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B-155149, Oct. 21, 1964

Number: B-155149

Date: 1964-10-21

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TO THE HONORABLE SECRETARY OF THE ARMY:

THERE HAS BEEN FORWARDED TO THIS OFFICE FROM MAJOR R. G. BISHOFF, FINANCE AND ACCOUNTING OFFICER, 106TH FINANCE DISBURSING STATION, APO 154, NEW YORK, N.Y., A CLAIM FOR REIMBURSEMENT IN THE AMOUNT OF $29.86 OF CAPTAIN CHARLES K. CLARK, QMC, 05201132, APPARENTLY THE OFFICER IN CHARGE OF A LAUNDRY OPERATION AT A SUBPOST AT GOEPPINGEN, GERMANY.

THE FACTS AS SHOWN BY THE RECORD BEFORE THIS OFFICE ARE AS FOLLOWS: CAPTAIN CLARK, AS OFFICER IN CHARGE OF THE LAUNDRY OPERATION, WAS ADVANCED PUBLIC FUNDS OF THE UNITED STATES FROM MAJOR (THEN CAPTAIN) R. G. BISHOFF, FINANCE AND ACCOUNTING OFFICER, REFERRED TO ABOVE IN THE AMOUNT OF $60 (SIXTY-DOLLARS) TO BE HELD AS A CHANGE FUND IN THE OPERATIONS OF THE LAUNDRY. SEE AR 210-130, PAR. 30, AND AR 37-103, PAR. 3-56. IT SHOULD BE STATED AT THIS TIME THAT CAPTAIN CLARK, AS CUSTODIAN OF THESE PUBLIC FUNDS, OCCUPIED THE POSITION OF AN ACCOUNTABLE OFFICER FOR SUCH FUNDS AS THAT TERM HAS BEEN USED FOR A PERIOD OF MANY YEARS BY THE ACCOUNTING OFFICERS OF THE GOVERNMENT. ON MAY 24, 1963, THE SUM OF $237.42 WAS STOLEN FROM AN EMPLOYEE OF THE LAUNDRY. INCLUDED WITH THE LOSS OF FUNDS WAS THE SUM OF $29.86 FROM THE AFOREMENTIONED CHANGE FUND. THE RECORD FURTHER SHOWS THAT ON JUNE 21, 1963, UPON THE DEMAND OF MAJOR BISHOFF, CAPTAIN CLARK TURNED OVER THE SUM OF $60 WHICH WAS THE TOTAL AMOUNT OF THE CHANGE FUND SIGNED FOR BY CAPTAIN CLARK. SINCE THE CHANGE FUND WAS $29.86 SHORT BY REASON OF THE ROBBERY THIS ACTION RESULTED IN CAPTAIN CLARK REIMBURSING THE FUND IN THIS AMOUNT FROM HIS PERSONAL FUNDS. THEREAFTER, AS THE RESULT OF RECOMMENDATIONS AND APPROVAL OF A REPORT OF INVESTIGATION OF THE AFOREMENTIONED LOSS OF FUND, BY THE COMMANDING OFFICER, HEADQUARTERS, SOUTHERN AREA COMMAND, UNITED STATES FORCES, GERMANY, CAPTAIN CLARK WAS RELIEVED OF RESPONSIBILITY AND PECUNIARY LIABILITY FOR THE LOSS OF FUNDS OTHER THAN THOSE FROM THE CHANGE FUND. THE RECORD FURTHER SHOWS THAT THE PAYMENT OF $29.86 BY THE CLAIMANT FROM HIS PERSONAL FUNDS WAS ACCOMPLISHED TO CLEAR THE CHANGE FUND AND NO ADMISSION OF GUILT OR NEGLIGENCE AS REGARDS THE ROBBERY SHOULD BE INFERRED THEREFROM.

THEREAFTER CAPTAIN CLARK MADE CLAIM FOR THE AMOUNT OF $29.86 PAID FROM HIS PERSONAL FUNDS WHICH CLAIM WAS FORWARDED TO THIS OFFICE FOR SETTLEMENT BY MAJOR BISHOFF. AS THE RESULT OF AN EXCHANGE OF CORRESPONDENCE BETWEEN YOUR DEPARTMENT AND THIS OFFICE, FOR THE PURPOSE OF ASCERTAINING THE APPROPRIATION TO BE CHARGED FOR THE PAYMENT OF THE CLAIM, IT WAS REQUESTED THAT THE CLAIM BE PROCESSED PURSUANT TO THE SO-CALLED MERITORIOUS CLAIMS ACT OF APRIL 10, 1928, 31 U.S.C. 236.

BEFORE A CLAIM MAY BE PROCESSED UNDER THE AFOREMENTIONED ACT OF APRIL 10, 1928,

ONE OF THE REQUIREMENTS IS THAT AN APPROPRIATION IS NOT AVAILABLE FOR THE PAYMENT THEREOF. FOR REASONS SHOWN HEREAFTER IT IS APPARENT THAT SATISFACTION OF THIS CLAIM MAY BE ACCOMPLISHED UNDER APPROPRIATION NOW AVAILABLE TO THE DEPARTMENT OF THE ARMY AND FOR SUCH REASONS THE CLAIM MAY NOT BE CONSIDERED UNDER THE 1928 ACT MENTIONED ABOVE.

RELIEF FROM THE LOSS OF PUBLIC FUNDS UNDER THE CIRCUMSTANCES AS HERE INVOLVED HAS BEEN PROVIDED FOR BY LAW FOR A CONSIDERABLE PERIOD OF TIME. THERE ARE AT PRESENT TWO BASIC STATUTES TO RELIEVE DISBURSING AND ACCOUNTABLE OFFICERS OF THE UNITED STATES FROM PHYSICAL LOSSES OF GOVERNMENT FUNDS. THE PROVISIONS OF LAW CONTAINED IN 31 U.S.C. 95A REQUIRES THIS OFFICE IN A SITUATION WHERE A PHYSICAL LOSS HAS BEEN INCURRED BY A DISBURSING OFFICER OF THE ARMY, NAVY, AIR FORCE, OR MARINE CORPS, TO RELIEVE SUCH OFFICER FROM LIABILITY FROM SUCH LOSS WHERE THE SECRETARY OF THE DEPARTMENT CONCERNED DETERMINES THAT SUCH LOSS OCCURRED WHILE THE OFFICER WAS IN LINE OF DUTY AND THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON HIS PART. IN ADDITION TO SUCH RELIEF AUTHORITY THE STATUTE PERMITS REIMBURSEMENT FROM AN AVAILABLE APPROPRIATION OF ANY AMOUNT PAID BY SUCH OFFICER IN RESTITUTION OF SUCH LOSS. SEE GENERALLY AR 37-103, CHAPTER 3, SECTION VIII. THIS OFFICE IS OF THE OPINION THAT THE LOSS IN THE CHANGE FUND OF $29.86 FOR WHICH CAPTAIN CLARK REIMBURSED THE ACCOUNTING AND FINANCE OFFICER, MAJOR BISHOFF, WAS PROPERLY FOR CONSIDERATION AS A PHYSICAL LOSS OF FUNDS FOR WHICH MAJOR BISHOFF COULD HAVE ASSUMED ULTIMATE RESPONSIBILITY AND FOR WHICH HE COULD HAVE REQUESTED RELIEF UNDER THE PROVISIONS OF 31 U.S.C. 95A. HAD ACTION BEEN TAKEN UNDER THIS RELIEF STATUTE THE INSTANT CLAIM COULD HAVE BEEN AVOIDED.

HOWEVER, THERE IS ANOTHER RELIEF STATUTE WHICH MAY BE INVOKED TO MAKE PAYMENT TO CAPTAIN CLARK. IN ADDITION TO THE RELIEF PROVISION OF 31 U.S.C. 95A FOR USE BY MILITARY DISBURSING OFFICER, THERE ARE PROVISIONS IN 31 U.S.C. 82A-1 CONTAINING SIMILAR RELIEF AUTHORITY CONCERNING PHYSICAL LOSSES FOR DISBURSING OFFICERS AND ACCOUNTABLE OFFICERS GENERALLY. SINCE CAPTAIN CLARK, AS CUSTODIAN OF THE CHANGE FUND ADVANCED ON RECEIPT FROM THE FINANCE AND ACCOUNTING OFFICER, OCCUPIED THE POSITION OF AN ACCOUNTABLE OFFICER FOR PUBLIC FUNDS, HE MAY QUALIFY AS AN ACCOUNTABLE OFFICER ENTITLED TO RELIEF UNDER THE TERMS OF THIS LAW. THE PRINCIPAL DIFFERENCE BETWEEN THE PROVISIONS IN 31 U.S.C. 95A AND 31 U.S.C. 82A-1 IS THAT A DETERMINATION BY THE HEAD OF THE DEPARTMENT THAT RELIEF SHOULD BE GRANTED UNDER THE FORMER IS CONCLUSIVE UPON THIS OFFICE WHEREAS RELIEF UNDER THE LATTER IS DISCRETIONARY WITH THIS OFFICE. RELIEF, HOWEVER, IS INVARIABLY GRANTED UNDER THE LATTER-MENTIONED LAW UPON THE RECEIPT OF THE DETERMINATION OF THE DEPARTMENT HEAD THAT THE LOSS OCCURRED IN THE DISCHARGE OF OFFICIAL DUTIES AND THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE OF SUCH OFFICER. THIS STATUTE SIMILARLY PROVIDES FOR THE REIMBURSEMENT FROM THE CURRENT AVAILABLE APPROPRIATION OF AMOUNTS PAID BY THE OFFICER AS RESTITUTION OF THE LOSS WHERE RELIEF IS GRANTED BY THIS OFFICE.

THE FACTS AND CIRCUMSTANCES SURROUNDING THE PHYSICAL LOSS OF THE FUNDS FOR WHICH REIMBURSEMENT WAS MADE BY THE CLAIMANT IN THE INSTANT CASE INDICATE THAT THE CONDITIONS FOR THE GRANTING OF RELIEF TO CAPTAIN CLARK HAVE BEEN COMPLIED WITH INSOFAR AS THE PROVISIONS OF 31 U.S.C. 82-1 ARE CONCERNED. ACCORDINGLY, UPON SUBMISSION OF THE REQUIRED DETERMINATIONS AND RECOMMENDATIONS BY YOU FOR RELIEF AS REQUIRED BY THE PROVISION IN 31 U.S.C. 82A-1, OUR OFFICE WILL GRANT THE NECESSARY RELIEF AND AUTHORIZE REIMBURSEMENT TO THE CLAIMANT OF THE AMOUNTS PAID BY HIM AS RESTITUTION OF THE PUBLIC FUNDS STOLEN.