Text as published on gao.gov, https://www.gao.gov/products/b-216279.2, archived 2025-07-09. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-216279.2, Dec 30, 1985, Office of General Counsel

Number: B-216279.2

Date: 1985-12-30

B-216279.2, DEC 30, 1985, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - RELIEF - LACK OF DUE CARE, ETC. - RELIEF DENIED DIGEST: UPON RECONSIDERATION, DECISION TO DENY RELIEF PURSUANT TO 31 U.S.C. SEC. 3527 TO CUSTOMS SERVICE CASHIER FOR $1,000 DEFICIENCY IN HER ACCOUNT IS AFFIRMED. AGENCY FAILED TO MAKE THE DETERMINATIONS REQUIRED BY THE STATUTE THAT THE DEFICIENCY WAS NOT THE RESULT OF NEGLIGENCE ON THE PART OF THE ACCOUNTABLE OFFICER. FURTHER, AGENCY COULD NOT HAVE MADE NECESSARY DETERMINATIONS BECAUSE RECORD CLEARLY INDICATES THAT CASHIER WAS NEGLIGENT. ANY ADVERSE PERSONNEL ACTION TAKEN BY THE AGENCY AGAINST THE ACCOUNTABLE OFFICER IS NOT RELEVANT TO THE GRANTING OF RELIEF BY THIS OFFICE.

THE HONORABLE EDOLPHUS TOWNS:

HOUSE OF REPRESENTATIVES

THIS IS IN RESPONSE TO YOUR LETTER DATED OCTOBER 16, 1985, REQUESTING THAT WE RECONSIDER OUR DECISION B-216279, OCTOBER 9, 1984. IN THAT DECISION WE DECLINED TO RELIEVE MS. ENID MORGAN, A CUSTOMS TELLER IN THE NEW YORK OFFICE OF THE REGIONAL COMMISSIONER OF CUSTOMS, FROM LIABILITY FOR A DEFICIENCY OF $1,000 IN HER ACCOUNT. WE HAVE CAREFULLY CONSIDERED THE INFORMATION YOU PROVIDED BUT REMAIN UNABLE TO GRANT THE REQUESTED RELIEF, AS EXPLAINED BELOW.

THE CIRCUMSTANCES THAT GAVE RISE TO THE LOSS WERE FULLY SET FORTH IN OUR DECISION B-216279, OCTOBER 9, 1984, WHICH YOU ENCLOSED WITH YOUR LETTER REQUESTING RECONSIDERATION. THEY WERE NEVER DISPUTED BY MS. MORGAN OR BY THE CUSTOMS SERVICE. YOUR LETTER ONLY NOTES THAT, IN ADDITION TO BEING HELD LIABLE FOR THE $1,000 DEFICIENCY IN HER ACCOUNT, MS. MORGAN WAS ALSO SUSPENDED WITHOUT PAY BY THE CUSTOMS SERVICE FOR 2 DAYS. YOU STATE, "REPAYMENT OF THIS DEFICIENCY WOULD CREATE A GREAT HARDSHIP FOR MS. MORGAN, AND IT WOULD SEEM THAT SHE WAS PENALIZED ENOUGH WITH HER TEMPORARY SUSPENSION IN THIS SITUATION."

WE REGRET THAT THE UNDISPUTED CIRCUMSTANCES IN THIS CASE MAKE IT IMPOSSIBLE FOR US TO RELIEVE MS. MORGAN FROM LIABILITY. INITIALLY, AS OUR OCTOBER 9, 1984, DECISION INDICATES, THE CUSTOMS SERVICE FAILED TO MAKE THE FINDINGS REQUIRED FOR RELIEF TO BE GRANTED UNDER 31 U.S.C. SEC. 3527, THAT THE DEFICIENCY WAS NOT THE RESULT OF FAULT OR NEGLIGENCE ON THE PART OF MS. MORGAN. THE AGENCY FINDINGS ARE NECESSARY TO TRIGGER THE COMPTROLLER GENERAL'S JURISDICTION, AND IN THEIR ABSENCE THE COMPTROLLER GENERAL DOES NOT HAVE AUTHORITY TO GRANT RELIEF, NOTWITHSTANDING THE MERITS OF THE CASE. B-197616, MARCH 24, 1980. FURTHER, IT REMAINS CLEAR THAT THE CUSTOMS SERVICE COULD NOT, IN GOOD FAITH, MAKE THE REQUISITE DETERMINATIONS IN THIS CASE. THE RECORD, INCLUDING MS. MORGAN'S OWN STATEMENT, CLEARLY INDICATES THAT THE DEFICIENCY WAS CAUSED BY MS. MORGAN'S

NEGLIGENCE.

THE DECISION OF THE CUSTOMS SERVICE TO SUSPEND MS. MORGAN FOR 2 DAYS AS A RESULT OF THIS INCIDENT IS A MATTER WHOLLY WITHIN THE DISCRETION OF THE CUSTOMS SERVICE AND OUTSIDE OF THE JURISDICTION OF THIS OFFICE. THE PURPOSE OF THE STRICT LIABILITY AND RELIEF PROVISIONS APPLICABLE TO ACCOUNTABLE OFFICERS IS NOT PUNISHMENT OF WRONGDOING, BUT RATHER THE PROTECTION OF THE GOVERNMENT'S INTERESTS. SEE UNITED STATES V. PRESCOTT, 44 U.S. (3 HOW.) 578 (1845). ACCORDINGLY, ANY ADVERSE PERSONNEL ACTION TAKEN BY THE CUSTOMS SERVICE AGAINST MS. MORGAN IS NOT RELEVANT TO THE GRANTING OF RELIEF FROM LIABILITY BY THIS OFFICE. WE DO NOT HAVE AUTHORITY TO GRANT RELIEF ON THE BASIS OF EQUITABLE CONSIDERATIONS, AND THE RELIEF STATUTE DOES NOT PERMIT EXTENUATING OR MITIGATING CIRCUMSTANCES TO BE TAKEN INTO ACCOUNT. SEE B-204173, NOVEMBER 9, 1982; 48 COMP.GEN. 566 (1969).

ONE ALTERNATIVE AVAILABLE TO MS. MORGAN IS TO REQUEST THAT THE GENERAL ACCOUNTING OFFICE REPORT THE GOVERNMENT'S CLAIM AGAINST HER TO THE ATTORNEY GENERAL, PURSUANT TO 5 U.S.C. SEC. 5512(B), SO THAT SUIT COULD BE INSTITUTED AGAINST HER TO ADJUDICATE THE MATTER IN THE APPROPRIATE UNITED STATES DISTRICT COURT. SEE B-214561.2, JUNE 11, 1985.

WE HOPE THAT WE HAVE BEEN OF ASSISTANCE AND HAVE ADEQUATELY EXPLAINED THE REASONS WHY WE REMAIN UNABLE TO GRANT RELIEF FROM LIABILITY TO YOUR CONSTITUENT. COPIES OF UNPUBLISHED COMPTROLLER GENERAL DECISIONS CITED IN THIS LETTER ARE ENCLOSED FOR YOUR CONVENIENCE.