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B-186190 May 11, 1976

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Date: 1976-05-11

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Honorable The Secretary of the Navy

Dear Mr. Secretary:

Reference is made to a letter dated March 9, 1976, from Joseph T. McCullen, Assistant Secretary of the Navy, Manpower and Reserve Affairs, Department of the Navy, requesting that relief be granted in amount of $978 on behalf of Gunnery Sergeant Roger Joseph Fugere, D12 32 20 84, USMC, for loss of public funds in his custody as Primary Collection Agent at Camp Garcia, Fleet Marine Force, Atlantic, Visques Puerto Rico.

The letter indicates that it has been administratively determined that GySgt, Fagere was acting in the discharge of official duties and that the lead or deficiency occured without fault or magligence on his part. Our concurrence in these determinations has been requested pursuant to 31 U.S.C. 82a-1.

The submission indicates that as Primary Collection Agent, GySgt, Fugere collected cash receipts from the camp's mess halls for turning in to the nearest Disbursing Officer who was located at Roosevelt Roads, USMS, Puerto Rico. Until turned in, these collections were kept in the office of the Subsistence Warehouse, building No. 302, in a field safe welded to a steel column set in concrete. The safe's combination lock was inoperable so it was equipped with a hasp and hinge and secured by a lay- lock padlock to which GySgt, Fugere possessed the only key.

The submission also indicates that sometime between 6:00 p.m. on Friday, March 14, 1975, and 7:50 a.m. on Saturday, March 16, 1975, a cash box containing $978 representing 13 days mess collections disappeared from the safe. The safe door was found ajar with the padlock missing and interior key-locked drawer apparently had been pried open with a blunt intrumente. Although there was no indication that force was used to open the safe, the Naval Investigative Service surmised that the padlock was apparently cut off and removed fro the area.

Additionally, a piece of cardboard covering a broken windo pane in the Subsistence Warehouse office was pushed in and a foot print was found on a chair under the windo in the office. Initially, Naval Investigative Service considered GySgt. Fugere a possible suspect because he admittedly entered the office at about 9:30 p.m. and secured the safe at 10:00 p.m. Friday, March 14, 1975. However, he submitted to a polygraph examination, the results of which were negative concerning his possible theft or knowledge of the theft of the funds involved.

We note that HARCOSUP Manual, Vol. I para, 06101s provides that:

"Safekeeping of Public Funds. The imprest fund cashier, collection agent, and authorized custodian will keep the funds entrusted to them fro safekeeping in a safe assigned exclusively for their respective use. The combination willbe known only to him, and he will not communicate it or place it in the custody of anyone else. The combination of the safe will be changed every 6 months and upon relief of a designated agent,. The combination lock will be an integral part (built into/nondetachable) of the safe. Safes which have been modified to accommodate a hinge and hasp are not authorized fro the safekeeping of funds. Field safes shall not be used for the safekeeping of funds, unless they have been bolted or chained in a place in such a manner that they cannot be remvoed. A cash box, with key, must be provided to the appointed agent."

While the collections were not kept in a combination locked safe but instead in a safe secured in an unauthorized manner (detachable padlock), this was not the fault of GySgt. Fugere. It was not his responsibility to assure that the safe had a combination lock. He used the safe assigned to him for his exclusive use by appropriate naval authorities. Both the Supply Officer and Subsistence Officer were aware that his safe had the wrong type of lock and had taken steps prior to the logs to have his safe repaired. However, this was not accomplished until April 17, 1975.

Additional safes had been ordered but did not arrive until June 13, 1975, while the only other safe available for his possible use also had a broken lock. Thus, he appears to have kept the funds in the best place available to him.

We note that NAVCOMP Manual Vol. IV, para. 043003.1 provides in pertinent part, as follows:

"GENERAL, Except as otherwise provided in this Chapter, all collections will be delivered to the disbursing officer or will be deposited with a Government depositary daily or at least twice weekly if daily delivery or deposit is impracticable."

However, the actual practice followed by GySgt. Fugere varied from the prescribed, supra, in that twice weekly he would exchange cash collections for a check made out to the U.S. Treasury at the Marine Corps Exchange which he deposited with the Disbursing Officer at Roosevelt Roads once a month.

This variaton in prescribed procedure had been approved by the Commanding Officer, Camp Garcia as well as the Disbursing Officer at Roosevelt Roads, because Roosevelt Roads is located on the main island of Puerto Rico while Camp Garcia is located on Vieques Island, Transportation to the main island is available only Monday through Friday by a rather lengthy boatride. While arguably, he could have deposited funds on weekdays with the Disbursing Officer as infrequently as twice weekly, and the exchange of collections twice weekly for thanks, in essence, served to achieve the same purpose, reduction of cash-on-hand.

Finally, while the submission indicates that 13 days mess collections were in the safe, it does not indicate that these funds had been if the safe for 13 days. The submission indicates that due to certain exigencies, training units turned in mess funds covering extended periods of time and thereby caused turn-ins by the collection agents to cover periods of time extending beyond the

periods normally elapsed between turn-ins. The submission also indicates that a number of units were training at Camp Garcia and cash collections from their personnel were being made during the period in question. Additionaly, the submission indicates that the amount of $978 was not excessive in view of the number of units in training at Camp Garcia in March 1975. Finally, under applicable regulations there was no dollar limitation on the amount GySgt. Fugere as Primary Collection Agent could have in his custody at any particular time.

In summary we agree that the loss was apparently the result of a burglary in which GySgt. Fugere was not involved. The fact that there was no evidence of force used in opening the safe is reasonable explained by the fact that the lock could have been cut off and removed. Furthermore, while his actions were not in compliance with applicable regulations, he used the safe and lock he was assigned and kept the funds in the best place available to him. Finally, while such collections represent 13 days mess funds, there is no evidence that such funds were kept in the safe 13 days and substantial doubt exists to that conclusion (a turn-in having been made on March 10, 1975).

Therefore, we concur in the determination made, and the requested relief may be granted.

Sincerely yours,

Paul G. Dembling General Counsel