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B-214080, Mar 25, 1986, Office of General Counsel

Number: B-214080

Date: 1986-03-25

B-214080, MAR 25, 1986, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - PHYSICAL LOSSES, ETC. OF FUNDS, VOUCHERS, ETC. - CASHIERS, ETC. - IMPREST FUND - RELIEF GRANTED DIGEST: IMPREST FUND CASHIER IS RELIEVED OF LIABILITY FOR UNEXPLAINED LOSS OF FUNDS. CASHIER GAVE SWORN TESTIMONY THAT SHE LOCKED THE SAFE BEFORE LEAVING THE OFFICE, AND HER UNREFUTED STATEMENT IS SUFFICIENT TO RELIEVE THE PRESUMPTION OF NEGLIGENCE WHICH IS RAISED BY THE UNEXPLAINED LOSS. MOREOVER, TWO OTHER EMPLOYEES ALSO HAD ACCESS TO THE COMBINATION PROVIDING AN INDEPENDENT BASIS FOR RELIEF.

MR. WILLIAM L. KENDIG: DIRECTOR, OFFICE OF FINANCIAL MANAGEMENT DEPARTMENT OF THE INTERIOR

THIS RESPONDS TO YOUR JANUARY 14, 1986, REQUEST FOR RELIEF OF MS. HARUKO I. WHITE, IMPREST FUND CASHIER AT THE BUREAU OF LAND MANAGEMENT, LAS VEGAS DISTRICT OFFICE. THE IMPREST FUND MAINTAINED BY MS. WHITE SUSTAINED AN UNEXPLAINED PHYSICAL LOSS OF $907.24. THE LOSS APPARENTLY OCCURRED SOMETIME BETWEEN 4:15 P.M. FRIDAY, DECEMBER 17 AND 7:40 A.M. MONDAY, DECEMBER 20, 1982. YOU ORIGINALLY REQUESTED RELIEF ON DECEMBER 6, 1983, BUT THAT REQUEST WAS RETURNED BECAUSE IT LACKED THE ADMINISTRATIVE DETERMINATIONS REQUIRED BY STATUTE. YOUR CURRENT SUBMISSION CONTAINS THOSE DETERMINATIONS. BASED ON THE RECORD, WE GRANT THE REQUESTED RELIEF.

WHEN GOVERNMENT FUNDS ARE DISCOVERED TO BE MISSING AND THERE ARE NO SIGNS OF FORCED ENTRY INTO THE SAFE WHERE THE FUNDS ARE STORED, THE MISSING FUNDS ARE CLASSIFIED AS AN UNEXPLAINED PHYSICAL LOSS. IN SUCH CASES, THE MERE FACT OF THE OCCURRENCE OF THE LOSS GIVES RISE TO A PRESUMPTION OF NEGLIGENCE ON THE PART OF THE CUSTODIAN OF THE FUNDS. 48 COMP.GEN. 566 (1969). TO REBUT THE PRESUMPTION, THE ACCOUNTABLE OFFICER MUST MAKE AN AFFIRMATIVE SHOWING OF DUE CARE. FAILING IN THIS BURDEN, RELIEF CANNOT BE GRANTED.

THE RECORD IN THIS CASE CONTAINS SEVERAL FACTS WHICH, TAKEN TOGETHER, ARE SUFFICIENT TO REBUT THE PRESUMPTION. MS. WHITE MADE A SWORN STATEMENT TO THE LAS VEGAS METROPOLITAN POLICE THAT SHE LOCKED THE SAFE BEFORE LEAVING WORK AT 4:15 P.M. ON FRIDAY, DECEMBER 17. SHE REPEATED THAT STATEMENT TO THE SECRET SERVICE. IN B-188733, MAR. 29, 1979, WE HELD THAT THE UNREFUTED TESTIMONY OF THE ACCOUNTABLE OFFICER THAT HE OR SHE LOCKED THE SAFE PRIOR TO THE LOSS IS SUFFICIENT TO REBUT THE PRESUMPTION OF NEGLIGENCE. THE OPINION OF MS. WHITE'S SUPERVISOR THAT THE SAFE MUST HAVE BEEN UNLOCKED DOES NOT REBUT MS. WHITE'S SWORN STATEMENT TO THE CONTRARY.

ADDITIONALLY, THE RECORD SHOWS THAT MS. WHITE'S SUPERVISOR KNEW THE COMBINATION TO THE SAFE AND THAT THE COMBINATION WAS NOT CHANGED WHEN MS. WHITE'S

PREDECESSOR LEFT THE CASHIER'S POSITION. MS. WHITE DID NOT HAVE SOLE CONTROL OVER THE SAFE BECAUSE AT LEAST TWO OTHER PEOPLE HAD ACCESS TO THE COMBINATION. THIS PROVIDES AN INDEPENDENT BASIS FOR RELIEF UNDER OUR DECISIONS. B-196855, SEPT. 9, 1981; B-191440, MAY 25, 1979.

SINCE THERE ARE PROPER GROUNDS TO GRANT RELIEF, WE DO NOT NEED TO EVALUATE THE POLYGRAPH EVIDENCE CONTAINED IN THE FILE NOR THE CIRCUMSTANTIAL EVIDENCE OF LAX BUILDING SECURITY. THESE FACTS, HOWEVER, TEND GENERALLY TO CORROBORATE OUR FINDING THAT MS. WHITE WAS IN NO WAY RESPONSIBLE FOR THE LOSS.

IN LIGHT OF THE EXPLICIT UNREFUTED EVIDENCE THAT MS. WHITE LOCKED THE SAFE BEFORE THE LOSS OCCURRED, AND THE FACT THAT OTHERS HAD ACCESS TO IT, WE FIND THAT MS. WHITE HAS MET HER BURDEN OF PROVING DUE CARE. RELIEF IS GRANTED ACCORDINGLY.