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B-209717.2, Jul 1, 1983, Office of General Counsel

Number: B-209717.2

Date: 1983-07-01

B-209717.2, JUL 1, 1983, OFFICE OF GENERAL COUNSEL

BRIGADIER GENERAL ROBERT B. ADAMS DEPUTY COMMANDER U.S. ARMY FINANCE AND ACCOUNTING CENTER

THIS IS IN RESPONSE TO YOUR REQUEST THAT RELIEF BE GRANTED UNDER 31 U.S.C. SEC. 3527(C) FOR AN IMPROPER PAYMENT OF $5,341.51, CHARGEABLE TO THE ACCOUNT OF LIEUTENANT COLONEL (LTC) G.L. COMFORT, FINANCE AND ACCOUNTING OFFICER AT FORT LEWIS, WASHINGTON. FOR THE REASONS INDICATED BELOW, WE RELIEVE LTC COMFORT. FURTHER, ALTHOUGH NO OFFICIAL REQUEST WAS MADE ON HER BEHALF, WE ALSO RELIEVE THE CASHIER, FAITH R. TAIT, WHO ACTUALLY MADE THE IMPROPER PAYMENT IN THIS CASE.

ON MAY 19, 1981, A MAN IDENTIFYING HIMSELF AS BOB RUSSELL PRESENTED SEPARATION ORDERS AND A MILITARY PAY VOUCHER FOR $5,341.51 TO CASHIER FAITH R. TAIT. HE ALSO PRESENTED WHAT APPEARED TO BE A VALID U.S. ARMY IDENTIFICATION CARD. MS. TAIT CHECKED THE PAYEE'S IDENTITY AND THE CORRECTNESS OF HIS VOUCHER ACCORDING TO THE PRESCRIBED PROCEDURES, AND THEN PAID HIM $5,341.51. AN AUDIT LATER REVEALED SEVERAL MINOR DISCREPANCIES IN THE VOUCHER WHICH LED TO A FULL INVESTIGATION OF THE PAYMENT AND ITS CIRCUMSTANCES. THE INVESTIGATION REVEALED THAT THE PAYEE, USING A FICTITIOUS NAME, HAD PRESENTED A FRAUDULENT VOUCHER TO THE CASHIER. NO STEPS TO COLLECT OR RECOUP THE PAYMENT HAVE BEEN TAKEN BECAUSE THE PAYEE HAS NOT BEEN IDENTIFIED.

AS A DISBURSING OFFICER, LTC COMFORT IS PERSONALLY LIABLE FOR DEFICIENCIES IN HIS ACCOUNTS CAUSED BY ILLEGAL, IMPROPER, OR INCORRECT PAYMENTS. HOWEVER, UNDER THE PROVISIONS OF 31 U.S.C. SEC. 3527(C) THIS OFFICE IS AUTHORIZED TO GRANT RELIEF FROM LIABILITY UPON A DETERMINATION THAT THE PAYMENT WAS

"*** NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE BY THE OFFICIAL." SEE GENERALLY, 54 COMP.GEN. 112 (1974).

IN CASES WHERE A SUBORDINATE ACTUALLY DISBURSES FUNDS RATHER THAN THE DISBURSING OFFICER HIMSELF, WE HAVE GRANTED RELIEF UPON A SHOWING THAT THE DISBURSING OFFICER PROPERLY SUPERVISED HIS SUBORDINATES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO SAFEGUARD THE FUNDS, AND TOOK STEPS TO SEE THAT THE SYSTEM WAS EFFECTIVE AND BEING FOLLOWED E.Q., B-194877, JULY 12, 1979; B-192409, OCTOBER 11, 1978.

ACCORDING TO YOUR LETTER REQUESTING RELIEF, "*** ADEQUATE SUPERVISORY CONTROLS TO PRECLUDE IMPROPER PAYMENTS WERE IN EFFECT AT THE TIME THE PAYMENT WAS MADE." FROM THE RECORD, IT APPEARS THAT LTC COMFORT HAD ESTABLISHED AND MAINTAINED ADEQUATE OFFICE PROCEDURES TO SAFEGUARD THE FUNDS HE WAS ACCOUNTABLE FOR.

THE IMPROPER PAYMENT IN THIS CASE WAS THE RESULT OF CRIMINAL ACTIVITY - PRESENTING FALSE IDENTIFICATION AND SUBMITTING A FRAUDULENT VOUCHER OVER WHICH LTC COMFORT HAD NO CONTROL. EVEN THE MOST CAREFULLY ESTABLISHED AND EFFECTIVELY SUPERVISED SYSTEM CANNOT PREVENT EVERY CONCEIVABLE FORM OF CRIMINAL ACTIVITY. SEE B-202911, JUNE 29, 1981. THE FACT THAT SECURITY MEASURES WERE SUBSEQUENTLY TIGHTENED TO PREVENT A SIMILAR INCIDENT FROM OCCURRING IN THE FUTURE IS EVIDENCE OF PROPER SUPERVISION, NOT AN ADMISSION OF PRIOR NEGLIGENCE ON THE PART OF THE SUPERVISORY OFFICER. SHORT, WE CONCUR WITH THE FINDING THAT THIS IMPROPER PAYMENT WAS NOT THE RESULT OF BAD FAITH OR THE LACK OF REASONABLE CARE ON THE PART OF LTC COMFORT.

THE CASHIER, MS. FAITH R. TAIT IS ALSO AN ACCOUNTABLE OFFICER IN THIS CASE. SEE 59 COMP.GEN. 113, 114 (1979). HOWEVER, WHERE A CASHIER APPEARS TO HAVE BEEN IN FULL COMPLIANCE WITH EXISTING DIRECTIVES, AND NOTHING IN THE RECORD SUGGESTS THAT SHE WAS NOT EXERCISING DUE CARE, THIS OFFICE MAY GRANT RELIEF UNDER THE PROVISIONS OF 31 U.S.C. SEC. 3527(C). SEE B-192558, DECEMBER 7, 1978.

MS. TAIT MADE THE PAYMENT IN THIS CASE BASED ON THE DOCUMENTS PRESENTED TO HER. THESE DOCUMENTS APPEARED TO BE VALID AND SUFFICIENTLY ENTITLED THE PAYEE TO RECEIVE PAYMENT. THE RECORD SHOWS THAT BEFORE MAKING THE PAYMENT, MS. TAIT COMPLIED WITH EXISTING SECURITY PROCEDURES, SUCH AS REVIEWING THE VOUCHER FOR CORRECTNESS OF NAME, SOCIAL SECURITY NUMBER, AUTHORIZED CERTIFYING SIGNATURE, AND LEGIBILITY OF AMOUNT DUE. SHE ALSO CHECKED THE PAYEE'S MILITARY IDENTIFICATION CARD. NOTHING IN THE RECORD SUGGESTS THAT MS. TAIT SHOULD HAVE BEEN AWARE OF THE FRAUDULENT CHARACTER OF THE DOCUMENTS. ACCORDINGLY, WE CONCLUDE THAT THE IMPROPER PAYMENT WAS NOT THE RESULT OF BAD FAITH OR A LACK OF REASONABLE CARE ON THE PART OF MS. TAIT.

COLLECTION ACTION HAS NOT BEEN POSSIBLE IN THIS CASE BECAUSE THE IDENTITY OF THE PAYEE IS STILL UNKNOWN. IF HIS IDENTITY IS LATER DISCOVERED, OF COURSE, THE DEPARTMENT OF THE ARMY WOULD BE REQUIRED TO DILIGENTLY PURSUE COLLECTION. 31 U.S.C. SEC. 3527(D)(2)(B).

FOR THE REASONS STATED ABOVE, WE GRANT RELIEF TO LTC COMFORT AND MS. TAIT FROM LIABILITY FOR THE IMPROPER PAYMENT OF $5,341.51.