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[VA Request for Relief for Claims Clerk's Loss of Patient Funds]

Number: B-215477

Date: 1984-11-05

B-215477, NOV 5, 1984, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - PHYSICAL LOSSES, ETC. OF FUNDS, VOUCHERS, ETC. - CONTRIBUTORY NEGLIGENCE BY GOVERNMENT DIGEST: 1. WHERE $2,050 LOSS OF PATIENT FUNDS FROM OVERNIGHT DEPOSITORY AT VA HOSPITAL OCCURRED AFTER EMPLOYEE WAS CARELESS IN HANDLING A $2,000 DEPOSIT, RELIEF GRANTED SINCE EMPLOYEE'S NEGLIGENCE WAS NOT THE PROXIMATE CAUSE OF THE LOSS. HERE, THE LOSS MIGHT HAVE BEEN PREVENTED HAD THE HOSPITAL INSTALLED A NEW SAFE IT HAD ORDERED, MOVED THE LOCATION OF THE SAFE OR ISSUED GUIDELINES ON HOW TO HANDLE PATIENT MONEY TO ITS EMPLOYEES. VETERAN'S ADMINISTRATION - TRUST FUNDS - HOSPITAL PATIENTS - LOSS, THEFT, ETC. 2. PATIENT FUNDS GIVEN TO A VETERAN'S ADMINISTRATION (VA) HOSPITAL EMPLOYEE WILL BE TREATED AS "PUBLIC MONEY" FOR THE PURPOSES OF 31 U.S.C. 3527(A). THE UNITED STATES HAS AT LEAST EQUITABLE INTEREST IN THIS MONEY BECAUSE IT IS ENTRUSTED TO A PUBLIC OFFICIAL.

MR. CONRAD HOFFMAN DIRECTOR, OFFICE OF BUDGET AND FINANCE VETERANS ADMINISTRATION

DEAR MR. HOFFMAN:

THIS RESPONDS TO YOUR REQUEST FOR RELIEF ON BEHALF OF MR. LARRY WILKERSON, CLAIMS CLERK, AT THE VETERANS ADMINISTRATION MEDICAL CENTER (VA) IN HOUSTON, TEXAS, FOR $2,000 OF A $2,050 LOSS OF PATIENT FUNDS. FOR THE REASONS GIVEN BELOW, WE GRANT RELIEF.

FACTS

ON NOVEMBER 16, 1983, AT APPROXIMATELY 2 A.M., MR. WILKERSON ACCEPTED A $2,000 DEPOSIT FOR SAFEKEEPING FROM THE WIFE OF A PATIENT BEING ADMITTED TO THE VA HOSPITAL. MR. WILKERSON COUNTED THE MONEY TWICE AND GAVE THE WOMAN A RECEIPT. HE THEN SHOWED THE MONEY TO SEVERAL EMPLOYEES AROUND THE ADMITTING AREA AND JOKED ABOUT HAVING CUSTODY OF SUCH A LARGE SUM OF MONEY. NON-EMPLOYEES ALSO OBSERVED MR. WILKERSON'S DISPLAY OF THE FUNDS. MR. WILKERSON CLAIMS HE THEN PUT ALL THE MONEY IN AN ENVELOPE, SEALED IT, DEPOSITED IT IN THE SAFE, AND MADE AN ENTRY IN THE ADMISSIONS LOG TO RECORD THE TRANSACTION. NO ONE ELSE COUNTED THE MONEY NOR WITNESSED THE DEPOSIT.

AT 9:45 A.M. ON NOVEMBER 17, 1983, THE BENEFICIARY TRAVEL CLERK AND THE AGENT CASHIER OPENED THE OVERNIGHT BOX AND DISCOVERED THAT THREE DEPOSITS WERE MISSING: THE $2,000 THAT MR. WILKERSON DEPOSITED PLUS TWO EARLIER DEPOSITS MADE BY OTHER HOSPITAL EMPLOYEES TOTALLING $50. THERE REMAINED TWO DEPOSITS MADE AFTER 4 P.M. ON NOVEMBER 16, 1983.

AN ADMINISTRATIVE INVESTIGATION CONDUCTED IN CONJUNCTION WITH THE FBI FOUND THAT MR. WILKERSON DID RECEIVE $2,000 FROM A PATIENT AND DEPOSITED IT IN THE OVERNIGHT BOX. WHILE THE INVESTIGATION QUESTIONED THE MANNER IN WHICH THE DEPOSIT WAS HANDLED, IT DID NOT FIND MR. WILKERSON RESPONSIBLE FOR THE LOSS. THE INVESTIGATION REVEALED THAT THE SECURITY AND LOCATION OF THE NIGHT DEPOSITORY HAD BEEN A CONCERN OF MANAGEMENT FOR A LONG TIME. A NEW SAFE HAD BEEN ORDERED AND DELIVERED BY APRIL 29, 1983. HOWEVER, IT HAD NOT BEEN INSTALLED AT THE TIME OF THIS INCIDENT.

THE ROOM IN WHICH THE SAFE WAS LOCATED WAS DESERTED AFTER NORMAL WORK HOURS AND WAS LEFT UNLOCKED. FURTHERMORE, ONE EMPLOYEE STATED THAT ANYONE COULD EASILY SLIDE THE LOCKS TO OPEN THE SAFE. THE NEW SAFE HAS SUBSEQUENTLY BEEN INSTALLED IN A MORE SECURE LOCATION.

AT THE TIME OF THE LOSS, THERE WERE NO EMPLOYEE GUIDELINES ESTABLISHED BY THE HOSPITAL TO CARRY OUT VA ADMINISTRATIVE MANUAL REQUIREMENTS. SEE M-1, PART I, CHAPTER 8, PARAGRAPH 8.21 AND 8.22. ALSO, EMPLOYEES WERE NOT TRAINED REGARDING RECEIPT AND DEPOSIT OF PATIENT FUNDS. AFTER THE LOSS, THE HOSPITAL ISSUED A MEMORANDUM ESTABLISHING A PROCEDURE FOR THE DEPOSIT OF PATIENT FUNDS. THERE IS NO INDICATION THAT THE MANAGEMENT OFFICIALS RESPONSIBLE FOR THE CONDITION OF THE SAFE AND ABSENCE OF GUIDELINES WERE ACCOUNTABLE FOR THE LOST FUNDS.

DISCUSSION

AN ACCOUNTABLE OFFICIAL IS PERSONALLY LIABLE FOR THE LOSS OF PUBLIC FUNDS IN HIS CUSTODY. 54 COMP.GEN. 112, 114 (1974). THIS OFFICE MAY RELIEVE AN ACCOUNTABLE OFFICER OR AGENT OF AN AGENCY FOR LOSS OF PUBLIC MONEY UNDER 31 U.S.C. SEC. 3527(A) (1982). WHILE THE MONEY INVOLVED HERE WAS PATIENT MONEY, NOT GOVERNMENT MONEY, WE HAVE HELD THAT THE LOSS OF PATIENT FUNDS FROM A VA HOSPITAL WHILE IN THE CUSTODY OF THE UNITED STATES CONSTITUTES A LIABILITY OF THE GOVERNMENT FOR WHICH AN ACCOUNTABLE OFFICER MAY BE LIABLE. B-164896-O.M., AUGUST 1, 1968. SINCE THE $2,000 WAS GIVEN TO, AND ACCEPTED BY THE CLAIMS CLERK IN HIS OFFICIAL CAPACITY, AND SINCE THE UNITED STATES HAD CUSTODY OF THE MONEY WHEN IT WAS STOLEN, THE LOSS IN QUESTION MAY BE CONSIDERED A LOSS OF "PUBLIC MONEY" FOR THE PURPOSES OF 31 U.S.C. SEC. 3527(A).

THIS OFFICE MAY GRANT RELIEF WHEN WE CONCUR WITH THE HEAD OF THE AGENCY'S DETERMINATION THAT AN ACCOUNTABLE OFFICER WAS CARRYING OUT OFFICIAL DUTIES WHEN THE PHYSICAL LOSS OR DEFICIENCY OF FUNDS OCCURRED AND THE LOSS OR DEFICIENCY WAS NOT THE RESULT OF FAULT OR NEGLIGENCE BY THE ACCOUNTABLE OFFICER. 31 U.S.C. SEC. 3527(A).

WE AGREE WITH THE DIRECTOR OF THE MEDICAL CENTER'S DETERMINATION THAT THE EMPLOYEE WAS ACTING IN THE DISCHARGE OF HIS DUTIES AT THE TIME THE LOSS OCCURRED, BUT WE BELIEVE THERE IS EVIDENCE THAT MR. WILKERSON WAS NEGLIGENT IN HANDLING THE MONEY. THUS, IN ORDER TO GRANT RELIEF IT MUST BE SHOWN THAT THE ACCOUNTABLE OFFICER'S NEGLIGENCE WAS NOT THE PROXIMATE CAUSE OF THE LOSS.

OUR OFFICE HAS PREVIOUSLY HELD THAT AN AGENCY'S FAILURE TO PROVIDE PROPER SECURITY ARRANGEMENTS FOR THE SAFEKEEPING OF GOVERNMENT FUNDS MAY IN ITSELF BE THE PROXIMATE CAUSE OF THE LOSS. SEE B-182386, APRIL 24, 1984. WE THINK THAT THERE IS ENOUGH EVIDENCE IN THE RECORD TO CONCLUDE THAT MR. WILKERSON DID DEPOSIT THE $2,000 IN THE SAFE AND THAT THE LOSS WAS CAUSED BY THE LAX SECURITY PROVIDED BY THE AGENCY.

ALTHOUGH NO ONE ACTUALLY SAW MR. WILKERSON DEPOSIT THE $2,000 IN THE SAFE, THE AGENCY THROUGH ITS INVESTIGATION DETERMINED THAT THE $2,000 WAS DEPOSITED IN THE OVERNIGHT LOCK BOX. THE TOTAL LOSS INVOLVED IN THE THEFT INCLUDED A $20 DEPOSIT AND A $30 DEPOSIT BY TWO OTHER EMPLOYEES. BOTH WERE DEPOSITED BEFORE THE $2,000 WAS DEPOSITED. THE LOSS OF THESE DEPOSITS SUPPORTS THE CONCLUSION THAT THE $2,000 (ACCEPTING THE AGENCY DETERMINATION THAT THE $2,000 WAS DEPOSITED) WAS REMOVED AS PART OF THE THEFT OF THE OTHER DEPOSITS.

ALTHOUGH IT IS POSSIBLE THAT MR. WILKERSON'S BEHAVIOR ALERTED THE THEFT TO THE EXISTENCE OF THE $2,000, THE LOSS COULD HAVE BEEN PREVENTED HAD THE HOSPITAL PROVIDED BETTER SECURITY FOR THE SAFEKEEPING OF THESE DEPOSITS. EVEN WHERE THE ACCOUNTABLE OFFICER HAS BEEN NEGLIGENT, HE WILL BE RELIEVED IF HIS NEGLIGENCE IS DETERMINED NOT TO BE THE PROXIMATE CAUSE OF THE LOSS. ID. ONCE MR. WILKERSON DEPOSITED THE MONEY IN THE SAFE, THE EFFECT OF HIS NEGLIGENCE STOPS AND MANAGEMENT'S FAILURE TO PROVIDE A SECURE NIGHT DEPOSITORY BY MEANS READILY AVAILABLE TO IT SUPERSEDES.

BY FAILING TO INSTALL THE MORE SECURE SAFE FOR MORE THAN 7 MONTHS, MANAGEMENT NEGLECTED TO CORRECT A SITUATION OF CONCERN TO IT. KNOWING AS IT DID THAT THE OLD SAFE WAS LOCATED IN A ROOM EASILY ACCESSIBLE TO HOSPITAL EMPLOYEES AND TO THE PUBLIC IT WOULD HAVE BEEN REASONABLE TO RELOCATE THE SAFE TO AN AREA WHERE ENTRY AND EXIT COULD HAVE BEEN MONITORED.

AS WE HAVE DETERMINED THAT LAX SECURITY WAS THE PROXIMATE CAUSE OF THE LOSS, MR. WILKERSON IS RELIEVED UNDER 31 U.S.C. SEC. 3527(A).