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B-183284 June 17, 1975

Number: B-183284

Date: 1975-06-17

B-183284 June 17, 1975

Mr. L.F. Chapman, Jr. Commissioner, Immigration and Naturalization Service Department of Justice

Dear Mr. Chapman:

This is in reply to your letter of February 10, 1975, requesting our Office to relieve Sylvia Echandia Schramm, Class A Cashier, in the Immigration and Naturalization Service Office, Tucson, Arizona, of liability of the lose of $1 740.30 in Government funds under the authority of 31 U.S.C. Sec. 82a-1 (1970).

The record indicates that the loss in question occurred sometime between 5 p.m. Friday, February 9, 1973, when Mrs. Dorothy B. Britt locked the safe which contained the Imprest fund cashbox, and 8:45 a.m., Monday, February 12, 1973, when the loss of the cashbox was first noticed. Mrs. Schramm states that she placed the cashbox in the primary safe at about 4:45 p.m. , Monday, February 9, 1975 Mrs. Dorothy Britt, who is a secretary to the United States Border Patrol and also alternate Imprest fund cashier locked the primary safe about 5 p.m. the same day. During the weekend, the primary safe was opened by another employee who placed other funds in the top drawer of the safe.

There is no evidence that the safe wee forcibly entered, however, the administrative report indicates that the safe was malfunctioning at the time of the loss.

The report of the FBI agent in charge of the investigation discloses that the combination to the safe was known to six individuals other then Mrs. Schramm. The combination to the safe was stored in the top drawer of the safe which was left open during the day when employees were present. From the administrative and FBI investigations, it cannot be determined how the loss occurred.

Our Office is authorized to grant accountable officers relief from liability for losses arising under certain conditions prescribed by 31 U.S.C. Sec. 82a-14 (1970) which provides in pertinent part as follows:

"The General Accounting Office is authorized, after consider ration of the pertinent 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 * * * charged with responsibility on account of physical loss or deficiency of Government funds, vouchers, records, checks, securities, or papers in his charge * * * 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 lose or deficiency occurred by reason of the act or mission 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."

A determination of an "unexplained loss" is, standing alone, sufficient to raise a presumption of negligence. However, the presumption is rebuttable and, as we have consistently held, is rebutted by a finding that the individual seeking relief is not the proximate cause of the loss. From our review of this case, we do not find that the discharge of Mrs. Schramm's official duties was the proximate cause of the loss of Government funds, and the lose occurred without her fault or negligence. We concur with the administrative determination in this regard. Therefore, under the authority of 31 U.S.C. Sec. 82a-1, we hereby grant Mrs. Schramm relief from liability as requested.

Sincerely yours,

Paul G. Dembling General Counsel