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[Request for Reconsideration of Decision Declining Relief From Liability]

Number: B-211962

Date: 1985-12-10

B-211962, DEC 10, 1985, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - RELIEF - ILLEGAL OR ERRONEOUS PAYMENTS - WITHOUT FAULT OR NEGLIGENCE DIGEST: UPON A REQUEST FOR RECONSIDERATION, RELIEF FROM LIABILITY FOR A LOSS OF $8,202 GRANTED FORMER DEPARTMENT OF LABOR IMPREST FUND CASHIER UNDER 31 U.S.C. SEC. 3527(A). A NUMBER OF PERSONS HAD ACCESS TO THE SAFE WHERE THE FUND WAS KEPT IN VIOLATION OF TREASURY STANDARDS. GAO AGREES WITH CONCLUSION THAT THE LOSS WAS THE RESULT OF PERVASIVE LAXITY IN OFFICE PROCEDURES BEYOND CONTROL OF THE CASHIER.

MS. BETTY BOLDEN:

DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION & MANAGEMENT

U.S. DEPARTMENT OF LABOR

WASHINGTON, D.C. 20210

THIS IS IN RESPONSE TO YOUR LETTER OF APRIL 22, 1985, REQUESTING RECONSIDERATION OF OUR DECISION B-211962, JULY 20, 1983. IN THAT DECISION WE DECLINED TO RELIEVE MR. MONDELL J. VALENTINE, A FORMER DEPARTMENT OF LABOR (DOL) EMPLOYEE, FROM PERSONAL LIABILITY FOR A DEFICIENCY IN THE AMOUNT OF $8,202 IN A TRAVEL ADVANCE IMPREST FUND UNDER HIS CHARGE. OUR OFFICE DENIED THE ORIGINAL REQUEST FOR RELIEF BECAUSE DOL FAILED TO MAKE THE REQUISITE DETERMINATION THAT MR. VALENTINE WAS NOT NEGLIGENT IN CARRYING OUT HIS DUTIES.

THE DEPARTMENT OF LABOR REEVALUATED ITS POSITION AND DECIDED THAT THE DEFICIENCY IN THE IMPREST FUND WAS NOT THE RESULT OF MR. VALENTINE'S FAULT OR NEGLIGENCE AND RECOMMENDS RELIEF. THE AGENCY FOUND THAT THE PERVASIVE LAXITY OF THE OFFICE PROCEDURES WAS THE CAUSE OF THE LOSS. BASED ON THIS NEW DETERMINATION AND FOR THE FOLLOWING REASONS, WE NOW GRANT MR. VALENTINE RELIEF FROM LIABILITY AS REQUESTED.

A SHORTAGE OF $8,202 WAS FOUND IN MR. VALENTINE'S IMPREST FUND IN JANUARY 1979. AN INVESTIGATION BY THE DEPARTMENT OF LABOR'S OFFICE OF INSPECTOR GENERAL COULD NOT DETERMINE THE PRECISE CAUSE OF THE LOSS. THE INSPECTOR GENERAL FAILED TO ESTABLISH THAT THE DEFICIENCY WAS THE RESULT EITHER OF THEFT OR A MISALLOCATION OF FUNDS. HOWEVER, BASED ON THIS INVESTIGATION, YOUR OFFICE HAS CONCLUDED THAT AT THE TIME OF THE LOSS

"-- OPERATING PROCEDURES AND INSTRUCTIONS WERE NOT MADE READILY AVAILABLE TO THE CASHIERS BY MANAGEMENT.

"-- SUPERVISORY NEGLIGENCE WAS SIGNIFICANT. SHIFTS OF FUNDS BETWEEN TWO FUNDS WERE INITIALLY DIRECTED BY THE IMMEDIATE SUPERVISOR. THIS BECAME COMMON PRACTICE OVER AN EXTENDED PERIOD WITHOUT SUPERVISORY KNOWLEDGE, SUGGESTING LACK OF PROPER OVERSIGHT.

"-- THERE WERE NO UNANNOUNCED CASH COUNTS AT THE REQUIRED INTERVALS.

"-- THE COMBINATION TO THE SAFE WAS KNOWN TO BOTH CASHIERS AND TO OTHERS IN THE OFFICE.

"-- IMPREST FUND ACCOUNTS WERE NOT REGULARLY RECONCILED AS REQUIRED, RESULTING IN NO ASSURANCE THAT FUND BALANCES WERE CORRECT AT ANY POINT IN TIME PRIOR TO DISCLOSURE OF THE SHORTAGE."

THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED TO GRANT RELIEF FROM LIABILITY TO AN ACCOUNTABLE OFFICER UPON ITS CONCURRENCE WITH DETERMINATIONS BY THE DEPARTMENT OR AGENCY HEAD THAT (1) THE LOSS OR DEFICIENCY OCCURRED WHILE THE OFFICER OR AGENT WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES, OR THAT IT OCCURRED BY REASON OF ACT OR OMISSION OF A SUBORDINATE OF THE OFFICER OR AGENT, AND (2) THE LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER OR AGENT. 31 U.S.C. SEC. 3527 (A).

THE SHORTAGE INVOLVED IN THIS CASE IS AN "UNEXPLAINED LOSS." GENERALLY, THE DISAPPEARANCE OF FUNDS WITHOUT AN EXPLANATION GIVES RISE TO A PRESUMPTION OF NEGLIGENCE ON THE PART OF THE ACCOUNTABLE OFFICER AND THE BURDEN IS ON THE OFFICER TO REBUT THE PRESUMPTION WITH EVIDENCE TO THE CONTRARY. 48 COMP.GEN. 566 (1969).

REVIEW OF OUR FILE ON THIS CASE, WHICH INCLUDES INFORMATION SUPPLIED ON BEHALF OF MR. VALENTINE, CONFIRMS YOUR CONCLUSION THAT SEVERAL PERSONS HAD ACCESS TO THE TRAVEL ADVANCE IMPREST FUND AT THE TIME MR. VALENTINE DISCOVERED THE LOSS. IN ADDITION TO MR. VALENTINE AND MR. ZANDERS, WHO WAS DESIGNATED ALTERNATE CASHIER OF THE FUND, TWO OF MR. VALENTINE'S SUPERVISORS HAD ACCESS TO THE FUND ALONG WITH TWO OTHER OFFICE EMPLOYEES. ALSO, ALL SECURITY PERSONNEL WERE PERMITTED INTO THE AREA IN WHICH THE IMPREST FUND WAS LOCATED. THE TREASURY DEPARTMENT'S "MANUAL OF PROCEDURES AND INSTRUCTIONS FOR CASHIERS" PROVIDES THAT CASH SHOULD BE IN A SUITABLE SAFE OR VAULT "UNDER THE EXCLUSIVE CONTROL OF THE CASHIER" (ID., SEC. 0402). THIS IS ONE OF THE FUNDAMENTAL PRINCIPLES OF SOUND CASH CONTROL. B-199034, FEBRUARY 9, 1981. WHERE SEVERAL PERSONS HAVE ACCESS TO MONEY IN AN IMPREST FUND, THE FUND IS NOT SECURE AND THE DEFINITIVE PLACEMENT OF RESPONSIBILITY FOR A LOSS SUCH AS THE ONE IN QUESTION IS IMPOSSIBLE. ID. IN THIS CASE, SINCE NUMEROUS PERSONS HAD ACCESS TO THE FUNDS, THERE IS CERTAINLY EVIDENCE OF FAULTY AGENCY SECURITY. OUR OFFICE HAS OFTEN HELD THAT WHERE THERE IS AN UNEXPLAINED LOSS, INADEQUATE SECURITY IN THE AREA AROUND THE IMPREST FUNDS WILL REBUT THE PRESUMPTION OF NEGLIGENCE AND PERMIT US TO GRANT RELIEF.

OTHER FINDINGS BY YOUR OFFICE ALSO MAKE IT CLEAR THAT MR. VALENTINE WAS NOT PROPERLY SUPERVISED IN HIS HANDLING OF THE IMPREST ACCOUNT. THESE FINDINGS ALSO SUPPORT YOUR DETERMINATION.

THE GENERAL ACCOUNTING OFFICE HAS CONSISTENTLY GRANTED RELIEF TO ACCOUNTABLE OFFICERS WHO WERE NEGLIGENT, BUT WHOSE NEGLIGENCE WAS DETERMINED NOT TO BE THE PROXIMATE CAUSE OF THE MONETARY LOSS. B-182386, APRIL 24, 1975. UNDER THE CIRCUMSTANCES, IT IS REASONABLE TO CONCLUDE THAT THE PERVASIVE LAXITY OF OFFICE PROCEDURES OVER WHICH MR. VALENTINE HAD NO CONTROL WAS THE ACTUAL CAUSE OF THE

LOSS.

ACCORDINGLY, WE AGREE WITH THE ADMINISTRATIVE DETERMINATION THAT THE LOSS IN QUESTION DID NOT OCCUR AS A RESULT OF FAULT OR NEGLIGENCE ON THE PART OF MR. VALENTINE, AND WE GRANT HIM RELIEF AS REQUESTED.