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B-209697, Nov 21, 1983, Office of General Counsel

Number: B-209697

Date: 1983-11-21

B-209697, NOV 21, 1983, OFFICE OF GENERAL COUNSEL

MR. CLYDE E. JEFFCOAT, PRINCIPAL DEPUTY COMMANDER:

THIS IS IN RESPONSE TO YOUR REQUEST FOR RELIEF FROM LIABILITY IN THE AMOUNT OF $312 FOR AN ERRONEOUS PAYMENT ON BEHALF OF FIRST LIEUTENANT HARVEY A. MENDEN, CLASS A AGENT, 1ST ARMORED DIVISION, FUERTH, GERMANY. SINCE THE ERRONEOUS PAYMENT MADE BY LIEUTENANT MENDEN WAS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE, WE GRANT THE REQUESTED RELIEF.

THE FACTS UNDERLYING THIS LOSS HAVE BEEN SET OUT PREVIOUSLY IN B-209697, JUNE 20, 1983, FN1 AND CAN BE RESTATED SUMMARILY. THE ERRONEOUS PAYMENT OCCURRED ON MAY 29, 1981, WHEN PRIVATE EARNEST Q. WALKER PRESENTED AN ALTERED CHECK WHICH LIEUTENANT MENDEN CASHED. THE CHECK, WAS ORIGINALLY IMPRINTED IN THE AMOUNT OF $54, AND AS STANDARD WITH ALL UNITED STATES TREASURY CHECKS, THE AMOUNT WAS NOT SPELLED OUT IN WORDS. PRIVATE WALKER HAD ALTERED THE CHECK BY ERASING AN ASTERISK IN FRONT OF THE NUMERAL 5 AND REPLACING THE ASTERISK WITH THE NUMERAL 6, THEREBY INCREASING THE CHECK AMOUNT FROM $54 TO $654. SUBSEQUENTLY, THE ALTERATION WAS DISCOVERED AND PRIVATE WALKER WAS APPREHENDED, AT WHICH TIME $342 WAS RECOVERED. THE REMAINING $312 OF PRIVATE WALKER'S DEBT WAS NOT RECOVERED.

IN OUR EARLIER DECISION ON THIS MATTER, B-209697, JUNE 20, 1983, WE CONSIDERED YOUR AGENCY'S REQUEST TO RELIEVE LIEUTENANT MENDEN'S SUPERVISOR, MAJOR J. D. HARWOOD, FINANCE OFFICER, WHO AS THE DISBURSING AGENT OFFICIALLY RESPONSIBLE FOR THE ACCOUNT WAS PERSONALLY LIABLE FOR THE WRONGFUL PAYMENT MADE BY HIS SUBORDINATE. WE GRANTED RELIEF TO MAJOR HARWOOD SINCE HE HAD PROPERLY SUPERVISED HIS EMPLOYEES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO AVOID ERRORS, AND HE HAD TAKEN APPROPRIATE STEPS TO ENSURE THE SYSTEM'S IMPLEMENTATION AND EFFECTIVENESS.

ALTHOUGH WE RELIEVED MAJOR HARWOOD, WE DECLINED TO RELIEVE LIEUTENANT MENDEN WHO WAS ALSO LIABLE FOR THE LOSS SINCE HE WAS THE ACCOUNTABLE OFFICER WHO MADE THE ERRONEOUS PAYMENT. SEE 54 COMP.GEN. 112, 114 (1974). WE RECOGNIZED THAT THE INVESTIGATIVE REPORT RECOMMENDED THAT LIEUTENANT MENDEN BE RELIEVED FROM LIABILITY, BUT WE HAD NO FORMAL REQUEST FOR RELIEF FROM YOUR AGENCY. THEREFORE, WE ADVISED THAT COLLECTION ACTION SHOULD BE TAKEN AGAINST HIM UNLESS A REQUEST FOR RELIEF WOULD BE FORTHCOMING.

UNDER 31 U.S.C. SEC. 3527(C), THIS OFFICE MAY GRANT RELIEF TO A CASHIER, SUCH AS LIEUTENANT MENDEN, WHEN HE MAKES AN ERRONEOUS PAYMENT THAT IS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE. WE HAVE CONSIDERED THIS STATUTORY TEST MET WHEN THE CASHIER HAS BEEN IN FULL COMPLIANCE WITH EXISTING DIRECTIVES. SEE B-209717, JULY 1, 1983, CITING B-192558, DECEMBER 7, 1978. THUS, TO RELIEVE

LIEUTENANT MENDEN, WE MUST ASCERTAIN IF HE COMPLIED WITH ALL THE PROCEDURES AND CONTROLS FOR CASHING CHECKS WHICH WERE IMPLEMENTED BY HIS SUPERVISOR, MAJOR HARWOOD.

THE RECORD REVEALS THAT LIEUTENANT MENDEN DID FOLLOW ALL THE REQUIRED PROCEDURES AND CONTROLS. WE THEREFORE CONCLUDE THAT THE ERRONEOUS PAYMENT WAS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE BY LIEUTENANT MENDEN. ACCORDINGLY, WE RELIEVE LIEUTENANT MENDEN FOR THE LOSS OF THE $312.

FN1 B-209697 IS ONE OF TEN CASES CONSOLIDATED UNDER B-211440, ET AL., JUNE 20, 1983, WHICH WILL BE INCLUDED IN 62 COMP.GEN. WHEN PUBLISHED.