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B-166519, Oct. 6, 1969

Number: B-166519

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B-166519, OCT. 6, 1969

MISCELLANEOUS - ACCOUNTABLE OFFICER - RELIEF DECISION TO ADMINISTRATOR OF FEDERAL AVIATION ADMINISTRATION DENYING RELIEF TO ACCOUNTABLE OFFICER FOR SHORTAGE IN IMPREST FUND ACCOUNT. REPORT INDICATES THAT THERE WAS NO FORCIBLE ENTRY INTO BOX WHICH WAS KEPT IN LOCKED ROOM AND LOCKED RECEPTACLE. MERE CONCLUSION OF ABSENCE OF NEGLIGENCE WITHOUT FACTUAL SUPPORT IS, INSUFFICIENT TO OVERCOME PRESUMPTION OF NEGLIGENCE.

TO MR. JOHN H. SHAFFER:

BY LETTER OF JULY 9, 1969, THE DIRECTOR OF THE EASTERN REGION, FEDERAL AVIATION ADMINISTRATION, REQUESTED THAT WE RECONSIDER OUR DENIAL OF RELIEF UNDER 31 U.S.C. 82A-1 TO MR. HENRY DELLA PENNA, CLASS "C" IMPREST FUND CASHIER, FAA, CLEVELAND, OHIO, WHO SUFFERED A SHORTAGE IN HIS ACCOUNT OF $170.30.

PRIOR TO ISSUANCE OF OUR LETTER OF JUNE 30, 1969, DENYING RELIEF IN THIS MATTER, WE REVIEWED THE REPORT OF INVESTIGATION ENCLOSED WITH THE PRESENT REQUEST TO RECONSIDER THE DISALLOWANCE. NO ADDITIONAL EVIDENCE IS PRESENTED, AND RELIEF IS AGAIN DENIED UNDER 31 U.S.C. 82A-1.

WE CAN ONLY ADD THAT THE PRESUMPTION OF NEGLIGENCE IS A REASONABLE AND LEGAL BASIS FOR THE DENIAL OF RELIEF WHERE THE ACCOUNTABLE OFFICERS HAVE CONTROL OVER THE FUNDS AND THE MEANS AVAILABLE FOR THEIR SAFEKEEPING BUT THE SHORTAGE NEVERTHELESS OCCURS WITHOUT EVIDENCE OF FORCIBLE ENTRY OR OTHER CONCLUSIVE EXPLANATION WHICH WOULD EXCLUDE NEGLIGENCE AS THE PROXIMATE CAUSE OF THE LOSS. IN THIS CASE, THERE WAS A LOCKED ROOM AND A LOCKED RECEPTACLE WHERE THE FUNDS WERE GENERALLY KEPT AND NO EVIDENCE IN THE RECORD OF FORCIBLE ENTRY. IN FACT, THE INVESTIGATIVE REPORT SPECIFICALLY STATES THAT THERE WAS NO SIGN OF FORCIBLE ENTRY INTO THE BOX WHERE THE FUND WAS KEPT. THE MERE CONCLUSION OF THE ABSENCE OF NEGLIGENCE WITHOUT FACTUAL SUPPORT IS, IN THESE CIRCUMSTANCES, INSUFFICIENT TO OVERCOME THE PRESUMPTION. FURTHER, AS INDICATED IN OUR LETTER OF JUNE 30, THE THEORETICAL EXPLANATIONS OF THE LOSS, EVEN IF ACCEPTED FOR THE SAKE OF ARGUMENT, ALL POINT TOWARD NEGLIGENCE. SEE B-166174, FEBRUARY 28, 1969, 48 COMP. GEN. -----; B-158699, SEPTEMBER 6, 1968; AND CASES CITED THEREIN.