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B-212337 February 17, 1984

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1. Request for relief of Army disbursing officer under 31 U.S.C. Sec. 3527(c) for deficiency in his accounts of $46 resulting from two incorrect payments may not be granted where record fails to show that officer was not personally responsible for the improper payment and that he properly supervised his subordinates and maintained adequate system of procedures and controls. 2. Relief for erroneous per diem payments to Republic of Philippines trainees not granted. Army terminated claim collection based on Department of Defense (DOD) regulation providing collection may not be pursued against trainees who have left the country. DOD regulation appears contrary to Claims Collection Act regulations. Accordingly, Army did not diligently pursue collection of claim. 31 U.S.C. Sec. 3527(c).

Mr. Clyde E. Jeffcoat Principal Deputy Commander U.S. Army Finance and Accounting Center Indianapolis, Indiana 46249

Dear Mr. Jeffcoat:

This responds to a request from your office that relief be granted, under 31 U.S.C. Sec. 3527(c) (1982), for the improper disbursement of $46, chargeable to the accounts of Lieutenant Colonel (LTC) K.T. Kincaid, Finance Corps, symbol number 6339, Finance and Accounting Officer, U.S. Army Finance and Accounting Office, Fort Khox, Kentucky. For the reasons stated below, the requested relief is denied.

According to your request, payments of $23 were made to Captain Meni B. Partisola and Captain Pablo A. Bayot, Republic of Philippines military officers attending classes as students at Fort Knox under the International Military Education and Training Program. These disbursements totalling $46, represent payments of one day's per diem to each student. According to the record, the per diem checks were issued despite a specific provision in the travel orders of each payee stating that payment of a living allowance was the responsibility of the Philippines Government. While the travel vouchers were prepared and paid by Fort Knox, the charge for the payment was sustained by Fort Shafter, Hawaii. When notified of the charge, Fort Shafter notified Fort Knox that the students were not entitled to per diem under the student's travel orders. Fort Knox then reimbursed Fort Shafter and sustained the loss. The record further indicates that collection was not pursued from the officers because Department of Defense regulations prevent collection where students have left the United States.

An accountable officer such as LTC Kincaid is liable for improper payments made under his supervision. B-194877, July 12, 1979. If an incident or series of

incidents has resulted in the erroneous disbursement of funds in excess of $25, as occurred in this case, a request for relief must be submitted to this Office. 61 Comp.Gen. 646 (1982). Under 31 U.S.C. Sec. 3527(c), the Comptroller General, or his designee, has authority to grant relief upon a showing that an improper payment was not the result of bad faith or lack of due care on the part of the official. See, e.g., B-192109, June 3, 1981. The question thus narrows to whether the record supports a determination that LTC Kincaid acted in good faith and with reasonable care. See B-192109, October 11, 1978.

With the exception of a conclusory statement in the relief request, however, there is no indication that the erroneous payments did not result from a lack of due care on the part of LTC Kincaid. This is insufficient to meet the requirements of 31 U.S.C. Sec. 3527(c). Accordingly, we conclude that, on the record presented, the requested relief is denied until further evidence is presented which would justify the requisite findings.

Furthermore, as we said in B-211660, December 15, 1983, 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. Acoordingly, 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. 476, 479 (1983), there appears to be some misunderstanding as to who are the accountable officers in cases submitted to this Office. In this case, Colonel Kincaid and the person who actually made the erroneous payment are now jointly liable. 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.

Sincerely yours,

L. H. Barclay, Jr. for Harry R. Van Cleve Acting General Counsel