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B-167126 August 9, 1976

Number: B-167126

Date: 1976-08-09

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Alice M. Ohanian, Deputy Chief Disbursing Officer Department of the Treasury Bureau of Government Financial Operations Division of Disbursement, Financial Services Branch Treasury Annex No. 1 Washington, D.C. 10116

Dear Ms. Ohanian:

This is in response to a request you forwarded from the Controller, Veterans Administration, for relief of William E. Fritts, Class "B" Cashier, for an unexplained loss of $1,990.09 from his imprest funds account.

The record indicates that on May 10, 1976, while in the course of preparing a routine voucher for replenishment of funds, Mr. Fritts discovered a shortage of funds in the amount of $1,990.09. Two audits verified the amount of the shortage, but failed to disclose any evidence which would positively explain the existence of the shortage. Because payments had been delayed on Thursday, May 6, due to a temporary shortage of funds, Friday, May 7, had been a particulary busy day, and the phone, located behind Mr. Fritts' desk was continually ringing.

Our office is authorized by the provisions of 31 U.S.C. Sec. 82a-1 (1970) to relieve accountable officers of responsibility for physical loss or deficiency of Government funds if (1) the head of the department of independent establishment concerned determines that such lose or deficiency occurred while the office was acting in the discharge of his official duties, or that such loss of deficiency occurred by reason of the act or omission of a subordinate of such officer of agent, and that such loss or deficiency ocurred without fault or negligence on the part of the officer and (2) we concur with these determinations after consideration of the pertinent findings.

In his letter requesting that we relieve Mr. Fritts of responsibility for the loss, the Controller of the Veterans Administration states in part as follows:

"While the investigation report revealed no evidence that would conclusively define the cause of the shortage, neither did it produce an affirmative showing of fault or negligence on the part of Mr. Fritts. Based upon this absence of evidence of fault or negligence and upon the cashier's long history of exemplary performance, the administrative officials at the hospital have requested that relief be requested* * * ."

Such language does not constitute an affirmative determination that the loss did not result from the fault or negligence of Mr. Fritts. Since the statute clearly requires a determination by the head of the agency that the officer was without

fault or negligance as a condition precedent to our considering the granting of relief, we cannot take any action to relieve Mr. Fritts.

We note, however, that even if the requisite determination had been made, our Office could not concur on the present record. Our decisions have held that an unexplained shortage of Government funds gives rise to a presumption of negligence against the person responsible for the missing funds which he must rebut. With affirmative evidence. See, e.g., 48 Comp. Gen. 566 (1969). A Government official charged with the custody and handling of public money is expected to exercise the highest degree of care in the performance of his duty and, when funds disappear without explanation or evident reason, the presumption naturally arises that the responsible official was derelict in some way. He cannot relay on the absence of evidence implicating him, but rather must come forward with evidence that establishes that he exercised the requisite degree of care. In the instant case, there is no such evidence to rebut the presumption of negligence arising from the shortage. Mr. Fritts' suspicion that the funds were stolen during a period of confusion is entirely conjectural and thus insufficent for this purpose. Moreover, his "loyal and dedicated performance" for over 20 years is not relevant to the question of whether, in this instance, his performance was negligent.

For the foregoing reasons, we cannot grant the requested relief.

Sincerely yours,

Paul G. Dembling General Counsel