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B-180863 April 24, 1975

Number: B-180863

Date: 1975-04-24

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The Honorable Richard L. Roudebush Administrator, Veterans Administration

Dear Mr. Roudebush:

By letter of September 13, 1974, with enclosures, Mr. R. H. Offutt, on behalf of Mr. Conrad R. Hoffman, Controller, Veterans Administration, submitted further information and requested our Office to reconsider granting relief to Mrs. Bernice Bowser, sub-cashier for the Veterans Administration Outpatient clinic, Oakland, California, who suffered a shortage of $930.91 in her imprast fund account. The letter was forwarded to our Office by letter dated December 16, 1974, from Mr. J.C. Abbott, Chief Disbursing Officer, Bureau of Government Financial Operations, Department of the Treasury Fiscal Service.

31 U.S.C. Sec. 82a-1 authorizes our Office to relieve accountable officers of responsibility for physical loss or deficiency of Government funds if the head of the department of independent establishment concerned, or his designee where authorized by statues, determines (1) that such loss or deficiency occurred while the officer was acting in the discharge of his official duties; and (2) that such loss or deficiency occurred without fault or negligence on the part of the officer, and our Office concurs with such determinations after consideration of the pertinent findings. We note that the letter of September 13 does not expressly state that, in the opinion of the Controller of the Veterans Administration, the shortage in the present case occurred without fault or negligence on Mrs. Bowser's part. However, it appears that such a determination has been made by the Controller in view of the submission of the case for reconsideration and his reference in the September 13 letter to statements by the Director, Veterans Administration Hospital, Martinez, California; the Director, Field Operations, Region 7, Los Angeles, California; and Mrs. Lillie Quan, Chief, Medical Administration Section, VA Outpatient Clinic, Oakland, California, that "Mrs. Bowser should not be held responsible for the loss; " "Mrs. Bowser is a conscientious employee and in our estimation is without fault in this matter"; and "I do not feel that the loss was due to any fault or negligence and unless there is further evidence to the contrary, Mrs. Bowser should not be held responsible." In view of the circumstances, we will accept the latter of September 13 as satisfying the requirements of 31 U.S.C. Sec. 82a-1 for an administrative determination of lack of negligence; however, in the future, such determination should be expressly stated in the words of the statute.

The record shows that Mrs. Bowser discovered the shortage the morning of April 10, 1973, soon after reporting for work. Three padlocked cashboxes containing

the imprest funds in question were missing from the safe. Although there was no evidence of forced entry into either the safe or the office in which the safe was situated, several items and drawers around the office had also been tampered with the night the funds disappeared, indicating that the shortage was caused by theft or burglary. Such an explanation for the shortage is supported by a July 31, 1974, memorandum in which Mrs. Quan speaks highly of Mrs. Bowser's character:

"Mrs. Bowser had been working for the Veterans Administration for the past twenty-seven years, wiht the Last eighteen years at the Oakland Outpatient Clinic. She has been a conscientious, dependable and trustworthy employee. When the duties of Imprest Fund cashier were assigned to her on July 1, 1968, she was reluctant to accept the added responsibility for fear of possible theft or hold-up. When she was persuaded to perform the duties, she was persuaded to perform the duties, she was ever midful and cautious that her funds were always accountable. It was a routine practice for her to check the safe before leaving at the end of the day. Mrs. Bowser also received periodic unannounced audits of her funds by the Fiscal Officer, VA Hospital, S.F., and never once was there any discrepancy."

In view of the above, we think it reasonable to conclude that the shortage in question resulted from theft or burglary and was not an "unexplained loss" as that term has been used in prior decisions by our Office. See, for example, B-170012, August 11, 1970; and B-158699, September 6, 1968. Hence, the question of relieving Mrs. Bowser of responsibility for the shortage depends upon whether the theft or burglary was facilitated by any negligence on her part.

In regard to whether the safe was locked on April 9 when Mrs. Bowser left work, she has stated that she remembered last opening and closing the safe the afternoon of April 9 and that before leaving work that day she tried the handle of the safe and it did not turn. The record shows that the safe had a day-lock mechanism which permitted the locking and reopening of the safe without dialing the complete combination. That type of locking is done by closing the door of the safe, turning the dial ahead a few number and locking the safe with a pull on its handle. To unlock the safe when it is day-locked, it is only necessary to turn the dial back to the last number of the safe's combination and pull the handle. In locking the safe overnight, the dial should be spun several turns in both directions, thus making it necessary to dial the full combination in order to open the safe. One of the police officers who investigated the shortage concluded in his report that the safe was probably only day- locked when Mrs. Bowser left the office on April 9, thereby allowing the presumed thief or burglar to open the safe by merely turning the dial back to the last number of the combination.

Normally, our office would consider a cashier negligent if he left a safe day-locked overnight. However, Mrs. Bowser has stated that she did not know the safe had a day-lock mechanism or that it could be reopened easily when day-locked. In her memorandum, Mrs. Quan states:

"As for the day lock mechanism in the safe, no employee concerned with the safe had any knowledge that the safe was so equipped. When the safe was acquired in 1969 from Supply Division, S.F., VA Hospital, there were no instructions given concerning the operation of the safe. The combination was changed before being used for the imprest fund and again in August, 1971. At no time did S.F. VA Hospital Supply Division or the technicians mentioned anything about a day lock

device."

While not free from doubt, in view of Mrs. Bowser's lack of knowledge or instruction regarding the day-lock mechanism on the safe, and the general lack of knowledge in the office of the existence of such day-lock, we do not think it unreasonable for Mrs. Bowser to have believed the safe was fully locked when, in fact, it was only day-locked. We therefore concur with the administrative determination that Mrs. Bowser was not at fault with respect to the shortage in question.

Accordingly, sub-cashier Bernice Bowser may be granted relief pursuant to 31 U.S.C. Sec. 82a-1.

Sincerely yours,

Paul G. Dembling General Counsel

CC: FGMSD

Chief Disbursing Officer Treasury Department

Mr. Conrad R. Hoffman Office of Controller VA