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[Request for Relief for HHS Fiscal Clerk]

Number: B-217724

Date: 1985-03-25

B-217724, MAR 25, 1985, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - RELIEF - ADMINISTRATIVE RECOMMENDATION - ABSENT DIGEST: GAO IS UNABLE TO GRANT RELIEF FROM LIABILITY PURSUANT TO 31 U.S.C. 3527(A) TO ACCOUNTABLE OFFICER, A HEALTH AND HUMAN SERVICES FISCAL CLERK, WHEN AGENCY HEAD FAILS TO MAKE REQUISITE DETERMINATIONS THAT THE ACCOUNTABLE OFFICER WAS CARRYING OUT HER OFFICIAL DUTIES WHEN THE LOSS IN QUESTION OCCURRED AND THAT THE LOSS WAS NOT THE RESULT OF FAULT OR NEGLIGENCE BY THE ACCOUNTABLE OFFICER.

THE HONORABLE JOHN J. O'SHAUGHNESSY: ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET DEPARTMENT OF HEALTH AND HUMAN SERVICES

THIS IS IN RESPONSE TO YOUR LETTER DATED FEBRUARY 7, 1985, REQUESTING THAT MS. LEANNE E. SEIDELMAN, A FISCAL CLERK AT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) REGIONAL ADMINISTRATIVE SUPPORT CENTER IN SEATTLE, WASHINGTON, BE RELIEVED OF LIABILITY PURSUANT TO 31 U.S.C. SEC. 3527(A) (1982) FOR THE LOSS OF $1,227.04 IN TRAVEL ADVANCE REPAYMENTS. FOR THE REASONS SET FORTH BELOW, WE ARE UNABLE TO GRANT RELIEF ON THE BASIS OF THE CURRENT RECORD.

THE COMPTROLLER GENERAL IS AUTHORIZED TO GRANT RELIEF FROM LIABILITY TO ACCOUNTABLE OFFICERS PURSUANT TO 31 U.S.C. SEC. 3527(A) (1982) WHEN:

"(1) THE HEAD OF THE AGENCY DECIDES THAT--

"(A) THE OFFICIAL OR AGENT WAS CARRYING OUT OFFICIAL DUTIES WHEN THE LOSS OR DEFICIENCY OCCURRED, *** AND

"(B) THE LOSS OR DEFICIENCY WAS NOT THE RESULT OF FAULT OR NEGLIGENCE BY THE OFFICIAL OR AGENT;

"(2) THE LOSS OR DEFICIENCY WAS NOT THE RESULT OF AN ILLEGAL OR INCORRECT PAYMENT; AND

"(3) THE COMPTROLLER GENERAL AGREES WITH THE DECISION OF THE HEAD OF THE AGENCY."

IT HAS BEEN THE POSITION OF THIS OFFICE THAT WE ARE AUTHORIZED TO GRANT RELIEF PURSUANT TO SECTION 3527(A) ONLY IF THE AGENCY HEAD MAKES THE TWO SPECIFIC DETERMINATIONS REQUIRED BY THE STATUTE. B-204464, JANUARY 19, 1982. THE AGENCY DETERMINATIONS ARE NECESSARY TO TRIGGER GAO'S JURISDICTION, AND WITHOUT THEM GAO DOES NOT HAVE AUTHORITY TO GRANT RELIEF, REGARDLESS OF THE MERITS OF THE CASE.

IN YOUR FEBRUARY 7, 1985 LETTER, YOU DO NOT MAKE THE TWO DETERMINATIONS REQUIRED

BY 31 U.S.C. SEC. 3527(A). YOUR LETTER MERELY NOTES AN ATTACHED REPORT "WHICH INDICATED NO EVIDENCE OF WILLFUL WRONGDOING CONTRIBUTING TO THE LOSS" AND STATES THAT YOU "FULLY SUPPORT THE RECOMMENDATIONS THAT MS. SEIDELMAN BE RELIEVED OF ALL LIABILITY IN CONNECTION WITH THE LOSS." OUR VIEW, THESE STATEMENTS DO NOT SATISFY THE REQUIREMENTS OF SECTION 3527(A). THE FACT THAT THE RECORD REVEALS "NO EVIDENCE OF WILLFUL MISCONDUCT" DOES NOT AMOUNT TO A DETERMINATION BY HHS THAT MS. SEIDELMAN WAS ACTING IN THE COURSE OF HER OFFICIAL DUTIES AND WAS NEITHER AT FAULT NOR NEGLIGENT.

IT IS POSSIBLE TO ARGUE THAT MS. SEIDELMAN SHOULD BE RELIEVED, EVEN IF SHE WAS HERSELF NEGLIGENT TO SOME DEGREE, IF YOU FIND THAT PERVASIVE LAXITY IN THE APPLICABLE AGENCY SECURITY PROCEDURES, RATHER THAN HER NEGLIGENCE CONSTITUTED THE PROXIMATE CAUSE OF THE LOSS. SEE B-208511, MAY 9, 1983. THE HHS PROCEDURE IN THIS CASE OF LEAVING CASH RECEIPTS IN AN UNSECURED BASKET OVERNIGHT CONSTITUTES ONE OF THE WORST EXAMPLES OF AGENCY LAXITY IN SECURITY TO BE BROUGHT TO THE ATTENTION OF THIS OFFICE IN MANY YEARS. HOWEVER, ALTHOUGH AN INTERNAL HHS MEMORANDUM REPORTS THAT "ESTABLISHMENT OF OVERALL CONTROLS WAS BEYOND THE RESPONSIBILITY OF MS. SEIDELMAN" AND THAT SHE "WAS FOLLOWING ROUTINE PROCEDURES USED BY HER PREDECESSORS AND PRESUMABLY CONDONED BY HER SUPERVISOR," IT IS UNCLEAR WHETHER HHS CAN DETERMINE THAT MS. SEIDELMAN WAS NOT EQUALLY AT FAULT IN FAILING TO SEEK AN ALTERNATIVE IN VIEW OF THE OBVIOUS, GLARING DEFICIENCIES IN THE "ROUTINE PROCEDURES." AS AN ACCOUNTABLE OFFICER, MS. SEIDELMAN IS HELD TO THE STANDARD OF WHAT THE REASONABLY PRUDENT AND CAREFUL PERSON WOULD HAVE DONE TO TAKE CARE OF HIS OR HER OWN PROPERTY IN SIMILAR CIRCUMSTANCES. 63 COMP.GEN. 489 (1984).

THIS OFFICE HAS HELD THAT AN ACCOUNTABLE OFFICER MAY HAVE AN INDEPENDENT DUTY TO REPORT DEFICIENCIES IN AGENCY SECURITY, AND FAILURE TO REPORT THOSE DEFICIENCIES MAY CONSTITUTE GROUNDS FOR DENYING RELIEF. SEE 63 COMP.GEN. 489, 483 (1984). FROM THE ATTACHMENTS TO YOUR FEBRUARY 7 LETTER, WE CANNOT TELL WHETHER MS. SEIDELMAN MADE ANY EFFORT TO REPORT THE SECURITY DEFICIENCIES, AND IF SHE DID NOT REPORT THEM, WHETHER HHS CAN REASONABLY DETERMINE THAT SHE WAS NOT NEGLIGENT IN FAILING TO DO SO.

THEREFORE, WE MUST DENY THE REQUESTED RELIEF. WE WILL CONSIDER RELIEVING MS. SEIDELMAN SHOULD YOU RESUBMIT YOUR REQUEST WITH ADDITIONAL INFORMATION, AS DISCUSSED ABOVE, TO SUPPORT BOTH OF THE REQUIRED DETERMINATIONS.