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B-173710, Jul 13, 1972

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B-173710, JUL 13, 1972

GENERAL GOVERNMENT MATTERS - LOSS OF FUNDS - EMPLOYEE LIABILITY DECISION AFFIRMING PRIOR DENIAL OF RELIEF FROM ACCOUNTABILITY FOR THE LOSS OF FUNDS IN THE CUSTODY OF WILMOTH C. BATTLE, A CASHIER WITH THE AGENCY FOR INTERNATIONAL DEVELOPMENT. THE COMP. GEN. IS UNABLE TO AGREE THAT MRS. BATTLE ACTED AS A CAUTIOUS, PRUDENT PERSON AND HER FAILURE TO LOCK THE SAFE IS CLEARLY DISTINCT IN POINT OF TIME AND FUNCTION FROM THE MANNER BY WHICH THE THIEF GAINED ENTRANCE INTO THE CASHIER'S PROTECTED AREA. SINCE THE RECORD FAILS TO ESTABLISH THAT SHE WAS WITHOUT FAULT OR NEGLIGENCE IN THE SAFEGUARDING OF THESE FUNDS, RELIEF CANNOT BE GRANTED UNDER 31 U.S.C. 82A-1.

TO MR. SECRETARY:

REFERENCE IS MADE TO THE LETTER OF MARCH 20, 1972, FROM THE CHIEF, CENTRAL ACCOUNTS BRANCH, ACCOUNTING DIVISION, OFFICE OF THE CONTROLLER, AGENCY FOR INTERNATIONAL DEVELOPMENT. THIS LETTER REQUESTS RECONSIDERATION OF OUR LETTER OF JANUARY 3, 1972, WHICH DENIED RELIEF FROM ACCOUNTABILITY UNDER 31 U.S.C. 82A-1 FOR THE LOSS OF FUNDS IN THE AMOUNT OF $5,989.17. THESE FUNDS WERE IN THE CUSTODY OF MRS. WILMOTH C. BATTLE, PRINCIPAL CLASS "B" CASHIER.

BRIEFLY STATED, THE ESSENTIAL FACTS FROM THE RECORD DISCLOSE THAT THE FUNDS DISAPPEARED THROUGH AN ACT OF THEFT BY A PERSON WHO GAINED ENTRANCE INTO THE CASHIER'S ENCLOSURE WHILE POSING AS A MAINTENANCE WORKER. IN THE CIRCUMSTANCES DESCRIBED IT WAS CONCLUDED THAT THE EMPLOYEES IN THE ENCLOSURE, AND THE IMMEDIATE VICINITY THEREOF, HAD NOT BEEN DERELICT IN PERMITTING ACCESS TO THE PROTECTED AREA. WILMOTH M. BATTLE, THE CUSTODIAN, WAS FOUND TO BE NEGLIGENT IN ANOTHER RESPECT, HOWEVER, IN FAILING TO LOCK THE SAFE AFTER PLACING IN IT THE BOX CONTAINING THESE FUNDS, THEREBY PRECLUDING RELIEF FROM LIABILITY FOR THE LOSS OF FUNDS UNDER AUTHORITY OF 31 U.S.C. 82A-1.

IN THE MARCH 20 LETTER MR. FINN REQUESTED OUR RECONSIDERATION, CITING IN SUPPORT THEREOF FOUR POINTS WHICH ARE CONSIDERED SEPARATELY IN THE FOLLOWING PARAGRAPHS. IN OUR RECONSIDERATION EACH OF THE POINTS DEVELOPED IN THIS LETTER WAS REVIEWED AS TO ITS IMPACT AND MITIGATING EFFECT ON THE FINDING THAT THE CUSTODIAN WAS NEGLIGENT IN FAILING TO LOCK THE SAFE, THIS BEING THE PREMISE ON WHICH RELIEF WAS DENIED.

POINT ONE SUGGESTS THE POSSIBILITY OF INCONSISTENCY IN FINDING NEGLIGENCE AFTER CONCLUDING THAT ADMISSION OF THE MAINTENANCE WORKER UNDER THE DESCRIBED CIRCUMSTANCES WAS NOT NEGLIGENCE. A CLEAR DISTINCTION IS MADE BETWEEN PERMITTING PERSONS WITH OSTENSIBLE OFFICIAL BUSINESS INTO A RESTRICTED AREA AND IN NOT LOCKING AN UNUSUALLY SUBSTANTIAL SUM OF CASH IN A READILY ACCESSIBLE SAFE

PROVIDED FOR THE PROTECTION OF SUCH FUNDS, WHILE SUCH PERSON IS IN THE AREA. IT WAS DETERMINED IN OUR LETTER OF JANUARY 3 THAT THIS OMISSION CONSTITUTED A NEGLIGENT ACT AND SINCE THE TWO ACTIONS DISCUSSED HERE, I.E., ENTRANCE INTO THE CASHIER'S PROTECTED AREA AND FAILURE TO LOCK THE SAFE, ARE SEPARATE, DISTINCT, AND UNRELATED IN POINT OF TIME OR FUNCTION, IT DOES NOT APPEAR THAT THERE IS ANY INCONSISTENCY WHICH MIGHT BE A BASIS FOR MODIFYING OUR EARLIER CONCLUSION.

THE SECOND POINT IS ADDRESSED PRIMARILY TO THE QUESTION OF IDENTIFICATION OF THE WORKMAN. THIS ISSUE WAS RESOLVED IN FAVOR OF THE CASHIER'S JUDGMENT IN PERMITTING ACCESS TO THE AREA AND SINCE IT DOES NOT DIRECTLY BEAR ON THE FAILURE TO LOCK THE SAFE IT IS NOT AN IMPORTANT FACTOR REGARDING THE NEGLIGENCE DETERMINATION OF THIS SECOND INDEPENDENT ACTION.

REGARDING THE THIRD POINT, WE ARE UNABLE TO AGREE THAT THE CASHIER ACTED AS A CAUTIOUS PRUDENT PERSON. THE RECORD INDICATES THAT THE CASHIER NORMALLY COUNTED THE CASH IMMEDIATELY BUT "*** DIDN'T THIS TIME BECAUSE THE WORKMAN WAS IN THE OFFICE. SO SHE TOOK HER MONEY OUT AS SECRETLY AS POSSIBLE, PUT IT IN HER CASH BOX, LOCKED IT AND RETURNED IT TO THE SAFE AND CLOSED IT." (MEMO FOR THE RECORD, OCTOBER 28, 1970.) THIS CLEARLY DEMONSTRATES RECOGNITION BY THE CASHIER OF THE PRESENCE OF AN ABNORMAL SITUATION WHICH CAUSED HER TO VARY FROM THE NORMAL HABIT PATTERN. HAVING DEVIATED FROM THE NORMAL PRACTICE IT IS DIFFICULT TO UNDERSTAND WHY THE NEXT LOGICAL STEP OF LOCKING THE COMBINATION ON THE SAFE WAS NOT UNDERTAKEN. WE ALSO BELIEVE THE LARGE SUM INVOLVED SHOULD HAVE ALERTED THE CASHIER TO THE NEED FOR EXTRA PRECAUTIONS. APPLYING THE LONG-STANDING RULE OF EXERCISING SUCH REASONABLE CARE AND DILIGENCE AS A CAUTIOUS, PRUDENT AND DILIGENT PERSON WOULD APPLY TO HIS OWN AFFAIRS, IT SEEMS MOST LIKELY THAT ANY PERSON WITH AN EQUALLY LARGE SUM OF HIS OWN MONEY WOULD HAVE TURNED THE LOCK IN SIMILAR CIRCUMSTANCES AFTER PLACING THE CASH BOX IN THE SAFE DRAWER AND CLOSING IT.

THE LAST POINT DOES NOT APPEAR TO GO TO THE ISSUE OF CASHIER NEGLIGENCE AND SINCE THERE HAS BEEN NO QUESTION RAISED ON THE ISSUE OF THEFT IT IS NOT A FACTOR IN THIS REVIEW.

IN SUMMARY, THE FOREGOING DOES NOT ESTABLISH THAT THE CASHIER WAS WITHOUT FAULT OR NEGLIGENCE IN THE SAFEGUARDING OF THESE FUNDS. SINCE THIS IS A REQUIREMENT TO THE APPLICATION OF RELIEF UNDER 31 U.S.C. 82A 1 WE MUST REAFFIRM OUR EARLIER DECISION THAT RELIEF CANNOT BE GRANTED.