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B-177910 February 20, 1973

Number: B-177910

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The Honorable Clement J. Zablocki House of Representatives

Dear Mr. Zablocki:

Your communication of January 24, 1973, transmitted for our consideration correspondence concerning the Veterans Administration's refusal to relieve Mrs. Ann F. Kobelinski, an alternate agent cashier athe Veterans Aministration Center, Wood, Wisconsin, from liability for the loss of $100 from her cash account. The correspondence transmitted with your communication indicates that on October 5, 1972, when verifying her cash box at the end of the day, Mrs. Kobelinski discovered that she was short $100, which she restored from her personal funds. After unsuccessful efforts to determine what became of the missing funds, she requested relief and the return of her personal funds of $100. By letter of October 30, 1972, to the Director of the VA Center at Wood, Wisconsin, the Veterans Amdinistration denied relief on the basis that since the loss was unexplained it must be presumed that it occurred with the fault or negligence of Mr. Kobelinski and, since this presumption has not been rebutted by the record presented, relief could not be granted.

Our Office is authorized by the provisions of 31U.S.C. 82a-1 to grant relief to accountable officers from liability for loss under conditions stipulated therein. The cited statute provides in pertinent part as follows:

The General Accounting Office is authorized, after consideration of the partinent 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 decifiency of Government funds, vouchers, records, checks, securities, or papers in his charge, or to authorize the reinbursement, 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 dificiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. ***

As you will note from the above quotation, 31 U.S.C. 82a-1 requires, as a prerequisite tot he granting of relief by our Office thereunder, a determination by the head of the department or agency involved that the loss or deficiency occurred without fault or negligence onthe part of the accountable officer or agency, and our concurrence therein. In the absence of such determination by the Veterans Administration and referral of the matter to us, we can take no action therein. Moreover, we must be able to concur with such determination. As indicated by the Veterans Administration's letter of October 30, 1972, we have repeatedly held that the fact that an explained loss occurred is, in itself, sufficient to raise an inference or presumption of negligence. In our decision of February 23, 1969, B-166174, to the Postmaster General, published at 48 Comp. Gen. 586, in connection with a request for relief of a postal supply clerk from liability for the loss of several thousand dollars of stamps, we stated:

While there is no positive or affirmative evidence of negligence on the part of Mr. Szabo in connection with this loss, we have repeatedly held that positive or affirmative evidence of negligence is not neccessary, and that the mere fact that an unexplained shortage occurred is, in and of itself, sufficient to raise an inference or presumption of negligence. A Government official charged with the custody and handling of public moneys (the stamps, etc., here in question are the equivalent of money and are so treated) is expected to exercise the highest degree of care int he performance of his duty and, when funds (or such stamps etc.) disappear without explanation or evident reason, the presumption naturally arises that the responsible official was derelict in some way. Moreover, granting relief to Government officials for unexplained losses or shortages of this nature might tend to make such officials lax in the performance of their duties. B-122688, September 25, 1956; B-142326, March 31, 1960; B-159987, September 21, 1966; B-158699, September 6, 1968.

Hence, even if the Veterans Administration had referred the matter to us, we could not have granted relief on the basis of the record transmitted by you.

With regard to Mrs. Kobelinski's contentions concerning the applicablity of section 102(a) of the act of June 6, 1972, Pub. L. 92-310, 86 Stat. 201, the cited section provides as follows:

(a) Whenever--

(1) it is necessary to restore or otherwise adjust the account of any accountable officer or his agent for any loss tot he United States due to the fault or negligence of such officer or agent, and

(2) the head of the agency of the Federal Government concerned determines that the amount of the loss is uncollectable,

Such amount shall be charged to the appropriation or fund available for the expenses of the accountable function at the time the restoration or adjustment is made. Such restoration or adjustment shall not affect the personal financial liability of such offficer or agent on account of such loss.

It is apparent that the restoration or adjustment of the accounts of an accountable officer or his agent provided for therein is for application only where the loss involved is uncollectible--which includes uncollectibility fromt he accountable officer or his agent. Furthermore, the section specifically provides that any restoration or adjustment effected thereunder "shall not

affect the personal financial liability of such officer or agent on account of such loss." Hence, even if an adjustment of Mrs. Kobelinski's account could be made under the cited statute, she would still be liable to the Government for the amount thereof.

We regret that we are unable to reach a determination more favorable to your constituent.

Sincerely yours,

PAUL G. DEMBLING For the Comptroller General of the United States