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B-144467, Dec. 19, 1960

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TO THE SECRETARY OF THE NAVY:

BY LETTER DATED AUGUST 23, 1960, THE ASSISTANT SECRETARY OF THE NAVY (PERSONNEL AND RESERVE FORCES) REQUESTED THAT WE RELIEVE MAJOR W. J. SKVARIL, USMC, COMMANDING OFFICER OF MARINE BARRACKS, U.S. NAVAL STATION, BERMUDA, OF LIABILITY FOR THE LOSS OF $115 REPRESENTING RECEIPTS FROM THE SALES OF CLOTHING. WHILE THAT LETTER DID NOT INDICATE THE RELIEF ACT UNDER WHICH RELIEF WAS REQUESTED, A LETTER DATED AUGUST 29, 1960, FROM ANTHONY J. DEVICO, CAPTAIN, USN, DIRECTOR, ADMINISTRATIVE LAW, FILE REFERENCE JAG:134:JWG:AM 5859, STATED THAT RELIEF WAS REQUESTED UNDER 31 U.S.C. 95A.

SECTION 95A OF TITLE 31, U.S.C. PROVIDES AS FOLLOWS:

"WHENEVER (1) ANY DISBURSING OFFICER OF THE ARMY, NAVY, AIR FORCE,OR MARINE CORPS INCURS OR HAS INCURRED A PHYSICAL LOSS OR DEFICIENCY OF ANY GOVERNMENT FUNDS, VOUCHERS, RECORDS, OR PAPERS IN HIS CHARGE AND (2) THE SECRETARY OF THE DEPARTMENT CONCERNED DETERMINES THAT SUCH LOSS OR DEFICIENCY OCCURRED WHILE THE OFFICER WAS IN LINE OF HIS DUTY AND THAT SUCH LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON HIS PART, THE GENERAL ACCOUNTING OFFICE SHALL RELIEVE SUCH OFFICER OF THE LIABILITY FOR SUCH LOSS OR DEFICIENCY, OR AUTHORIZES THE REIMBURSEMENT, FROM ANY APPROPRIATION OR FUND MADE AVAILABLE FOR THAT PURPOSE, OF AMOUNTS PAID BY OR ON BEHALF OF SUCH OFFICER IN RESTITUTION OF SUCH LOSS OR DEFICIENCY. ANY DETERMINATION MADE BY THE SECRETARY OF THE DEPARTMENT CONCERNED UNDER THIS SECTION SHALL BE CONCLUSIVE UPON THE GENERAL ACCOUNTING OFFICE. * *

THE ABOVE ACT CLEARLY AND SPECIFICALLY APPLIES ONLY TO DISBURSING OFFICERS AND DOES NOT INCLUDE OTHER TYPES OF ACCOUNTABLE OFFICERS. THE TERM "ACCOUNTABLE OFFICER" REFERS TO ANY GOVERNMENT PERSONNEL WHO ARE PECUNIARILY RESPONSIBLE TO THE GOVERNMENT FOR THEIR OFFICIAL ACTIVITIES. DISBURSING OFFICERS ARE A SPECIFIC TYPE OF ACCOUNTABLE OFFICER AND, WHILE ALL DISBURSING OFFICERS ARE ACCOUNTABLE OFFICERS, ALL ACCOUNTABLE OFFICERS ARE NOT DISBURSING OFFICERS. WHILE MAJOR SKVARIL WAS AN ACCOUNTABLE OFFICER AT THE TIME OF THE LOSS, THERE IS NOTHING IN THE RECORD TO INDICATE THAT HE WAS A DISBURSING OFFICER AND THE FACT THAT HE WAS THE COMMANDING OFFICER OF THE MARINE BARRACKS AT THAT TIME WOULD MAKE IT APPEAR VERY UNLIKELY THAT HE WAS A DISBURSING OFFICER. WE HAVE BEEN ADVISED INFORMALLY THAT YOUR DEPARTMENT CONSIDERS ANY ACCOUNTABLE OFFICER TO BE A DISBURSING OFFICER FOR THE PURPOSES OF 31 U.S.C. 95A. HOWEVER, WE CANNOT CONCUR WITH THAT INTERPRETATION. SINCE THE CONGRESS HAS USED THE TERMS "DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT" IN ONE OF THE TWO ACTS FOR RELIEF OF LIABILITY FOR PHYSICAL LOSS OF FUNDS, ETC., 31 U.S.C. 82A-1, AND ONLY THE WORDS "DISBURSING

OFFICER" IN THE OTHER SUCH ACT, 31 U.S.C. 95A, IT SEEMS APPARENT THAT THE LATTER ACT MUST BE LIMITED TO DISBURSING OFFICERS. SEE PAGE 2 OF SENATE REPORT NO. 379, 80TH CONGRESS, 1ST SESSION, ON S. 1350, ENACTED AS PUBLIC LAW 321, AUGUST 1, 1947, 31 U.S.C. 82A-1. HENCE, RELIEF CANNOT BE GRANTED TO MAJOR SKVARIL UNDER THE PROVISIONS OF 31 U.S.C. 95A.

SECTION 82A-1 OF TITLE 31, U.S.C. PROVIDES AS FOLLOWS:

"THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED, AFTER CONSIDERATION OF THE PERTINENT FINDINGS AND IF IN CONCURRENCE WITH THE DETERMINATIONS AND RECOMMENDATIONS OF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT CONCERNED, TO RELIEVE ANY DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT OR FORMER DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT OF ANY SUCH DEPARTMENT OR INDEPENDENT ESTABLISHMENT OF THE GOVERNMENT CHARGED WITH RESPONSIBILITY ON ACCOUNT OF PHYSICAL LOSS OR DEFICIENCY OF GOVERNMENT FUNDS, VOUCHERS, RECORDS, CHECKS, SECURITIES, OR PAPERS IN HIS CHARGE, OR TO AUTHORIZE THE REIMBURSEMENT, FROM ANY APPROPRIATION OR FUND AVAILABLE FOR PURPOSES OF THE ACTIVITY IN WHICH THE LOSS OR DEFICIENCY OCCURRED, OF AMOUNTS PAID SUBSEQUENT TO AUGUST 1, 1947, BY OR ON BEHALF OF THE OFFICER OR AGENT IN RESTITUTION OF THE LOSS OR DEFICIENCY, IF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT DETERMINES (1) THAT SUCH LOSS OR DEFICIENCY OCCURRED WHILE SUCH OFFICER OR AGENT WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES, OR THAT SUCH LOSS OR DEFICIENCY OCCURRED BY REASON OF THE ACT OR OMISSION OF A SUBORDINATE OF SUCH OFFICER OR NEGLIGENCE ON THE PART OF SUCH OFFICER OR AGENT. * * *" AGENT; AND (2) THAT SUCH LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR

SINCE MAJOR SKVARIL WAS AN ACCOUNTABLE OFFICER AT THE TIME OF THE LOSS, HE IS ELIGIBLE FOR CONSIDERATION FOR RELIEF UNDER THE PROVISIONS OF 31 U.S.C. 82A-1. HOWEVER, THAT ACT, UNLIKE 31 U.S.C. 95A, REQUIRES OUR CONCURRENCE IN THE FINDING OF THE HEAD OF THE DEPARTMENT INVOLVED. THE INFORMATION FURNISHED WITH THE REQUEST FOR RELIEF, CONSISTING SOLELY OF THE STATEMENT OF THE DEPARTMENT'S DETERMINATION WITHOUT SUPPORTING EVIDENCE, IS INSUFFICIENT TO ENABLE US TO DETERMINE WHETHER WE CAN CONCUR THEREWITH. HENCE, ON THE BASIS OF THE PRESENT RECORD, RELIEF CANNOT BE GRANTED TO MAJOR SKVARIL.

IF RELIEF FOR MAJOR SKVARIL FROM LIABILITY FOR THE LOSS HERE INVOLVED IS STILL DESIRED, THE COMPLETE FILE IN THE MATTER SHOULD BE FORWARDED TO OUR OFFICE FOR CONSIDERATION IN DETERMINING WHETHER WE CAN CONCUR WITH THE FINDING OF YOUR DEPARTMENT.