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B-199021 September 2, 1980

Number: B-199021

Date: 1980-09-02

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Mr. Richard A. Frank Administrator, National Oceanic and Atmospheric Administration Department of Commerce

Dear Mr. Frank:

This responds to the request for relief of Imprest Fund Cashier Janet Holbrook for the loss of $565, submitted by Ms. Sonia R. Maged, Chief, Central Accounting Division, National Oceanic and Atmospheric Administration (NCAA), Department of Commerce. Ms. Maged asserts that "reasonable care and prudence was exercised in safeguarding (the Imprest Fund) and that no negligence may be attributable to the cashier for this loss." Ms. Maged also asks that appropriation 13X1450 be charged if relief is granted. For the reasons given below we concur in Ms. Maged's determination that relief should be granted.

Ms. Holbrook is employed as a secretary for the Conservation Engineering and Pelagic Fish Investigation Tasks of the Northwest and Alaska Fisheries Center, Resource Assessment and Conservation Engineering Division, NoAA. Her duties include responsibility for and maintenance of an Imprest Fund. Ms. Holbrook works as a sub-cashier to Ms. Dorothy Townsend, Class B cashier, with an advance of $2,000. Although Ms. Holbrook is subcashier to Ms. Townsend, Ms. Holbrook is fully accountable for the Imprest Fund she maintains.

Ms. Holbrook's Imprest Fund is kept in a locked two-drawer combination safe located immediately adjacent to her desk. The money is maintained in a standard cash box with separate compartments for bills and coins. Receipts are placed in folders in the same drawer as the cash by use of a metal divider. Ms. Holbrook states that she does not remove the cash box from the safe when making a transaction due to the safe's proximity to her desk.

On January 15, 1980, Ms. Holbrook made several Imprest Fund transactions. At some time in the afternoon she made a partial count of the money to check whether she had enough cash for the following week and found over $500 in $20 bills. To the best of Ms. Holbrook's memory, prior to leaving work at 4:00 p.m., she followed her usual procedure of checking the safe to insure it was locked.

Ben Jones, Ms. Holbrook's supervisor, remained in the office until 4:30 p.m. and her co-supervisor, Martin Nelson, was in the office from 9:20 p.m. until 11:45 p.m. The area in which the safe is locked is accessible in the evening to numerous employees.

Upon performing her first transaction on January 16, Ms. Holbrook found the safe

which contained the Imprest Fund unlocked and noticed a number of $20 bills missing. After adding up all the receipts and cash remaining, she found the Fund short $566.15. Ms. Holbrook immediately reported the problem to her supervisor, Mr. Ben Jones, who, after rechecking the Fund, also found $566.15 missing (the amount was later determined to be $565) leaving approximately $173 cash in the cash box. m are was no evidence of forced entry into the safe.

Prior to the loss, the combination to the safe had apparently been changed in June 1979. The only place the combination was recorded was in resealed envelope' retained in Ms. Townsend's safe. That envelope was still in Ms. Townsend's safe unopened after the loss. Only Ms. Holbrook knew the combination. After the incident, the shortage was reported to the Secret Service and the Federal Bureau of Investigation. To date, NOAA is not aware of any arrests having been made.

Ms. Holbrook reports she employs the following procedures:

It is my policy to keep the safe locked at all times and never to remove the cash box from the safe for transactions. I unlock the safe for each transaction and lock it afterwards. Since the safe is located in a corner and access to it is blocked by my L-shaped desk and typewriter table, I can operate the combination from my chair with my back to the room area and my body shielding the combination from anyone's view because of this physical arrangement. I think it is impossible that anyone could have learned the combination during a cash transaction. I have always been very careful to safeguard the combination in my procedures and to lock the safe after each access."

Ms. Holbrook's description was confirmed by her supervisor, Mr. B.F. Jones who reported:

"Her desk is located in the reception area immediately adjacent to my office; thus, I have observed her system of handling money and the safe/cash box. In my opinion, she has always been most careful. For example, the location of the safe is such that she can, and does, shield the dial from an observer when she opens the door. She does not remove the cash box from the safe, but opens it and removes only the amounts of money required. Immediately after each transaction, she closes the cash box and shuts the safe door. If she is going to leave the reception area she always locks the safe by turning the combination dial. Finally, at the end of each day, she checks the safe door to be sure it is locked. Based on my observations, she does not deviate from this."

With regard to the day of the loss, Ms. Holbrook said that

"To the best of my memory, I followed my usual procedure of checking the safe handle and combination to be sure it was in the locked position before leaving work Tuesday, January 15."

She said in an earlier statement--

"I usually check the safe before going home each night to be sure the dial has been turned. It is possible that I neglected to do this, and that I closed the safe but did not twirl the dial. To the best of my recollection, I followed my usual procedure."

In another case, B-199020 (still pending), DCAA is seeking relief for a cashier for a loss of $584.64 which occurred several weeks after and in the same

building as this one. Although the rush boxes were also taken in that case, there was no evidence of forced entry.

Physical losses such as the one in question are covered by 31 U.S.C. Sec. 82a-1. That statute authorizes this Office to relieve an accountable officer from liability if we concur with a determination by the agency head that the loss occurred (1) while the accountable officer was acting in the discharge of his or her official duties, and (2) without fault or negligence of the accountable officer. If relief is granted, the law also authorizes adjusting the account by charging the appropriation or fund available for the disbursing function at the time the adjustment is effected' absent another appropriation specifically provided therefor.

Although Ms. Maged did find that Ms. Holbrook was not negligent, she did not expressly make the requisite determination that the loss occurred while Ms. Holbrook was acting in discharge of her official duties. The facts, however, clearly suggest this was NOAA's conclusion. See B-195435, September 12, 1979.

In applying section 82a-1 we have repeatedly held that when an accountable officer's account is short, the physical shortage is sufficient to raise an inference or presumption of negligence. 48 Camp. Gen. 566, 567 (1969). However, the presumption may be rebutted by evidence that the accountable officer was not negligent, or that such negligence as may have existed was not the proximate cause of the loss. 54 Comp. Gen. 112,116 (1974). In determining whether an individual has been negligent, we apply the reasonable care standard. Id.

The fact that two losses occurred in the same area under somewhat similar circumstances only several weeks apart tends to corroborate the likelihood of theft in this case even though not all the money was taken. Evidence of theft can overcome the presumption of negligence so long as it can be shown that the accountable officer was not implicated in the theft and that no negligent act or omission of the accountable officer contributed to it. B-193416 October 25, 1979. Accordingly, in B-1934164 0ctober 25, 1979, we granted relief where theft was probable since a second loss occurred a week after the first loss and the cashiers were found not to have been negligent.

On the other hand, an accountable officer may not be granted relief when that officer's negligence is the proximate cause of the theft. B-188733, March 29, 1979, affirmed January 17, 1980. In this regard, we have concluded that "a reasonably prudent person, even under the pressures of a heavy workload, would nevertheless take the tome to spin the combination and lock the safe." B-183559, August 28, 1975. Accordingly, in B-184028 March 2, 1976, we denied relief even where theft was evident since the impress fund cashier stated she might have left the safe open inadvertently.

Based on the principles described above, we concur with the administrative determination that Ms. Holbrook exercised reasonable care and prudence and that the loss was not attributable to her negligence. The facts show neither that Ms. Holbrook was implicated in the theft nor that her negligent act or omission was the proximate cause of or contributed to it: The Imprest Fund was kept in a safe at all times. The combination, kept in a sealed envelope in another safe not on the premises, was known only to Ms. Holbrcok. Agency procedures appeared to be followed; and to the best of Ms. Holbrook's recollection, she followed her usual procedure of checking the safe handle to insure it was in the locked position before she left work on January 15.

We have held that, even when a safe is found open, with no indication that it was forced, the accountable officer's uncontradicted statement that he locked the safe will be accepted and, in the absence of other evidence of negligence, relief will be granted. B-188733, March 29, 1979. [See also B-169756-O.M. July 8, 1970; B-164449-0.M. July 10, 1968; B-164450-O.M. September 5, 1968.]

An apparent obstacle here to granting relief is Ms. Holbrook's acknowledgement of the possibility that she failed to check the safe to insure it was locked prior to leaving work on January 15. As described above, we have held that the failure to lock the safe can constitute a negligent act which bars relief. B-184028 March 2, 1976. However, unlike B-184023 where the cashier's statement that she might have left the safe open prior to leaving work was supported by other facts--she experienced difficulty trying to lock the safe upon leaving work and told another employee she thought it was jammed--here there are no such facts.

It seems to us reasonable to construe Ms. Holbrook's acknowledgment as a conjecture about-how the money might have been taken in the absence of evidence showing an obvious break-in. In view of her assertion that on January 15 to the best of her recollection, she did lock the safe as she usually did prior to leaving work, the statement of her supervisor, Mr. Ben Jones, confirming her description of her usual procedure, and the lack of any facts which might explain why she would have neglected that procedure on January 15, we will assume that she followed her usual procedure. See IX Wigmore on Evidence Sec. 2534 (3d ed. 1940). Accordingly, we find that Ms. Holbrook may be granted relief, and that the loss may be charged to appropriation 13X1450 since that is the appropriation currently available for supporting the disbursing function.

We note that the request for relief in this case does not indicate that authority has been delegated to the Chief, Central Accounting Division, to make the administrative determinations required by 31 U.S.C. Sec. 82a-1. The statute requires that these determinations be made by the agency head. See title 3, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies (3GAO) section 58.2. For purposes of the present case, we have assumed that an appropriate delegation of authority exists. However, similar requests in the future should either be signed by you or, if signed by some other NOAA official, should contain evidence of an appropriate delegation.

Sincerely yours,

Harry R. Van Cleve For Milton J. Socolar General Counsel