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[Request for Relief From Liability for Navy Officer]

Number: B-217663

Date: 1985-07-16

B-217663, JUL 16, 1985, OFFICE OF GENERAL COUNSEL

DISBURSING OFFICERS - RELIEF - ERRONEOUS PAYMENTS - NOT RESULT OF BAD FAITH OR NEGLIGENCE DIGEST: NAVY DISBURSING OFFICER IS RELIEVED OF LIABILITY PURSUANT TO 31 U.S.C. SEC. 3527(C) (1982) FOR A DEFICIENCY OF $11,441 IN HIS ACCOUNT. THE DEFICIENCY RESULTED WHEN SEVERAL FRAUDULENTLY ALTERED MONEY ORDERS WERE SUCCESSFULLY NEGOTIATED IN THE SHIP'S DISBURSING OFFICE. DISBURSING OFFICER MAINTAINED AN ADEQUATE SYSTEM OF CONTROLS AND DEFICIENCY IS THE RESULT OF CRIMINAL ACTIVITY BEYOND THE CONTROL OF THE DISBURSING OFFICER. DISCREPANCIES IN CERTAIN PROCEDURES DO NOT CONSTITUTE PROXIMATE CAUSE OF THE LOSS.

THE HONORABLE CHARLES G. UNTERMEYER:

ASSISTANT SECRETARY OF THE NAVY

THIS IS IN RESPONSE TO YOUR LETTER DATED JANUARY 3, 1985, REQUESTING RELIEF FROM LIABILITY PURSUANT TO 31 U.S.C. SEC. 3527(C) ON BEHALF OF LT. R. G. MCKINNEY, SC, USNR, FOR A $11,441 DEFICIT IN HIS ACCOUNT AS FORMER DISBURSING OFFICER OF THE USS KITTY HAWK. THE DEFICIT RESULTED WHEN SEVERAL FRAUDULENTLY ALTERED POSTAL MONEY ORDERS WERE SUCCESSFULLY NEGOTIATED ABOARD THE KITTY HAWK WHEN SHE WAS IN PORT AT SUBIC BAY NAVAL BASE, PHILIPPINE ISLANDS, IN OCTOBER AND NOVEMBER, 1981. FOR THE REASONS SET FORTH BELOW, THE REQUESTED RELIEF IS GRANTED.

FACTS: THE RECORD INDICATES THAT IN OCTOBER AND NOVEMBER, 1981, LT. MCKINNEY WAS THE DISBURSING OFFICER ON THE USS KITTY HAWK WHEN THE SHIP WAS IN PORT AT SUBIC BAY. DURING THOSE TWO MONTHS, A TOTAL OF 27 FRAUDULENTLY ALTERED POSTAL MONEY ORDERS WERE SUCCESSFULLY CASHED IN THE SHIP'S DISBURSING OFFICE. THE MONEY ORDERS HAD BEEN PURCHASED AT THE SUBIC BAY POST OFFICE IN THE PHILIPPINES FOR $2.00, $3.00, OR $4.00 AND FRAUDULENTLY ALTERED TO READ $300, $400, OR $500. THE TOTAL DISCREPANCY, AND RESULTING DEFICIENCY IN LT. MCKINNEY'S ACCOUNT, AMOUNTED TO $11,441.

THE REPORT OF THE NAVY ACCOUNTING AND FINANCE CENTER IN THIS MATTER CONCLUDES:

"THERE WAS AN ORGANIZED EFFORT TO DEFRAUD THE GOVERNMENT IN THIS CASE. APPARENTLY, PERSON OR PERSONS UNKNOWN BOARDED THE SHIP WHILE BERTHED AT THE SUBIC BAY NAVAL BASE, PHILIPPINES, AND NEGOTIATED THE RAISED POSTAL MONEY ORDERS. IT SEEMS THAT THE PERPETRATORS USED FAKE NAVY IDENTIFICATION CARDS TO GAIN ENTRY ON BOARD AND ACCESS TO THE DISBURSING OFFICE.

"*** LT. ROBERT G. MCKINNEY, WHILE LEGALLY DISPENSING HIS DUTIES AND RESPONSIBILITIES, BECAME THE UNWITTING VICTIM OF A CONCERTED EFFORT TO OBTAIN

U.S. GOVERNMENT FUNDS ILLEGALLY."

DISBURSING PROCEDURES IN EFFECT ABOARD THE KITTY HAWK PERMITTED THE CASHING OF MONEY ORDERS ONLY FOR PERSONS ASSIGNED TO THE SHIP AND ATTACHED UNITS. EACH PERSON CASHING A MONEY ORDER WAS REQUIRED TO HAVE A MILITARY/CIVILIAN IDENTIFICATION CART WITH EITHER A "USS KITTY HAWK" STICKER AFFIXED TO THE CARD OR A SHIP'S BOARDING PASS. ALL MILITARY PERSONNEL CASHING A MONEY ORDER WERE REQUIRED TO BE IN UNIFORM. EACH PERSON CASHING A MONEY ORDER WAS REQUIRED TO SIGN THE MONEY ORDER AND SUPPLY ON THE BACK OF THE MONEY ORDER HIS UNIT, SOCIAL SECURITY NUMBER, AND IDENTIFICATION CARD NUMBER.

ACCORDING TO BOTH THE REPORT OF THE USS KITTY HAWK COMMANDING OFFICER AND THE STATEMENT OF LT. MCKINNEY, THE ALTERATION OF THE MONEY ORDERS WAS DONE IN A PROFESSIONAL FASHION AND COULD NOT REASONABLY HAVE BEEN DETECTED BY THE CASHIERS.

ACCORDING TO THE MATERIALS SUBMITTED TO US, THERE WERE THREE DISCREPANCIES IN THE PROCEDURES FOLLOWED IN CASHING THE MONEY ORDERS HERE IN QUESTION. FIRST, NAVY REGULATIONS REQUIRE THE ESTABLISHMENT OF CONTROLS WITHIN A DISBURSING OFFICE TO ENABLE THE IDENTIFICATION OF THE SPECIFIC CASHIER WHO CASHES EACH MONEY ORDER; FOR EXAMPLE, INITIALING OF THE MONEY ORDER BY THE CASHIER. NO SUCH CONTROL WAS IN FORCE ABOARD THE KITTY HAWK DURING THE PERIOD IN QUESTION. SECOND, NAVY REGULATIONS REQUIRE THE DISBURSING OFFICER TO MAINTAIN A LIST OF ALL POSTAL MONEY ORDERS DEPOSITED. NO SUCH LIST WAS MAINTAINED ON THE KITTY HAWK.

FINALLY, ONE OF THE FRAUDULENTLY ALTERED MONEY ORDERS CASHED ABOARD THE SHIP DID NOT INCLUDE THE PAYEE'S IDENTIFICATION CARD NUMBER IN THE INFORMATION LISTED ON THE BACK.

NOTWITHSTANDING THESE DISCREPANCIES, THE NAVY ACCOUNTING AND FINANCE CENTER HAS CONCLUDED THAT "NO AMOUNT OF PRUDENCE OR GOOD JUDGMENT ON LT. MCKINNEY'S PART COULD HAVE PREVENTED THE FRAUD FROM TAKING PLACE." YOUR JANUARY 3 LETTER, YOU INDICATE THAT YOU HAVE DETERMINED THAT "THE DEFICIT WAS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE ON THE PART OF LT. MCKINNEY" AND YOU RECOMMEND HIS RELIEF.

A DISBURSING OFFICER, SUCH AS LT. MCKINNEY, IS HELD PERSONALLY LIABLE FOR IMPROPER PAYMENTS MADE UNDER HIS SUPERVISION. B-212333, NOVEMBER 21, 1983. HOWEVER, THIS OFFICE MAY GRANT RELIEF FROM LIABILITY UNDER 31 U.S.C. SEC. 3527(C) (1982) UPON A DETERMINATION THAT AN ILLEGAL, IMPROPER, OR INCORRECT PAYMENT "WAS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE" BY THE ACCOUNTABLE OFFICER. SEE 54 COMP.GEN. 112 (1974). IN CASES WHERE A SUBORDINATE ACTUALLY DISBURSES THE FUNDS IN QUESTION, WE HAVE GRANTED RELIEF TO THE SUPERVISOR UPON A SHOWING THAT HE ADEQUATELY SUPERVISED HIS SUBORDINATES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO SAFEGUARD THE FUNDS. B-213874, SEPTEMBER 6, 1984.

IN THE CASE AT HAND, WE CONCLUDE THAT THE STATEMENT OF LT. MCKINNEY DESCRIBING IN DETAIL THE DISBURSING PROCEDURES IN EFFECT ON BOARD THE KITTY HAWK CONSTITUTES SUFFICIENT EVIDENCE THAT HE ESTABLISHED AND MAINTAINED ADEQUATE OFFICE PROCEDURES TO SAFEGUARD THE FUNDS FOR WHICH HE WAS ACCOUNTABLE. SEE B-213874, SEPTEMBER 6, 1984. IT APPEARS THAT THE IMPROPER PAYMENTS WERE THE RESULT OF CRIMINAL ACTIVITY OVER WHICH LT. MCKINNEY HAD NO CONTROL. SEE ID.; B-212333, NOVEMBER 21, 1983.

AS WE INDICATED ABOVE, THERE WERE THREE DISCREPANCIES IN THE PROCEDURES FOLLOWED IN CASHING MONEY ORDERS ABOARD THE KITTY HAWK DURING THE PERIOD IN QUESTION. HOWEVER, WE CONCLUDE THAT NONE OF THESE DISCREPANCIES CONTRIBUTED TO THE LOSS. EVEN IF THE DISBURSING OFFICE CASHIERS HAD INITIALED AND RECORDED EACH FRAUDULENT MONEY ORDER AND REQUIRED THE LISTING OF AN IDENTIFICATION CARD NUMBER ON THE ONE MONEY ORDER WHICH DID NOT INCLUDE THAT NUMBER, THE CRIMINAL SCHEME WOULD HAVE BEEN SUCCESSFUL NONETHELESS. THEREFORE, THE THREE PROCEDURAL DISCREPANCIES IN THE INSTANT CASE DID NOT PROXIMATELY CAUSE THE LOSS AND WILL NOT PREVENT THE GRANTING OF RELIEF. SEE B-192109, JUNE 3, 1981; B-198582, AUGUST 27, 1980.