Text as published on gao.gov, https://www.gao.gov/products/b-211660, archived 2026-07-12. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-211660, Dec 15, 1983, Office of General Counsel

Number: B-211660

Date: 1983-12-15

B-211660, DEC 15, 1983, OFFICE OF GENERAL COUNSEL

MAJOR GENERAL PAUL P. BURNS, COMMANDING GENERAL:

THIS IS IN RESPONSE TO YOUR LETTER DATED APRIL 27, 1983 (REFERENCE:FINCY- D KINCAID, K. T. (3855)) REQUESTING THAT WE GRANT RELIEF TO LIEUTENANT COLONEL K. T. KINCAID, FINANCE AND ACCOUNTING OFFICER AT THE U.S. ARMY ARMOR CENTER AND FORT KNOX, KENTUCKY, FROM LIABILITY FOR A DEFICIENCY IN HIS ACCOUNTS OF $56.00 RESULTING FROM AN INCORRECT PAYMENT. AS INDICATED BELOW, BECAUSE THE RECORD PRESENTED TO US FAILS TO ESTABLISH THAT LIEUTENANT COLONEL KINCAID WAS NOT PERSONALLY RESPONSIBLE FOR THE IMPROPER PAYMENT AND THAT HE PROPERLY SUPERVISED HIS SUBORDINATES AND MAINTAINED AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS, WE ARE UNABLE TO GRANT THE RELIEF REQUESTED.

THE MATERIALS SUBMITTED WITH THE REQUEST FOR RELIEF INDICATE THAT, ON SEPTEMBER 14, 1981, AN IMPROPER PER DIEM PAYMENT WAS MADE TO SERGEANT JAIME M. TAJALE OF THE PHILIPPINE ARMY WHILE HE WAS ATTENDING TRAINING AT FORT KNOX UNDER THE INTERNATIONAL MILITARY EDUCATION AND TRAINING PROGRAM. SERGEANT TAJALE WAS PAID $56.00 HE WAS NOT AUTHORIZED TO RECEIVE IN VIEW OF HIS INVITATIONAL TRAVEL ORDER WHICH PROVIDED: "TRANS-OCEAN TRAVEL AND LIVING ALLOWANCE ARE THE RESPONSIBILITY OF THE PHILIPPINE GOVERNMENT." THE PAYMENT APPARENTLY WAS MADE BY SUBORDINATES OF LIEUTENANT COLONEL KINCAID. COLLECTION OF THE IMPROPER PAYMENT WAS ATTEMPTED BY REQUESTING PAYMENT FROM THE JOINT UNITED STATES MILITARY ADVISORY GROUP TO THE REPUBLIC OF THE PHILIPPINES. HOWEVER, RESTITUTION WAS DEEMED IMPOSSIBLE IN VIEW OF REGULATIONS WHICH PRECLUDE COLLECTION OF OVERPAYMENTS FROM FOREIGN TRAINEES AFTER THEY HAVE LEFT THE UNITED STATES.

A GOVERNMENT DISBURSING OFFICER IS THE INSURER OF FUNDS IN HIS CHARGE AND IS PERSONALLY LIABLE FOR DEFICIENCIES CAUSED BY INCORRECT PAYMENTS, WITHOUT REGARD TO WHETHER THOSE DEFICIENCIES OCCUR BECAUSE OF ERRORS MADE BY HIM PERSONALLY OR BY HIS SUBORDINATES. 54 COMP.GEN. 112, 114 (1974); B-192109, OCTOBER 11, 1978. HOWEVER, THIS OFFICE IS EMPOWERED TO RELIEVE A DISBURSING OFFICER FROM LIABILITY FOR SUCH DEFICIENCIES IF THE IMPROPER PAYMENT "WAS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE BY THE OFFICIAL" AND A REASONABLE COLLECTION EFFORT HAS BEEN MADE. 31 U.S.C. SEC. 3527(C).

THIS OFFICE HAS RECOGNIZED THAT, IN DISBURSING OPERATIONS PROCESSING A HIGH VOLUME OF PAYMENTS, IT MAY NOT BE PRACTICAL FOR A SUPERVISORY DISBURSING OFFICER TO PERSONALLY CHECK THE PROPRIETY AND CORRECTNESS OF EACH VOUCHER AND CHECK, AND FAILURE TO DO SO WILL NOT, IN ITSELF, BE DEEMED TO BE NEGLIGENCE IN THE EVENT AN IMPROPER PAYMENT IS MADE. B-194877, JULY 12, 1979. WHEN A DISBURSING OFFICER RELIES UPON A SUBORDINATE TO ACTUALLY DISBURSE FUNDS:

"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 AVOID ERRORS, AND TOOK STEPS TO SEE THAT THE SYSTEM WAS EFFECTIVE AND BEING FOLLOWED."

B-192109, JUNE 3, 1981.

IN THE CASE AT HAND, THE ARMY FINANCE AND ACCOUNTING CENTER HAS MADE THE ADMINISTRATIVE DETERMINATION THAT "THE IMPROPER PAYMENT WAS NOT THE RESULT OF BAD FAITH OR LACK OF DUE CARE ON THE PART OF THE FINANCE AND ACCOUNTING OFFICER ..." HOWEVER, THIS OFFICE MAY NOT RELY ON AN AGENCY RECITATION, BUT RATHER MUST INDEPENDENTLY DETERMINE FROM THE AVAILABLE RECORD THAT THE ERRONEOUS PAYMENT WAS NOT CAUSED BY BAD FAITH OR LACK OF DUE CARE BY THE DISBURSING OFFICER. B-192109, OCTOBER 11, 1978. THE DISBURSING OFFICER, OR THE AGENCY, HAS THE AFFIRMATIVE BURDEN OF PRESENTING A RECORD SHOWING THAT THE DISBURSING OFFICER WAS NOT AT FAULT.

THERE IS NO INDICATION IN THE RECORD BEFORE US THAT LIEUTENANT COLONEL KINCAID MAINTAINED AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS AND THAT HE PROPERLY SUPERVISED HIS SUBORDINATES TO INSURE THAT THAT SYSTEM WAS BEING EFFECTIVELY IMPLEMENTED. THERE IS, IN SHORT, NO EXPLANATION AS TO WHY THIS ADMITTEDLY ERRONEOUS PAYMENT WAS NOT THE FAULT OF LIEUTENANT COLONEL KINCAID AND WHY THE ARMY HAS CONCLUDED THAT HE CARRIED OUT HIS RESPONSIBILITIES WITH DUE CARE. THEREFORE WE MUST DENY THE REQUESTED RELIEF UNTIL FURTHER EVIDENCE IS PRESENTED WHICH WOULD JUSTIFY THE REQUISITE FINDINGS.

FURTHERMORE, WE ARE UNAWARE OF ANY BASIS UNDER THE CLAIMS COLLECTION ACT REGULATIONS, 4 C.F.R. PARTS 101-105, FOR ESTABLISHING DEPARTMENT OF DEFENSE (DOD) REGULATIONS (DOD 5105.38M) THAT TERMINATE COLLECTION ACTIONS SIMPLY BECAUSE TRAINEES HAVE DEPARTED FROM THEIR U.S. OR OVERSEAS TRAINING ACTIVITIES. SUCH A REGULATION CONFLICTS ON ITS FACE WITH THE REQUIREMENTS OF THE CLAIMS COLLECTION ACT REGULATIONS THAT TERMINATION OF CLAIMS COLLECTION ACTIVITY BE BASED ON AN ASSESSMENT OF THE COLLECTIBILITY OF THE CLAIM. SEE 4 C.F.R. PART 104. IF THE SUM AT ISSUE IN THIS CASE IS SO SMALL THAT COLLECTING IT FROM PERSONS OUT OF THE JURISDICTION OF THE UNITED STATES IS UNECONOMICAL, A DECISION TO TERMINATE COLLECTION EFFORTS SHOULD BE BASED ON THIS CONCLUSION. UNLESS THE ARMY HAS SOME AUTHORITY OF WHICH WE ARE UNAWARE, WE DO NOT BELIEVE THAT THE ARMY HAS AT THIS TIME SATISFIED THE REQUIREMENT OF DILIGENTLY CARRYING OUT COLLECTION ACTIONS UNDER THE CLAIMS COLLECTION ACT. ACCORDINGLY, RELIEF WILL ALSO BE DENIED UNTIL EFFECTIVE CLAIM COLLECTION ACTION IS DEMONSTRATED OR THE REGULATION RELIED ON FOR TERMINATING COLLECTION EFFORTS CAN BE JUSTIFIED.

AS WE NOTED IN 62 COMP.GEN. (B-211440 ET AL., JUNE 20, 1983), THERE APPEARS TO BE SOME MISUNDERSTANDING AS TO WHO ARE THE ACCOUNTABLE OFFICERS IN CASES SUBMITTED TO THIS OFFICE. IN THIS CASE YOU HAVE NOT REQUESTED RELIEF FOR THE PERSON WHO ACTUALLY MADE THE ERRONEOUS PAYMENT. THIS PERSON WILL REMAIN LIABLE FOR THE LOSS EVEN IF COLONEL KINCAID IS RELIEVED. IF RELIEF IS NOT REQUESTED AND GRANTED FOR THE PERSON MAKING THE ERRONEOUS PAYMENT, THE ARMY IS REQUIRED TO TAKE COLLECTION ACTION AGAINST THIS PERSON.