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B-217114.5, Jun 8, 1990

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief - Illegal/improper payments - GAO decisions - Reconsideration DIGEST: 1. A request that GAO reconsider a decision denying an accountable officer relief is denied in part because the request failed to show that GAO's prior consideration of the arguments for relief was based on either a mistake of fact, or a misapplication of the applicable law. APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief Illegal/improper payments - GAO decisions - Reconsideration APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Disbursing officers - Relief - Illegal/improper payments - Fraud 2. An accountable officer argues, upon reconsideration, that he should be relieved for travel fraud losses because withholding reimbursements would have violated federal employees' due process rights. Even if the U.S. Constitution protects federal employee travel expense reimbursements, the ability of all federal employees to appeal agency denials of travel expense claims to GAO provides, in our view, whatever due process protection is necessary. APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief Illegal/improper payments - GAO decisions - Reconsideration 3. Upon reconsideration, an accountable officer argues that he should be relieved for losses because he diligently pursued collection efforts. deny this basis of the request for reconsideration. When we have concluded that a deficiency is the result of an accountable officer's lack of good faith or due care, we cannot grant relief solely on the basis of the diligent collection efforts. APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief Illegal/improper payments - GAO decisions - Reconsideration APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Disbursing officers - Relief - Illegal/improper payments - Fraud 4. Upon reconsideration, an accountable officer argues that he instituted sufficient procedures after he became aware of the travel fraud scheme affecting his accounts. Lodging providers had supplied inflated lodging receipts and then verified the inflated amounts during telephone calls from travel clerks. After learning of the fraud, the accountable officer required written rather than telephone verifications. In our view, requesting written verification from a participant in the fraud is not reasonable. The request for reconsideration on this basis is denied.

Mr. Paul F. Kane:

This responds to your request for reconsideration of 65 Comp.Gen. 858 (1986). In that decision, we considered a request to grant you relief from part of your liability for $22,848.22 in fraudulent travel claims paid out of your account from July 7, 1980, through August, 1982. granted you relief for fraudulent payments made before January 1, 1982, but denied relief for the $15,332.50 in payments made after that date. /1/ After considering the merits of your request

for reconsideration, we affirm our previous partial denial of relief.

As discussed in more detail in 65 Comp.Gen. 858, the improper payments for which you were initially liable were made as a result of a long- running scheme of travel reimbursement fraud perpetrated by a number of employees at the Buffalo, New York District Office of the North Central Division, U.S. Army Corps of Engineers. These employees obtained fraudulent reimbursements by submitting false and inflated lodging receipts, often handwritten, from the lodging providers the employees used while on temporary duty travel. When employees from your office made telephone calls to the lodging providers to verify the amounts shown on the inflated receipts, the lodging providers would falsely verify the inflated amounts. Our decision involved your liability for $22,848.22 in payments made between October 19, 1981, and August, 1982. /2/ We granted relief for $7,515.72 in payments made before January 1, 1982, and denied relief for $15,332.50 in payments made after that date.

The basis of our decision was that your approval of payments after January 1, 1982, was negligent in light of several facts which you were aware of at that time. First, your staff had questioned the veracity of the handwritten receipts for an extended period before 1982. Second, you were aware that a previous U.S. Army Criminal Investigative Command (CID) investigation into the suspected travel claims, which had failed to detect the fraud, had been reopened in late 1981. Finally, you were informed by Ms. Patricia Sadler of your staff that she had received a telephone call in December 1981, in which one of the employees perpetrating the fraud told Ms. Sadler that the lodging providers were involved in the fraud scheme. We concluded that your knowledge of these facts placed you on notice that verifying handwritten and other suspicious receipts by telephone calls to the lodging providers would not adequately protect the United States against fraudulent lodging claims. 65 Comp.Gen. at 862-863. We concluded that your reliance on the verification procedures after becoming aware of these facts was negligent, and that we could not grant relief for payments made after that point. Id.

LEGAL ANALYSIS

We have generally granted requests for reconsideration and have overruled our prior decisions when the request showed that the prior decision was based upon a material mistake of fact or law. E.g. B-226463, May 14, 1987. We have applied this standard for reconsideration to our accountable officer decisions. E.g. B-221447, November 21, 1986. Therefore, your request for reconsideration must show some material mistake of fact or law in our prior decision to deny your relief for the improper payments made after January 1, 1982.

Your request for reconsideration presents a number of arguments for reversing our decision to deny you complete relief: (1) that you could not withhold reimbursements for travel expenses before fraud was conclusively proven; (2) that you were not told of the results of the ongoing CID investigation; (3) that you were advised by an attorney for the Buffalo office to continue paying the reimbursement claims; (4) that you aggressively pursued collection of the fraudulently obtained travel reimbursements; and (5) that the procedures you used to verify receipts after you were informed of the nature of the fraud were reasonably designed to protect against the fraud. The first three of these arguments were raised and dealt with in our prior decision.

First, our prior decision specifically dealt with the question of whether

payments on suspect vouchers should have been withheld before the fraud was conclusively proven. We stated that:

"When there are longstanding questions about payments, the exercise of reasonable care may require action, such as strengthening verification procedures or requesting an advance decision from this office, long before clear evidence of fraud is discovered."

65 Comp.Gen. at 862 (citations omitted). Furthermore, your request for relief acknowledges that it is appropriate to withhold payments on suspicious vouchers. You state that, prior to the discovery of the individuals. You also point out that your refusal to pay one of these individuals was appealed to, and sustained by, this Office. /3/ Second, in regard to whether or not you were aware of the results of the ongoing CID investigation, we specifically noted that our decision to partially deny relief was not based upon your knowledge of the results of the investigation. 65 Comp.Gen. at 862. Our prior decision was based on the reasonableness of your actions in light of the information you were aware of on January 1, 1982. We held that your actions were no longer reasonable after you were informed that Ms. Sadler had received a telephone call exposing the nature of the fraud and that the CID investigation had been reopened. This information was sufficient in our view to put you on notice that existing procedures were inadequate to ensure that payments were proper. Id. at 862-863.

Third, in regard to the advice you received from the Buffalo office attorney, we stated in our prior decision that:

"an accountable officer faced with a questionable voucher does not exercise reasonable care by relying on advice from others within his agency in lieu of seeking an advance decision from this Office."

65 Comp.Gen. at 863 (citation omitted).

Your request for reconsideration does not show that our treatment of these three arguments was based upon a mistake regarding the facts involved. Your request also does not show that our analysis was based upon a mistaken view of the applicable law, and does not provide any compelling reason to reject the legal principles which were applied. Therefore, we conclude that your first three arguments do not satisfy the standards required for us to overrule our prior decision.

Your request for reconsideration presents two new arguments for complete relief. Your first new argument is that you should be relieved because you have aggressively pursued collection of the amounts owed to the United States by the employees who committed the fraud. In support of your argument, you refer to one of our cases, B-211440, 62 Comp.Gen. 476 (1983). You state that you withheld final paychecks or final settlements of annual leave from the employees involved, and that you sought Office of Personnel Management assistance in withholding those employees' retirement benefits. However, your argument misconstrues the nature of collection efforts as a requirement for granting relief. Section 3527(c) of title 31, U.S. Code, gives the Comptroller General the discretion to deny relief to an accountable officer (who otherwise meets the standards for relief) when the agency has not diligently pursued collection efforts. In 62 Comp.Gen. 476, we outlined the circumstances where we would exercise this discretion and deny relief. However, that decision makes clear that the requirement to show diligent collection efforts is in addition to, and

not in lieu of, the requirements to show that the deficiency in an accountable officer's account was not the result of bad faith or the lack of due care. See 62 Comp.Gen. at 478. In cases where we find that an accountable officer caused a deficiency because of a lack of due care, we do not relieve that officer because of subsequent diligent collection efforts. See B-227412, July 2, 1987, in which a subordinate official was not relieved of his liability for a loss caused by his negligence when the collection efforts were adequate to relieve a non negligent supervisory official. Since our denial of relief was based upon our determination that you did not exercise reasonable care, your assertion that you diligently pursued collection is not a basis for this Office to grant you relief.

The second of these new arguments is that, once you were aware of the nature of the fraud, you sought additional written verifications of the lodging receipts. You assert that these additional procedures were reasonable, and that you therefore should be relieved for illegal payments made under those procedures. In support of this argument, you refer to our decision B-210648, May 15, 1984, in which we granted an accountable officer relief upon reconsideration because we concluded that he had instituted reasonable procedures to prevent the loss. We disagree with your argument for two reasons.

First, we note that the process of obtaining written verifications suffered from the same deficiency as seeking telephonic confirmation; both sought confirmation from a participant in the fraud. Your own request for reconsideration acknowledges that "... since collusion existed between the perpetrators of this fraud and the lodging suppliers, none of the lodging cost verification procedures that I used would detect this type of travel fraud."

Further, you were fully aware of this deficiency after you were informed of the telephone call to Ms. Sadler. Given your acknowledgement of the deficiency in your procedures, we cannot agree that you acted reasonably in continuing to pay the suspect reimbursement claims after January 1, 1982.

Second, we do not believe that the holding in B-210648 supports your request for reconsideration. In that decision we granted a supervisory accountable officer relief when his request for reconsideration showed that he had maintained and implemented a set of procedures and controls adequate to prevent improper payments. The request for reconsideration also pointed out how the fraudulent travel claims were paid despite the controls. Although both the facts in this case and in B-210648 involve fraudulent travel claims which could not be prevented by the controls that were in place, we consider the cases to be distinguishable. In B-210648, the accountable officer was relieved for fraudulent payments which were made before the fraud was discovered. You have also been relieved for the fraudulent payments you authorized before the nature of the fraud was disclosed. 65 Comp.Gen. 858. Your request for reconsideration asks that you be relieved for those payments which you authorized after you knew of the nature of the fraud. In B-210648, there were no similar payments after the fraud was uncovered. Thus, B-210648 is not analogous to this case, and does not support your request for reconsideration.

Since your request for reconsideration does not present any compelling argument that our decision at 65 Comp.Gen. 858 was based upon a material mistake of fact or law, we deny your request and affirm our denial of relief for the payments you authorized after January 1, 1982.

/1/ Our decision reported the amount of your liability to be $15,232.49. The amount was corrected and our decision was modified by our letter, B-217114.3, February 10, 1987.

/2/Your liability for improper payments made before October 19, 1981 was settled by operation of law upon the running of the applicable statute of limitations. 31 U.S.C. Sec. 3526(c) (1988). Payments made after that date were not subject to the statute of limitations because our Notice of Exception suspended the statute as of that date. 65 Comp.Gen. at 861.

/3/ Your request for reconsideration also asserts that withholding travel reimbursements would have denied the employees involved their due process rights. The Fifth Amendment to the U.S. Constitution provides that "No person shall be ... deprived of life, liberty or property, without due process of law." Even if the employees' interest in travel expense reimbursements is one protected under the due process clause of the Fifth Amendment (an issue we do not resolve here), you have not provided and we are not aware of any cases that would require a conclusion that your withholding travel reimbursement would have denied the employees their rights. Due process would not necessarily require that government employees be given an opportunity to be heard before their reimbursements are initially denied; due process may be satisfied by providing employees an opportunity to be heard before final administrative action is taken. Cf. Curlott v. Campbell, 598 F.2d 1175 (9th Cir. 1979) (holding that whatever rights certain federal employees had to due process in regard to a reduction in their Cost of Living Adjustments were satisfied by the employees' ability to have a hearing after the adjustments were reduced). It is well established that government employees have a right to appeal a denial of travel benefits to this Office for a final administrative determination of their claim. E.g., 57 Comp.Gen. 664 (1978). In our view, this appeal satisfies whatever administrative due process rights federal government employees may have in their travel reimbursement claims.