

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education and Welfare

SUBJECT: University of the Pacific
Docket No. 18
Decision No. 15

DATE: April 21, 1976

DECISION

Statement of the Case

This is an appeal by the University of the Pacific from a decision of the National Institutes of Health (NIH) to sustain the disallowance of certain claimed costs charged to Grant # AM 14066-03, a research grant of the Arthritis Institute. Disallowance of the sum of \$5,699, identified as salary charges, and \$3,525 of indirect cost, based upon an overhead rate of 61.85%, resulted from an audit of the University covering fiscal years 1971 and 1972.

The audit report was furnished to appellant on May 15, 1973 and requested the University's response to each of the recommendations, within 30 days of the date of the transmittal letter. Following correspondence and telephone conversations with the University, Mr. Jacob Seidenberg, Chief, Office of Contracts and Grants, NIH, notified the University on March 18, 1974 that the data furnished his office was insufficient to support the claimed salary charges and, consequently, not adequate to set aside the auditor's finding. University filed its appeal with the Board on April 11, 1974. In support of its appeal, University enclosed seven exhibits which purport to document the salary charges in question.

NIH responded to the positions taken by the University by memoranda dated May 29, 1974 and September 4, 1974. By letter dated February 13, 1975, the parties were advised that the appeal was ripe for decision and would be decided on the basis of the documents already filed, together with any briefs or additional materials the parties submit within 20 days of the date of such notification. Neither party filed additional documents.

Fact Background

At issue here is the allowability of charges for salaries of three University employees identified as Graduate Assistants, appointed for a ten month period September, 1970 through June 1971, who allegedly performed research services on the grant during such period, and salary for the Principal Investigator on the grant, Dr. Marvin Malone, for the months of June and July, 1971.

University claims that two of the three Graduate Assistants, Mr. DeCato and Mr. Trottier, were performing services to the University in addition to services to the grant and were paid through the Payroll Office. That Office, at the time, was not geared to make multiple account distributions so that their combined salaries were charged to the University's General Fund Account #4693. The University's Contracts and Grants Office effected a journal entry to correct the grant's portion. Exhibit 4 and 7, submitted by appellant with its appeal, represent the adjustment intended.

As stated in its appeal, the Time and Effort Reports supportive of these salaries and wages are after-the-fact documentation, as noted in appellant's Exhibit 6. Exhibit 6 consists of Time and Effort Reports for Trottier and DeCato covering the period December 1970 - February, 1971, for DeCato for the months March 1971 - May 1971, for Omaye, DeCato and Malone for months June and July 1971, for Omaye and DeCato for August 1971, for DeCato for September 1971 - November 1971. All of the Time and Effort Reports were signed and certified by Dr. Marvin Malone, the Principal Investigator. However, these Reports, as stated by appellant, were not executed contemporaneously with the performance of the services claimed, or shortly thereafter, but were prepared long after the fact and in response to a request of Dr. Malone made by Mr. C. H. Sheng, Contracts and Grants Officer, on March 26, 1974. A handwritten notation on the bottom of the memo by Dr. Malone indicates he signed the reports on March 27, 1974, the day following the date of the request.

Also furnished in support of its appeal are other Exhibits, some of which were provided to Mr. Seidenberg. More will be said below about those Exhibits.

Decision

Based upon a review of the audit report, the appeal and exhibits submitted in support thereof, and the response by NIH to the appeal, it is the conclusion of this Board that for the reasons set forth below, the appeal be denied and the disallowance of the salary charges in question, in the amount of \$5,699.00 and applicable overhead of \$3,525, be sustained.

There is no dispute concerning the appellant's failure to comply with the requirement of OMB Circular A-21; such failure is, in effect, conceded by the University (See Appeal, dated April 11, 1974, page 2). In respect to substantiation required by A-21 for costs of professional services, Paragraph J.7.d. provides:

"Direct charges for personal services under payroll distribution. The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either: (1) an adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual investigators, deans, departmental chairman or supervisors having first-hand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of non-professionals will be supported by time and attendance and payroll distribution records."

Here neither alternative procedure set forth in the quoted paragraph has been complied with, since neither monthly reviews nor monthly after-the-fact certifications were made.

If other credible evidence were provided to support the claims for personnel services, we might be inclined to condone the literal non-compliance with the mandate of the Circular. However, the documentation proffered to substantiate the salary charges is neither reliable nor convincing. The Time and Effort Reports submitted were prepared long after the services were alleged to have been performed and signed by Dr. Malone on March 27, 1974. These certifications purport to reflect services performed between 2 1/2 and 3 1/2 years prior to the certifications. The mere lapse of time between the rendition of the services and the making of the certifications call into question the accuracy of the latter, particularly since they cover part-time services of the graduate assistants. Moreover, the documentation makes clear that the certifications belatedly made by Dr. Malone were not initiated by him, based upon any records he may have maintained nor even on his own personal recollection. Rather, they were prepared for his signature by C. H. Sheng, Contracts and Grants Officer on March 26, 1974, after the audit had been made and the salaries in question disallowed by the HEW auditors (See appellant's Exhibit 6). No attempt has been made, nor can we find any suggestion, that Dr. Malone checked any records or searched his memory to ascertain the accuracy of the reports.

To the contrary, his own notation on the Sheng memo indicating he signed them the day after the date of the request memorandum suggests that he did so without substantial effort to assure himself of their accuracy. While a certification even if made long after the fact but based upon records or documents made or compiled contemporaneously with the event may be worthy of reliance, the circumstances surrounding these certifications refute their reliability. It seems clear that they were prepared for the explicit purpose of attempting, belatedly, to satisfy the auditor's complaints.

As argued by NIH, the salaries claimed for the graduate assistants appear so excessive as to draw into question their validity. The Time and Effort Reports for them indicate they devoted only 20% of their time to the grant research. Their rate of claimed compensation would amount to in excess of \$26,000 each for their full time services. Such salaries are not only disproportionate, but do not jibe with the compensation ascribed, in terms of tuition and stipend in their Employees Enrollment and Appointment papers (see Appellant's Exhibits 2 and 3). Additionally, the compensation charged for these assistants, only 20% of whose time was allocated to the grant effort, would amount to in excess of \$26,000 computed on a full-time basis. As pointed out in NIH's response, graduate assistants do not command such salaries.

In the effort to justify personnel salaries as chargeable to the grant, appellant has submitted Exhibit 4 which identifies payroll distribution. Similarly, Exhibit 5 purports to be a "Corrected Copy" showing salary distribution. However, Exhibit 4 reflects no allocation to the grant. Exhibit 5 is dated January 10, 1974 and bears the same taint as the after-the-fact Time and Effort Reports.

Exhibit 7 is headed "Payroll Analysis" and is submitted in support of the contention that payroll adjustment was made to correct the initial charges for these salaries made against the University general fund. The document bears no date and, so far as can be ascertained, may have been prepared, as in the case of the other documents above discussed, more

recently and in response to the disallowance by the auditors.

To summarize, Appellant has failed to provide credible, convincing evidence adequate to refute the findings of the auditors and the disallowance of the salaries in question and the applicable overhead. Accordingly, the appeal is denied.

/s/ Manuel Hiller, Chairman

/s/ David V. Dukes

/s/ Francis DeGeorge