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[Request for Relief for Army Officer and Cashier]

Number: B-217637

Date: 1985-03-18

B-217637, MAR 18, 1985, OFFICE OF GENERAL COUNSEL

DISBURSING OFFICERS - RELIEF - ERRONEOUS PAYMENTS - NOT RESULT OF BAD FAITH OR NEGLIGENCE DIGEST: U.S. ARMY FINANCE AND ACCOUNTING OFFICER IS RELIEVED OF LIABILITY FOR IMPROPER PAYMENT MADE BY SUBORDINATE CASHIER SINCE HE MAINTAINED AND SUPERVISED ADEQUATE SYSTEM OF PROCEDURES TO PREVENT IMPROPER PAYMENTS. CASHIER IS ALSO RELIEVED SINCE HE FOLLOWED ALL EXISTING PROCEDURES ALTHOUGH SUCH PROCEDURES WERE CIRCUMVENTED BY PAYEE WHO PERPETRATED A CRIMINAL SCHEME TO OBTAIN FUNDS. SEE COMP.GEN. DECS. CITED.

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

THIS RESPONDS TO YOUR REQUEST THAT RELIEF BE GRANTED UNDER 31 U.S.C. SEC. 3527(C) IN THE AMOUNT OF $4,944, CHARGEABLE TO THE ACCOUNT OF CAPTAIN LEOCADIO MATIAS, JR., FINANCE OFFICER, 27TH FINANCIAL COMPANY, FORT HOOD, TEXAS, AND PAID BY CASHIER SPECIALIST 5 (SP5) STYLE COOLEY. FOR THE REASONS EXPLAINED BELOW, RELIEF IS GRANTED TO BOTH CAPTAIN MATIAS AND SP5 COOLEY.

YOU STATE THAT ON JANUARY 5, 1983, A MAN IDENTIFYING HIMSELF AS SP4 ROBERT J. LILLEY REPORTED TO 27TH FINANCE OFFICE AND REQUESTED A TRAVEL ADVANCE OF $4,944 IN CONNECTION WITH A TEMPORARY DUTY ASSIGNMENT IN PANAMA. BASED UPON WHAT APPEARED TO BE VALID DOCUMENTATION THAT THE MAN PRESENTED TO SUPPORT HIS CLAIM, A TRAVEL CLERK PREPARED THE PROPER TRAVEL VOUCHER. THE VOUCHER, AFTER BEING PROPERLY AUDITED AND CERTIFIED TO BE CORRECT, WAS HANDCARRIED TO THE DISBURSING BRANCH FOR PAYMENT. ACCORDANCE WITH THE USUAL PROCEDURES, SP5 COOLEY THEN VERIFIED THE CREDENTIALS PRESENTED AND MADE A CASH PAYMENT OF $4,944 TO THE INDIVIDUAL PURPORTING TO BE SP4 LILLEY.

WHEN THE TRAVEL BRANCH REQUESTED SP4 LILLEY TO SETTLE HIS ACCOUNT, HE DENIED HAVING RECEIVED A TRAVEL ADVANCE OR HAVING PERFORMED TRAVEL TO PANAMA. HE ALSO STATED THAT THE SIGNATURE ON THE VOUCHER WAS NOT HIS SIGNATURE. A SUBSEQUENT INVESTIGATION REVEALED THAT ON JANUARY 3, 1983, SP4 LILLEY'S IDENTIFICATION CARD WAS LOST BY PERSONNEL AT THE SUPPORT COMMAND GYMNASIUM WHEN HE ENTRUSTED THE CARD TO THEM AS SECURITY FOR EQUIPMENT HE WAS USING. SP4 LILLEY WAS NOT GIVEN A REPLACEMENT IDENTIFICATION CARD UNTIL JANUARY 18, 1983.

THE INVESTIGATION FAILED TO ASCERTAIN THE IDENTITY OF THE IMPERSONATOR NOR HOW HE OBTAINED POSSESSION OF THE DOCUMENTS ENABLING HIM TO OBTAIN THE TRAVEL VOUCHER. THE INVESTIGATION, HOWEVER, DID REVEAL THAT THE TRAVEL AND FINANCE PERSONNEL FOLLOWED ALL PRESCRIBED PROCEDURES IN PREPARING AND PAYING THE VOUCHER BASED ON THE DOCUMENT MATERIALS PRESENTED BY THE IMPERSONATOR. APPARENTLY, THE DOCUMENTS WERE SKILLFULLY FORGED BY THE IMPERSONATOR WHOSE PHYSICAL APPEARANCE

WAS SIMILAR ENOUGH TO THAT OF SP4 LILLEY'S PICTURE ON THE IDENTIFICATION CARD SO AS NOT TO AROUSE SUSPICION.

THIS OFFICE HAS AUTHORITY UNDER 31 U.S.C. SEC. 3527(C) TO RELIEVE A DISBURSING OFFICER FROM LIABILITY FOR A DEFICIENCY RESULTING FROM AN IMPROPER PAYMENT IF WE DETERMINE "THAT THE PAYMENT WAS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE BY THE OFFICIAL."

IN CASES WHERE A SUBORDINATE ACTUALLY DISBURSES FUNDS RATHER THAN THE DISBURSING OFFICER HIMSELF, WE HAVE GRANTED RELIEF UPON A SHOWING THAT THE DISBURSING OFFICER PROPERLY SUPERVISED HIS SUBORDINATES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO SAFEGUARD THE FUNDS, AND TOOK STEPS TO SEE THAT THE SYSTEM WAS EFFECTIVE AND BEING FOLLOWED. SEE, E.G., B-213874, SEPTEMBER 6, 1984.

THE RECORD, INCLUDING THE INVESTIGATION OF THE LOSS, INDICATES THAT PROPER PROCEDURES WERE IN EFFECT AT THE TIME THE LOSS OCCURED AND THAT CAPTAIN MATIAS MAINTAINED ADEQUATE PROCEDURES AND CONTROLS TO SAFEGUARD THE FUNDS FOR WHICH HE WAS ACCOUNTABLE. /1/ THE IMPROPER PAYMENT WAS THE RESULT OF A SKILLFULLY EXECUTED CRIMINAL ACTIVITY. EVEN THE MOST CAREFULLY ESTABLISHED AND EFFECTIVELY SUPERVISED SYSTEM CANNOT PREVENT EVERY CONCEIVABLE FORM OF CRIMINAL ACTIVITY. B-213550, APRIL 6, 1984.

SP5 COOLEY MADE THE PAYMENT IN THIS CASE BASED ON THE DOCUMENTS PRESENTED TO HIM AFTER HE COMPLIED WITH THE STANDARD OPERATING PROCEDURES. NOTHING IN THE RECORD SUGGESTS THAT SP5 COOLEY SHOULD HAVE BEEN AWARE OF THE NATURE OF THE FRAUD BEING PERPETRATED.

WE CONCUR THAT THIS IMPROPER PAYMENT WAS NOT THE RESULT OF BAD FAITH OR THE LACK OF REASONABLE CARE ON THE PART OF CAPTAIN MATIAS OR SP5 COOLEY. ACCORDINGLY, RELIEF IS GRANTED. IN SO DOING, WE RECOGNIZE THAT COLLECTION ACTION HAS BEEN PRECLUDED DUE TO THE IDENTITY OF THE PERPETRATOR BEING UNKNOW. WE ANTICIPATE THAT AGGRESSIVE COLLECTION ACTION WILL BE TAKEN, IF HIS IDENTITY IS ASCERTAINED.

/1/ THE INVESTIGATORS FAILED TO LOCATE A COPY OF THE STANDARD OPERATING PROCEDURES; HOWEVER, THE RECORD CONTAINS A STATEMENT SUBMITTED BY CAPTAIN MATIAS AS TO THE PROCEDURES IN EFFECT WHICH IS ACCEPTABLE EVIDENCE. SEE B-213874, SEPTEMBER 6, 1984.