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[Request for Reconsideration of Petition for Relief from Liability]

Number: B-212588

Date: 1984-08-14

B-212588, AUG. 14, 1984, 756 MS 196

ACCOUNTABLE OFFICERS - RELIEF - REQUIREMENTS FOR GRANTING DIGEST: RELIEF IS GRANTED U.S. ARMY DISBURSING OFFICER AND CASHIERS, UNDER 31 U.S.C. 3527(C), FROM LIABILITY FOR IMPROPER PAYMENT RESULTING FROM NEGOTIATION OF FORGED PERSONAL CHECKS, PRESENTED WITH A STOLEN MILITARY IDENTIFICATION CARD. THE OFFICER MAINTAINED AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO AVOID ERRORS AND THE CASHIERS EXERCISED REASONABLE CARE IN IMPLEMENTING THOSE PROCEDURES. IN ADDITION, THERE WAS NO INDICATION OF BAD FAITH ON THE PART OF EITHER THE OFFICER OR THE CASHIERS.

MR. CLYDE E. JEFFCOAT PRINCIPAL DEPUTY COMMANDER U.S. ARMY FINANCE AND ACCOUNTING CENTER INDIANAPOLIS, INDIANA 46249

DEAR MR. JEFFCOAT:

THIS IS IN RESPONSE TO YOUR LETTER OF JUNE 14, 1984, SUBMITTING ADDITIONAL INFORMATION AND REQUESTING RECONSIDERATION OF YOUR REQUEST THAT RELIEF BE GRANTED TO LIEUTENANT COLONEL (LTC) H. D. FLYNN, FINANCE CORPS, UNITED STATES FINANCE AND ACCOUNTING CENTER, EUROPE, FOR AN IMPROPER PAYMENT OF $1,980 FROM HIS ACCOUNTS. IN ADDITION, YOU REQUEST THAT RELIEF BE GRANTED TO THE CASHIERS, SPECIALIST FIVE (SP5) GLENN W. BARRINGER AND MRS. IRENE J. MOFFETT, WHO DISBURSED THE FUNDS. RELIEF IS SOUGHT PURSUANT TO 31 U.S.C. SEC. 3527(C). BECAUSE YOUR SUBMISSION DEMONSTRATES THAT LTC FLYNN ADEQUATELY SUPERVISED HIS SUBORDINATES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS AND THAT SP5 BARRINGER AND MRS. MOFFETT EXERCISED REASONABLE CARE IN FOLLOWING THOSE PROCEDURES, RELIEF IS GRANTED.

THE IMPROPER PAYMENT OCCURRED WHEN AN INDIVIDUAL CARRYING THE MILITARY IDENTIFICATION (ID) CARD OF SP5 MICHELLE D. TEDDER FORGED HER SIGNATURE ON AND CASHED FOUR PERSONAL CHECKS, EACH IN THE AMOUNT OF $495. THE CHECKS WERE MADE OUT TO THE FINANCE AND ACCOUNTING OFFICE; TWO WERE DISBURSED BY SP5 BARRINGER, ONE EACH ON AUGUST 17 AND AUGUST 18, 1982; THE OTHER TWO CHECKS WERE DISBURSED BY MRS. MOFFETT, SIMILARLY DATED AUGUST 17 AND AUGUST 18, 1982. SP5 TEDDER REPORTED ON AUGUST 17 THAT HER MILITARY ID AND HER CHECKBOOK HAD BEEN STOLEN ON AUGUST 16 BETWEEN 5 AND 6 P.M. SHE ALSO NOTIFIED HER BANK AND CLOSED HER ACCOUNT. THE RECORD INDICATES THAT VULNERABLE FACILITIES WERE NOTIFIED OF THE THEFT TO ENABLE THEM TO TAKE NECESSARY PRECAUTIONS TO PREVENT NEGOTIATION OF THE STOLEN CHECKS BUT THE FOUR IN QUESTION WERE CASHED BEFORE THE NOTICE WAS RECEIVED. INVESTIGATION OF THE INCIDENT HAS FAILED TO ESTABLISH THE IDENTITY OF THE FORGER, PRECLUDING COLLECTION OF THE FUNDS.

AS A DISBURSING OFFICER, LTC FLYNN IS PERSONALLY LIABLE FOR DEFICIENCIES IN HIS

ACCOUNTS CAUSED BY ILLEGAL, IMPROPER OR INCORRECT PAYMENTS. HOWEVER, OUR OFFICE HAS AUTHORITY UNDER 31 U.S.C. SEC. 3527(C) TO GRANT RELIEF FROM LIABILITY UPON DETERMINATION THAT THE PAYMENT WAS MADE IN THE COURSE OF OFFICIAL DUTIES AND WAS "NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE BY THE OFFICIAL." SEE 54 COMP.GEN. 112 (1974).

WHERE A SUBORDINATE, RATHER THAN THE DISBURSING OFFICER HIMSELF, DISBURSED THE FUNDS, RELIEF MAY BE GRANTED UPON A SHOWING THAT THE DISBURSING OFFICER PROPERLY SUPERVISED HIS SUBORDINATES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO AVOID ERRORS AND THAT APPROPRIATE STEPS WERE TAKEN TO ENSURE ITS IMPLEMENTATION AND EFFECTIVENESS. 62 COMP.GEN. 476 (1983).

YOUR SUBMISSION INDICATES THAT LTC FLYNN DID, IN FACT, MAINTAIN SUCH A SYSTEM OF PROCEDURES AND CONTROLS AS PART OF HIS OFFICIAL DUTIES. SEVERAL MONTHS PRIOR TO THE INCIDENT IN QUESTION, HE HAD ISSUED A LETTER OF INSTRUCTION (LOI) REGARDING PERSONAL CHECK CASHING POLICY, REQUIRING CASHIERS TO MATCH THE INFORMATION AND SIGNATURES ON THE ID CARD AND THE CHECK AND TO MAKE SURE THE PAYEE'S NAME DID NOT APPEAR ON THE DISHONORED CHECK LIST. LTC FLYNN SUPERVISES 326 PERSONNEL IN EIGHT OFFICES LOCATED IN WEST GERMANY AND TURKEY. THUS, WHILE IT IS IMPOSSIBLE FOR HIM TO PERSONALLY OVERSEE POLICY COMPLIANCE AT ALL OPERATIONS, HE STATED THAT HE INSPECTS THE BRANCH OFFICES AT LEAST ANNUALLY AS REQUIRED BY PARAGRAPH 15- 23C, AR 37-103. ADDITIONAL INSPECTIONS ARE CONDUCTED BY HIS PRIMARY DEPUTY FOR DISBURSING AND BY QUALITY ASSURANCE TEAMS FROM HIS OFFICE AND THE DEPARTMENT OF THE ARMY; ALL INSPECTIONS HAVE INDICATED PROPER COMPLIANCE WITH CHECK CASHING PROCEDURES AND CONTROLS. GIVEN LTC FLYNN'S IMPLEMENTATION OF AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO AVOID ERROR AND AN ABSENCE OF ANY INDICATION OF BAD FAITH ON HIS PART, WE CONCUR WITH THE FINDING THAT RELIEF SHOULD BE GRANTED.

THE CASHIERS, SP5 BARRINGER AND MRS. MOFFETT, ARE ALSO ACCOUNTABLE FOR ILLEGAL, IMPROPER OR INCORRECT PAYMENTS. SEE 59 COMP.GEN. 113, 114 (1979). THIS OFFICE MAY GRANT RELIEF, HOWEVER, UNDER 31 U.S.C. SEC. 3527(C), UPON THE DETERMINATION THAT THE CASHIERS WERE EXERCISING DUE CARE IN COMPLYING WITH ESTABLISHED DISBURSING PROCEDURES. 62 COMP.GEN. 476.

THE CASHIERS' STATEMENTS SUBMITTED FOR THE RECORD INDICATE THAT BOTH SP5 BARRINGER AND MRS. MOFFETT FOLLOWED THE PROCEDURES PRESCRIBED IN THE LOI FOR CASHING PERSONAL CHECKS. THE ESTABLISHED POLICY SPECIFIES THAT THE CHECK BE SIGNED PRIOR TO PRESENTATION, THUS PREVENTING THE CASHIER FROM ACTUALLY OBSERVING THE PAYEE SIGN THE CHECK. A REQUIREMENT THAT THE PAYEE SIGN THE CHECK IN THE CASHIER'S PRESENCE WOULD PROVIDE ADDED PROTECTION AGAINST FORGERY; THE RECORD INDICATES, HOWEVER, THAT SUCH A PROCEDURE, WHILE WORTHY OF CONSIDERATION, IS CURRENTLY CONSIDERED TOO TIME-CONSUMING TO BE IMPLEMENTED. IN THIS CASE, THE FORGED SIGNATURES ON THE CHECKS CLOSELY MATCHED THE SIGNATURE ON THE ID CARD, PRECLUDING IMMEDIATE DETECTION. IN ADDITION, THE PHYSICAL APPEARANCE OF THE FORGER WAS SUFFICIENTLY SIMILAR TO THE PICTURE ON THE ID TO AVOID QUESTIONING. NOTHING IN THE RECORD INDICATES THAT EITHER SP5 BARRINGER OR MRS. MOFFETT, EXERCISING REASONABLE CARE, COULD HAVE DETECTED THE FORGERY. NOR IS THERE ANY INDICATION THAT THE IMPROPER PAYMENTS WERE THE RESULT OF BAD FAITH ON THE PART OF THE CASHIERS. IN VIEW OF THESE FINDINGS, RELIEF IS GRANTED TO BOTH SP5 BARRINGER AND MRS. MOFFETT.

BECAUSE THE IDENTITY OF THE FORGER HAS NOT YET BEEN ESTABLISHED, COLLECTION ACTION HAS NOT BEEN POSSIBLE. IF SHE IS SUBSEQUENTLY POSITIVELY IDENTIFIED, 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, RELIEF IS GRANTED TO LTC FLYNN, SP5 BARRINGER AND MRS. MOFFETT FROM LIABILITY FOR THE IMPROPER PAYMENT OF $1,980.