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B-114042, Oct. 31, 1956

Number: B-114042

Date: 1956-10-31

B-114042, OCT. 31, 1956

TO MISS FRANCES E. CUTTER, STAFF OFFICER, HEALTH SERVICES BRANCH, DIVISION OF INTERNATIONAL HEALTH:

REFERENCE IS MADE TO YOUR LETTER OF SEPTEMBER 21, 1956, AGAIN REQUESTING RELIEF FROM LIABILITY UNDER NOTICE OF EXCEPTION DATED FEBRUARY 13, 1952, IN THE AMOUNT OF $28.36, STATED AGAINST DISBURSING OFFICER VOUCHER NO. 1133760 IN THE FEBRUARY 1948 ACCOUNTS OF PAUL D. BANNING. YOU REQUEST THAT THE EXCEPTION BE REMOVED IN ACCORDANCE WITH OUR DECISION OF JANUARY 12, 1951, B-94805, 30 COMP. GEN. 298, SINCE EFFORTS TO COLLECT THE AMOUNT INVOLVED FROM THE PAYEE HAVE BEEN UNSUCCESSFUL.

THE ABOVE-CITED DECISION WAS RENDERED IN RESPONSE TO AN INQUIRY FROM THE ADMINISTRATOR OF VETERANS AFFAIRS AS TO WHETHER ALL CASES OF VOUCHER OVERPAYMENTS INVOLVING THE LIABILITY OF CERTIFYING OFFICERS SHOULD BE SUBMITTED TO THE GENERAL ACCOUNTING OFFICE FOR CONSIDERATION UNDER THE RELIEF PROVISIONS OF THE ACT OF DECEMBER 29, 1941, 55 STAT. 875, 31 U.S.C. 82C, PRIOR TO SEEKING LEGISLATIVE RELIEF. IT WAS HELD IN THAT DECISION, QUOTING FROM THE SYLLABUS, THAT:

"UNDER THE ACT OF DECEMBER 29, 1941, VESTING AUTHORITY IN THE COMPTROLLER GENERAL TO RELIEVE CERTIFYING OFFICERS OF LIABILITY FOR ERRONEOUS PAYMENTS MADE UNDER CERTAIN CONDITIONS, REQUESTS FOR RELIEF OF CERTIFYING OFFICERS IN ALL ERRONEOUS PAYMENT CASES, INCLUDING COMPUTATIONAL ERROR CASES, IN WHICH REASONABLE EFFORTS TO ENFORCE COLLECTION FROM PAYEES HAVE BEEN EXHAUSTED SHOULD BE SUBMITTED TO THIS OFFICE PRIOR TO SEEKING LEGISLATIVE RELIEF, WITH A STATEMENT OF THE GROUNDS RELIED ON FOR SUCH RELIEF OR THE AMELIORATING CIRCUMSTANCES UPON WHICH THE CONGRESS WOULD BE URGED TO GRANT RELIEF IN THE EVENT RELIEF IS DENIED BY THIS OFFICE.'

THE DECISION FURTHER INDICATED THAT, PRIOR TO THE INSTITUTION OF ACTION TO OBTAIN RELIEF UNDER THE 1941 ACT, REASONABLE EFFORTS TO ENFORCE COLLECTION OF THE IMPROPER PAYMENT FROM THE PAYEE SHOULD BE EXHAUSTED, SINCE COLLECTION WOULD REMOVE THE NEED FOR RELIEF. IT WAS STATED THEREIN THAT "IN THE EVENT OF FAILURE TO EFFECT COLLECTION FROM THE PAYEE, IT IS CONSIDERED THAT THE NEXT STEP SHOULD BE THE PRESENTATION OF A REQUEST FOR RELIEF TO THIS OFFICE PURSUANT TO THE RELIEF PROVISIONS OF SAID ACT OF DECEMBER 29, 1941. SINCE, PRESUMABLY, SUCH RELIEF SHOULD BE SOUGHT ONLY IN MERITORIOUS CASES, AND AS REASONS FOR CONSIDERING IT MERITORIOUS MAY NOT BE DETERMINABLE BY THIS OFFICE FROM A MERE EXAMINATION OF THE VOUCHER, THE GROUNDS RELIED ON FOR RELIEF OR THE AMELIORATING CIRCUMSTANCES UPON WHICH THE CONGRESS WOULD BE URGED TO GRANT RELIEF SHOULD BE SHOWN IN THE REQUEST FOR RELIEF BY THIS OFFICE.'

IT IS APPARENT THAT THE DECISION OF JANUARY 12, 1951, DID NOT CONSTITUTE THE FAILURE OF COLLECTION EFFORTS AS GROUNDS FOR RELIEF, BUT MERELY INDICATED THAT A REQUEST FOR RELIEF WAS NECESSARY ONLY IN CASES WHERE SUCH FAILURE EXISTED, AND CLEARLY STATED THAT THE BASIS AND AUTHORITY FOR THE GRANTING OF SUCH RELIEF WAS CONTAINED IN THE RELIEF STATUTE, THE ACT OF DECEMBER 29, 1941. THAT ACT PROVIDES IN PERTINENT PART AS FOLLOWS:

"THAT THE COMPTROLLER GENERAL MAY, IN HIS DISCRETION, RELIEVE SUCH CERTIFYING OFFICER OR EMPLOYEE OF LIABILITY FOR ANY PAYMENT OTHERWISE PROPER WHENEVER HE FINDS (1) THAT THE CERTIFICATION WAS BASED ON OFFICIAL RECORDS AND THAT SUCH CERTIFYING OFFICER OR EMPLOYEE DID NOT KNOW, AND BY REASONABLE DILIGENCE AND INQUIRY COULD NOT HAVE ASCERTAINED, THE ACTUAL FACTS, OR (2) THAT THE OBLIGATION WAS INCURRED IN GOOD FAITH, THAT THE PAYMENT WAS NOT CONTRARY TO ANY STATUTORY PROVISION SPECIFICALLY PROHIBITING PAYMENTS OF THE CHARACTER INVOLVED, AND THAT THE UNITED STATES HAS RECEIVED VALUE FOR SUCH PAYMENT.'

OUR OFFICE HAS NO AUTHORITY TO GRANT RELIEF IN CASES SUCH AS THIS OTHER THAN ON THE BASIS PROVIDED IN THE ABOVE STATUTE. SINCE NO EVIDENCE HAS BEEN FURNISHED WHICH WOULD BRING THIS CASE WITHIN THE AUTHORITY TO GRANT RELIEF CONTAINED THEREIN--- YOUR SEVERAL REQUESTS FOR RELIEF APPARENTLY BEING BASED SOLELY UPON THE FAILURE OF EFFORTS TO COLLECT FROM THE PAYEE-- - WE HAVE NO ALTERNATIVE ON THE PRESENT RECORD BUT TO AGAIN DENY YOUR REQUEST FOR RELIEF.