additionally, the testimony of Mr. Herdt, Mr Zerr's supervisor, was that the travel regulations were so confusing that he simply submitted his vouchers with everything which he had and left it to the travel department to figure out what was the appropriate amount of reimbursement.

6. Lloyd Zerr specifically denied any intent to defraud the Government. His testimony under oath is uncontradicted on the question of intent. His testimony further is that he intended to provide all documentation (as Mr. Herdt did) and he did provide such information. Clearly, any person intending to defraud would not have provided certain information which was made available to the Government by these submissions. The Government case proves that Mr. Zerr had no intent to defraud.

7. With respect to the Hertz Car Rental, there is no evidence whatsoever that Mr. Zerr ever received the notice from Hertz concerning the multi-month rental arrangement. The only testimony was that it was mailed to an address at which he no longer resided. There is absolutely no evidence that he had knowledge of the multi-month rental agreement. Mr. Zerr's testimony and the evidence of the charge bills supports the fact that he made payments in general amounts to the extent of his ability and he testified that he did not review the charge bills. There is no evidence of any intent to defraud with respect to the Hertz rental agreement on the multi-month rental.

8. Further with respect to the Hertz rental arrangement, the vehicle was less costly in Atlanta for a better quality vehicle. The vehicle was the one delivered by Hertz, not the one chosen by Mr. Zerr. The vehicle which he used was consistent with Government Travel Regulations and the cost of that vehicle was appropriate.

9. Mr. Zerr was, without any training or background knowledge whatsoever, sent on this assignment with the understanding that he would have two separate divisional responsibilities. One divisional responsibility concerned Region 2. The other concerned the Hatch Plant. He simply submitted his billing as he was directed to do and left it to the travel office and supervising officials to apportion the payments. There was no failure to disclose and all items were presented consistent with the minimal directions which Mr. Zerr had on travel and work hours. Also, it is important to note that his work time and travel were all approved by his supervisors. Mr. Zerr had the right to rely on the approvals as an indication of appropriate submissions by him and as a model for future submissions. These same supervisors cannot now be used to question what Mr. Zerr did after they directly and impliedly told him that he was doing everything correct.

10. With respect to personal property items, Mr. Zerr is responsible only for trying to save the Government money. When the rental arrangements were not made in advance as they were supposed to be made, Mr. Zerr had to set about renting pots, pans, linens and household articles. The rate at which these were to be rented was so astronomical that it generated a call to the travel office. He received advice at the travel office. As the travel office witnesses have testified, anyone answering the phone gives advice. There was no reason years ago for anyone, such as Mr. Zerr, to write down and confirm the advice. He

simply called the responsible agency and followed their directives. He did exactly what Mr. Herdt does about travel. He followed that advice and paid for the pots and pans, spreading the cost out over a period of months. No one said anything when he submitted the vouchers. They were approved by every person within the level of responsibility.

11. The next time he had a similar circumstance, it appeared with the furniture. The monthly furniture rental was ridiculous and the furniture was also of low grade. Since the cost of the furniture was to be apportioned over a period of time, and because of the nature of the cost, Mr. Zerr purchased the items and spread the cost out doing exactly what he had previously done with the pots and pans and what had been previously approved by the Government for the pots and pans. His knowledge was only to the effect that this was appropriate. He submitted the items for pots and pans in that fashion previously and this was approved. Doing the same thing for the furniture only made sense. Additionally, the Government spent no money whatsoever on furniture. There were no false claims made with respect to furniture because there was nothing false about them. There was no payment made with respect to furniture at all.

12. Housing in Vidalia, Georgia was scarce at the time when Mr. Zerr was sent there for NRC purposes. He obtained housing without the assistance of any Government officials. He persuaded a realtor to allow him to occupy a house which was for sale.

Because of that, in addition to the regular standard rent, he was responsible for regular maintenance of the house, grounds, and pool. This was the only place available at all. Mr. Zerr occupied it. The total cost on a monthly basis was \$950.00. He billed appropriately for that. The fact that it was appropriate is clear to the effect that the United States Attorney, the Government of the United States, the Nuclear Regulatory Commission, the investigator in this matter, and all other officials involved in the review of this case in Georgia approved the full amount of this cost. Clearly no intent here was made to make any false claims.

13. Lloyd Zerr was sent to Kitch without any description given in advance to him of the "flat 40" hourly billing system. He was told specifically by his supervisor when he went that he had an obligation to perform a training to carry out, and a qualifications book to complete. Mr. Brockman testified that he thought it was impossible, that it would involve an incredible amount of overtime hours, and that he was only concerned about "burn out". Lloyd Zerr did what he was sent to do. At no time did he do anything improper.

14. With respect to the hours spent at work, the testimony of Mr. Brockman was that because of a special project which he directed Mr. Zerr to do after Mr. Zerr found a deficiency, that Mr. Zerr would be required to spend a considerable amount of time outside of the protected area in order to carry out the directive from Mr. Brockman. Mr. Zerr did the job that he was asked to do.

The fact that it was outside the protected area was not the fault of Mr. Terr or anyone else. The fact that it cannot be charged to hours within the protected area is only proof that he was doing the work of Mr. Trockman.

15. Additionally, Mr. Terr was required to perform the qualifications manual. The Government's witness, Mr. Musser, spent 11 months doing the project which Mr. Terr had a scant 6 months to do. Clearly, Mr. Terr was pressured to do this work.

16. The United States Attorney, the investigator in this matter, the United States Government, the Nuclear Regulatory Commission, and all other reviewing officials in this matter have already conceded that Mr. Terr worked the appropriate hours and have authorized payment for the overtime hours, including meal and commute time in this case only. No intent to defraud has been made, nor could it have been ever shown since it did not exist.

17. Lloyd Terr never hid one fact from the Government. He simply tried to carry out his responsibility in this rotational assignment. Several months after returning from Hatch, he was told on Christmas Eve that he had until the close of business that day to produce all of his documentation for travel. Because he had been busy carrying out his next responsibility after Hatch, he finally had to sit down and put together 6 months worth of travel documentation to the best of his ability. He did that. At no time did he ever intend to cause any problem. He simply did as Mr. Herdt stated would be appropriate, he filled

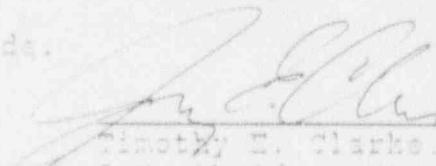
but the paperwork and sent it on. He never intended to defraud anyone.

18. Perhaps there was some personality conflict with the staff at Hatch and Mr. Zerr. No one will ever know that. He was sent as an intern. The Senior Resident Inspector immediately left. The Resident Inspector immediately left. Mr. Zerr was the sole "eyes and ears" of the NRC at Hatch for a period of time. Doing that job, trying to qualify, trying to learn his job at a new place, trying to be the best possible person for the NRC, all of these are the picture of Lloyd Zerr. Perhaps when a new supervisor came in intending to show his seniority he asked questions concerning the Lewis report. Unfortunately, the new supervisor did not know that Mr. Zerr was carrying out a responsibility for Mr. Brockman, carrying out the job without supervision or training because the other inspectors were missing, that Mr. Zerr was simply trying to do the best he could. He did nothing wrong.

19. When this new Senior Inspector questioned the amount of overtime and proceeded to begin this entire investigation, for reasons known only to that new Senior Inspector, what did he truly see? He truly saw that the hours in the protected area were overwhelmingly substantial. Because Mr. Zerr was not there on a Friday afternoon within the protected area, this new person decided to show his new found authority. That began all of this unfortunate chain of events.

20. Lloyd Zerr has suffered immensely at the hands of the

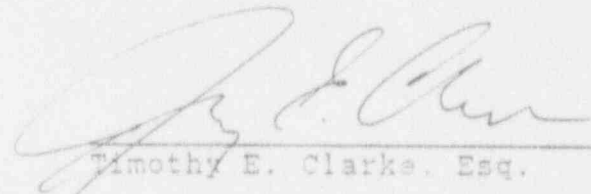
Nuclear Regulatory Commission, the agency that he tried valiantly to help. Lloyd Herr has suffered enough. He has never been paid for hours worked. He has never been reimbursed for expenses incurred. He is owed substantial sums from the Government. He will never collect any of it. The only thing which he can now recover from the Government is his good name. At no time did Lloyd Herr ever make a claim, present, or cause to be made, submitted, or presented, verbal, written, or substantial claims or written statements to any authority or to their agents. The only finding appropriate in the favor of Lloyd Herr terminating this sad and unfortunate episode.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, first class, postage prepaid, this 7th day of January, 1994, to ROGER K. DAVIS, ESQ. and DARYL M. SHAPIRO, ESQ., Office of the General Counsel, U. S. Nuclear Regulatory Commission, Mail Stop 15-B-18, Washington, D. C. 20555.



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