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B-142597, Apr. 29, 1960

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TO THE SECRETARY OF THE NAVY:

THE ASSISTANT SECRETARY OF THE NAVY (PERSONNEL AND RESERVE FORCES) BY LETTER OF MARCH 29, 1960, REQUESTED THAT PURSUANT TO THE PROVISIONS OF THE ACT OF AUGUST 1, 1947, 61 STAT. 720, AS AMENDED BY THE ACT OF AUGUST 9, 1955, 69 STAT. 626, 31 U.S.C. 82A-1, OUR OFFICE RELIEVE CAPTAIN MERLE K. LOESSIN, USMCR, A MARINE CORPS DEPUTY DISBURSING OFFICER, FROM LIABILITY FOR THE LOSS OF GOVERNMENT FUNDS,ON THE BASIS THAT THE LOSS OCCURRED WHILE THE OFFICER WAS IN THE LINE OF DUTY AND WITHOUT FAULT OR NEGLIGENCE ON HIS PART.

THE LETTER OF MARCH 29, 1960, STATES THAT ON MAY 18, 1953,CAPTAIN LOESSIN, THEN A FIRST LIEUTENANT, WAS ENGAGED IN DISBURSING CASH TO ENLISTED MEN; THAT SUBSEQUENT THERETO, UPON ATTEMPTING TO BALANCE THE MONEY IN HIS CUSTODY, HE DISCOVERED A SHORTAGE OF $1,000 WHICH HE REPORTED PROMPTLY TO THE REGIMENTAL DISBURSING OFFICER; AND THAT A BOARD OF INVESTIGATION WAS CONVENED TO CONSIDER THE MATTER.

THE REPORT OF INVESTIGATION DATED JUNE 1, 1953, REVEALS THAT CAPTAIN LOESSIN VERIFIED THE MONEY IN HIS CUSTODY AT APPROXIMATELY 4:30 P.M. ON MAY 18, 1953, AT WHICH TIME THE FUNDS BALANCED. ON MAY 19, 1953, AFTER DISBURSING FUNDS TO ENLISTED MEN, CAPTAIN LOESSIN, WHEN ATTEMPTING TO BALANCE HIS MONEY AT APPROXIMATELY 3:30 P.M. THAT AFTERNOON, DISCOVERED A SHORTAGE OF $1,000. THEREFORE, THE BOARD OF INVESTIGATION CONCLUDED THAT THE LOSS OCCURRED BETWEEN 4:30 P.M. ON MAY 18 AND 3:30 P.M. ON MAY 19, 1953. ALSO, THE REPORT OF INVESTIGATION SHOWS THAT CAPTAIN LOESSIN DID, BY HIS OWN ADMISSION, LEAVE HIS SAFE UNLOCKED WHILE AT LUNCH FOR A PERIOD OF APPROXIMATELY FORTY-FIVE MINUTES ON MAY 19, 1953. IN ADDITION, THE REPORT SHOWS THAT THE SAFE USED BY CAPTAIN LOESSIN WAS LOCATED IN THE DISBURSING OFFICE IN AN AREA TO WHICH A NUMBER OF INDIVIDUALS HAD ACCESS.

THE RECORD SHOWS THAT SUBSEQUENT TO THE INVESTIGATION CAPTAIN LOESSIN REFUNDED THE AMOUNT OF THE LOSS FROM HIS PERSONAL FUNDS. ALSO, THE RECORD SHOWS THAT CAPTAIN LOESSIN FIRST REQUESTED RELIEF FOR THE LOSS OF THE FUNDS BY LETTER OF APRIL 25, 1955, AND THAT AT THAT TIME THE OFFICE OF THE JUDGE ADVOCATE GENERAL INFORMED HIM THAT SINCE HE HAD REFUNDED THE AMOUNT OF THE LOSS, THERE WAS NO WAY TO GRANT HIM THE REQUESTED RELIEF.

THE ACT OF AUGUST 1, 1947, 61 STAT. 720, AS AMENDED BY THE ACT OF AUGUST 9, 1955, 69 STAT. 626, AUTHORIZES THE GENERAL ACCOUNTING OFFICE TO RELIEVE DISBURSING OFFICERS OF RESPONSIBILITY FOR PHYSICAL LOSS OR DEFICIENCY OF GOVERNMENT FUNDS IF THE HEAD OF THE DEPARTMENT CONCERNED DETERMINES (1) THAT

SUCH LOSS OR DEFICIENCY OCCURRED WHILE THE OFFICER WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTY, OR THE LOSS OR DEFICIENCY OCCURRED BY REASON OF THE ACT OR OMISSION OF HIS SUBORDINATE; AND (2) THAT SUCH LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER, AND THE GENERAL ACCOUNTING OFFICE CONCURS WITH SUCH DETERMINATION AFTER CONSIDERATION OF THE PERTINENT FINDINGS.

A DISBURSING OFFICER IS LIABLE AS AN INSURER FOR THE SAFEGUARDING OF FUNDS ADVANCED TO HIM FOR DISBURSING PURPOSES. 18 COMP. GEN. 640 AND CASES THEREIN CITED. IN THE PRESENT CASE, THE ACT OF LEAVING A SAFE, WHICH WAS IN A LOCATION WHERE IT WAS ACCESSIBLE TO OTHERS, UNLOCKED DURING A PERIOD OF ABSENCE CONSTITUTES A PRIMA FACIE CASE OF NEGLIGENCE. ONE OF THE OPINIONS OF THE BOARD OF INVESTIGATIONS, CONTAINED IN ITS REPORT OF JUNE 1, 1953, WAS "THAT LIEUTENANT LOESSIN WAS CARELESS, IN THAT HE LEFT HIS SAFE UNLOCKED DURING HIS ABSENCE FROM THE DISBURSING OFFICE; AND THAT THIS CARELESSNESS WAS THE DIRECT CAUSE OF THE LOSS.' WHILE THE COMMANDING OFFICER, 7TH MARINES, IN APPROVING THE INVESTIGATION REPORT STATED THAT THE EVIDENCE DID NOT SUPPORT THE OPINION THAT "THIS CARELESSNESS WAS THE DIRECT CAUSE OF THE LOSS.' HE STATED FURTHER "THAT THIS CARELESSNESS MIGHT HAVE CAUSED OR CONTRIBUTED TO THE CAUSE OF THE LOSS.' WE HAVE FOUND NOTHING IN THE RECORD TO ESTABLISH THAT THE LOSS WAS NOT DUE TO LIEUTENANT LOESSIN'S NEGLIGENCE IN LEAVING HIS SAFE UNLOCKED WHILE HE WAS AWAY FROM THE DISBURSING OFFICE FOR LUNCH.

THEREFORE, ON THE PRESENT RECORD, WE ARE UNABLE TO CONCUR IN THE ADMINISTRATIVE DETERMINATION THAT THE LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE DISBURSING OFFICER, AND, HENCE, RELIEF UNDER THE PROVISIONS OF 31 U.S.C. 82A-1, WHICH WOULD AUTHORIZE REIMBURSEMENT TO CAPTAIN LOESSIN FOR THE AMOUNT WHICH HE PAID FROM HIS PERSONAL FUNDS IN RESTITUTION OF THE LOSS, CANNOT BE GRANTED.