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B-212431, Nov 21, 1983, Office of General Counsel

Number: B-212431

Date: 1983-11-21

B-212431, NOV 21, 1983, OFFICE OF GENERAL COUNSEL

MS. CAROLE J. DINEEN, FISCAL ASSISTANT SECRETARY:

DEAR MS. DINEEN:

THIS RESPONDS TO YOUR REQUEST OF JULY 12, 1983, THAT MR. EUGENE MULCAHY, FORMER DIRECTOR OF THE CHICAGO DISBURSING CENTER, BE RELIEVED FROM LIABILITY FOR THE ERRONEOUS PAYMENT OF $644 OF GOVERNMENT FUNDS. IN THIS REQUEST YOU STATE THAT THE ERRONEOUS PAYMENT DID NOT RESULT FROM BAD FAITH OR LACK OF DUE CARE ON THE PART OF MR. MULCAHY. WE CONCUR WITH THIS FINDING AND THUS RELIEVE MR. MULCAHY OF LIABILITY.

THE RECORD INDICATES THAT DUE TO A MALFUNCTION IN THE DOUBLE FEED MECHANISM OF A CHECK PRINTING MACHINE, TWO CHECKS, EACH IN THE AMOUNT OF $644, WERE ERRONEOUSLY ISSUED TO RODNEY T. ZDENEK ON MARCH 27, 1981. THIS DISCREPANCY OCCURRED WHEN THE INSCRIPTION THAT SHOULD HAVE BEEN PRINTED ON ONE CHECK WAS INSTEAD PRINTED ON THE FOLLOWING CHECK. THE FIRST CHECK THUS HAVING NO INSCRIPTION WAS PULLED DURING INSPECTION AND WAS REPLACED WITH ANOTHER CHECK BEARING THE PROPER INSCRIPTION TO MR. ZDENEK. THE SECOND CHECK, HOWEVER, WAS NOT PULLED AND AS A RESULT, MR. ZDENEK WAS ISSUED TWO CHECKS, WHICH WERE BOTH SUBSEQUENTLY NEGOTIATED. THIS ERROR WAS DISCOVERED BY THE CHICAGO DISBURSING CENTER IN FEBRUARY OF 1982.

UPON DISCOVERING THIS ERRONEOUS PAYMENT, THE DISBURSING CENTER UNDERTOOK MEASURES, WHICH EVENTUALLY PROVED UNSUCCESSFUL, TO RECOVER THE OVERPAYMENT OF $644 TO MR. ZDENEK. THE DISBURSING CENTER TWICE WROTE TO MR. ZDENEK, ONCE ON JULY 27, 1982, AND AGAIN ON SEPTEMBER 3, 1982, ADVISING OF THE OVERPAYMENT AND REQUESTING REIMBURSEMENT. MR. ZDENEK NEVER RESPONDED TO THESE LETTERS. SUBSEQUENTLY, THE DISBURSING CENTER SOUGHT THE ASSISTANCE OF THE INTERNAL REVENUE SERVICE IN COLLECTING REIMBURSEMENT FROM MR. ZDENEK. THE IRS, HOWEVER, WAS UNABLE TO PROVIDE ASSISTANCE IN THIS INSTANCE.

A DISBURSING OFFICER IS PERSONALLY LIABLE FOR DEFICIENCIES IN HIS ACCOUNTS CAUSED BY ILLEGAL, IMPROPER, OR INCORRECT PAYMENTS. UNDER THE PROVISIONS OF 31 U.S.C. SEC. 3527(C) OUR OFFICE IS AUTHORIZED TO GRANT RELIEF FROM LIABILITY IF WE CONCLUDE THAT AN ERRONEOUS PAYMENT DID NOT RESULT FROM BAD FAITH OR LACK OF DUE CARE ON THE PART OF THE DISBURSING OFFICER.

IN THIS CASE THE ERRONEOUS ISSUANCE OF A SECOND CHECK TO MR. ZDENEK WAS CAUSED BY THE BREAKDOWN OF A CHECK PRINTING MACHINE AND THE SUBSEQUENT FAILURE OF A CLERK IN MR. MULCAHY'S OFFICE TO DISCOVER SUCH ERROR. THESE TWO FAILURES WERE NOT THE RESULT OF BAD FAITH OR LACK OF DUE CARE ON THE PART OF MR. MULCAHY. THE

RECORD INDICATES THAT MR. MULCAHY FOLLOWED ESTABLISHED PROCEDURES AND HE PROPERLY INSTRUCTED AND SUPERVISED HIS SUBORDINATES. FURTHERMORE, MR. MULCAHY PROPERLY RELIED ON HIS SUBORDINATES TO VERIFY THE ACCURACY OF EACH CHECK ISSUED. SEE B-195106, JULY 12, 1979. THE GREAT MAGNITUDE OF THE CHICAGO DISBURSING CENTER'S OPERATIONS PREVENTED MR. MULCAHY FROM PERSONALLY INSPECTING EACH ITEM.

ACCORDINGLY, WE GRANT RELIEF TO EUGENE MULCAHY AS REQUESTED.