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B-221395, Mar 26, 1986, Office of General Counsel

Number: B-221395

Date: 1986-03-26

B-221395, MAR 26, 1986, 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 PAYMENTS MADE BY HIS SUBORDINATE CASHIERS BECAUSE HE MAINTAINED AND SUPERVISED AN ADEQUATE SYSTEM OF PROCEDURES TO PREVENT IMPROPER PAYMENTS. EACH OF THE CASHIERS IS ALSO RELIEVED BECAUSE SHE FOLLOWED ALL PRESCRIBED PROCEDURES FOR CASHING TRAVEL VOUCHERS NOTWITHSTANDING THAT THE PAYEE CIRCUMVENTED THOSE PROCEDURES WITH CRIMINAL ACTIVITY.

MR. CLYDE E. JEFFCOAT:

ACTING ASSISTANT COMPTROLLER

FOR FINANCE AND ACCOUNTING

U.S. ARMY FINANCE AND

ACCOUNTING CENTER

INDIANAPOLIS, INDIANA 46249

THIS RESPONDS TO YOUR REQUEST THAT RELIEF BE GRANTED UNDER 31 U.S.C. SEC. 3527(C) FOR THREE IMPROPER PAYMENTS TOTALING $914 CHARGEABLE TO THE ACCOUNT OF MAJOR (MAJ) W. B. KIRTLAND, FINANCE AND ACCOUNTING OFFICER, FORT EUSTIS, VIRGINIA. FOR THE REASONS STATED BELOW, WE GRANT THE REQUESTED RELIEF. IN ADDITION, WE ALSO RELIEVE THE CASHIERS, FORMER PRIVATE FIRST CLASS (PFC) BARBARA KELLER AND MS. DELLA HUMPHREY, WHO ACTUALLY MADE TWO OF THE THREE PAYMENTS IN THIS CASE. /1/

ON JULY 3, 1984, FORMER SPECIALIST FOUR DUBOIS TINDLEY PRESENTED A REQUEST FOR AN ADVANCE TRAVEL ALLOWANCE ALONG WITH COPIES OF HIS SEPARATION ORDERS AND CERTIFICATION FROM THE INSTALLATION TRANSPORTATION OFFICER AT FORT EUSTIS. IN EXCHANGE, MR. TINDLEY RECEIVED $68, WHICH REPRESENTED A PARTIAL PAYMENT OF HIS TOTAL SEPARATION TRAVEL ENTITLEMENT. THIS ADVANCE PAYMENT WAS PREDICATED ON THE CONDITION THAT MR. TINDLEY'S DEPENDENTS ACCOMPANY HIM TO HIS PROPOSED NEW RESIDENCE IN QUEENS, NEW YORK.

LATER IN THE DAY OF JULY 3, 1984, MR. TINDLEY ALTERED HIS RENTAL CAR COMPANY RECEIPT TO REFLECT THE USE OF A VAN TO MOVE HIS HOUSEHOLD GOODS, WHEN, IN FACT, HE RENTED AN EIGHT-PASSENGER CAR. MR. TINDLEY THEN SUBMITTED WHAT APPEARED TO BE VALID DOCUMENTATION; A TRAVEL VOUCHER WAS PREPARED; AND HE RECEIVED $273 FROM PFC KELLER, CASHIER TO MAJ KIRTLAND, FOR HIS ALLEGED MOVING EXPENSES.

ON JULY 6, 1984, MR. TINDLEY RESUBMITTED COPIES OF THE DOCUMENTS ORIGINALLY SUBMITTED ON JULY 3, BUT WHICH HE HAD ALTERED TO REFLECT A $573 AMOUNT DUE. A SECOND VOUCHER WAS PREPARED AND MS. HUMPHREY, ANOTHER CASHIER TO MAJ KIRTLAND, TENDERED A $573 PAYMENT TO MR. TINDLEY, AGAIN BASED ON WHAT APPEARED TO BE VALID DOCUMENTATION.

IT APPEARS THAT THE SECOND VOUCHER WAS PREPARED BECAUSE THE REQUISITE FORM REFLECTING THE JULY 3 PAYMENT HAD YET TO BE POSTED BY JULY 6. THIS APPEARS TO HAVE BEEN DUE TO THE COMBINATION OF A HEAVY BACKLOG OF TRAVEL VOUCHERS AND THE LOSS OF 1 WORKDAY, JULY 4. NOTWITHSTANDING THESE CONDITIONS, THE FACT REMAINS THAT A CLERICAL ERROR LED, AT LEAST IN PART, TO THE $573 IMPROPER PAYMENT. WE CANNOT ATTRIBUTE THIS ERROR TO MAJ KIRTLAND OR TO THE CASHIER. WHILE MAJ KIRTLAND IS IN A SUPERVISORY RELATIONSHIP TO THE OFFICE IN WHICH THE ERROR WAS MADE, WE THINK HIS SUPERVISORY CONTROLS OVER THIS OFFICE WERE REASONABLE.

MR. TINDLEY ATTEMPTED TO SETTLE HIS SEPARATION PAY ADVANCE ON AUGUST 13, 1984, WHEN HE FILED ANOTHER CLAIM FOR APPROXIMATELY $71. HOWEVER, A VOUCHER EXAMINER DISCOVERED THAT MR. TINDLEY HAD ALREADY BEEN PAID TWICE FOR THE ONE ALLEGED SHIPMENT OF HOUSEHOLD GOODS. THE $71 WAS NOT PAID AND THE CASE WAS REFERRED TO THE CRIMINAL INVESTIGATION DIVISION (CID) FOR INVESTIGATION.

THE CID INVESTIGATION REVEALED THAT MR. TINDLEY RENTED AN EIGHT PASSENGER CAR, NOT A VAN; THAT MR. TINDLEY AND HIS WIFE TERMINATED THEIR MARRIAGE IN MAY 1984, SO THAT NEITHER MRS. TINDLEY NOR THE TINDLEY CHILD RELOCATED TO NEW YORK, AND THAT MR. TINDLEY DID NOT, IN FACT, MOVE HIS HOUSEHOLD GOODS TO NEW YORK. CONSEQUENTLY, THE INITIAL $68 PAYMENT AND THE SUBSEQUENT $273 PAYMENT WERE NOT SUPPORTED BY VALID CHARGES AGAINST THE GOVERNMENT (THE $573 PAYMENT HAVING BEEN ILLEGALLY OBTAINED FROM THE OUTSET), AND MR. TINDLEY WAS CHARGED WITH ATTEMPTED LARCENY AND LARCENY OF GOVERNMENT FUNDS. WHEN MR. TINDLEY FAILED TO APPEAR IN U.S. DISTRICT COURT ON OCTOBER 4, 1984, PURSUANT TO A CITATION, A WARRANT FOR HIS ARREST WAS ISSUED. TO DATE, MR. TINDLEY HAS NOT BEEN ARRESTED AND HIS PRESENT WHEREABOUTS ARE UNKNOWN.

AS THE DISBURSING OFFICER OFFICIALLY RESPONSIBLE FOR THE ACCOUNTS, MAJ KIRTLAND IS PERSONALLY LIABLE FOR DEFICIENCIES IN HIS ACCOUNTS CAUSED BY IMPROPER PAYMENTS MADE BY HIS SUBORDINATES. SEE 62 COMP.GEN. 476 (1983). NEVERTHELESS, UNDER 31 U.S.C. SEC. 3527(C), THIS OFFICE IS AUTHORIZED TO GRANT RELIEF FROM LIABILITY UPON A DETERMINATION THAT THE PAYMENTS WERE NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE BY THE OFFICIAL. SEE GENERALLY 54 COMP.GEN. 112 (1974).

IN CASES WHERE SUBORDINATES RATHER THAN THE DISBURSING OFFICER ACTUALLY DISBURSE THE FUNDS, WE HAVE GRANTED RELIEF UPON A SHOWING THAT THE FINANCE OFFICER PROPERLY SUPERVISED HIS SUBORDINATES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO SAFEGUARD THE FUNDS AND TOOK STEPS TO ENSURE THE SYSTEM'S IMPLEMENTATION AND EFFECTIVENESS. E.G., 62 COMP.GEN. AT 480.

ACCORDING TO YOUR LETTER AND SUPPORTING DOCUMENTS, MAJ KIRTLAND HAD ESTABLISHED AND MAINTAINED AN ADEQUATE SYSTEM OF CONTROLS TO SAFEGUARD THE FUNDS FOR WHICH HE WAS RESPONSIBLE. ALTHOUGH THE INVESTIGATORS WERE UNABLE TO LOCATE A COPY OF THE STANDARD OPERATING PROCEDURES IN EFFECT AT THE TIME THAT THE TRANSACTIONS OCCURRED, MAJ KIRTLAND HAS PROVIDED AND/OR REFERRED THE ARMY TO COPIES OF SIMILAR INSTRUCTIONS AND PROCEDURES THAT WOULD HAVE BEEN IN EFFECT AT THE TIME THE IMPROPER PAYMENTS WERE MADE. ADDITION, MAJ KIRTLAND EXECUTED AN AFFIDAVIT STATING HOW HE ENSURED THAT THE PROCEDURES WERE FOLLOWED. SEE B-215833, DEC. 21,

1984. THE IMPROPER PAYMENTS IN THIS CASE WERE LARGELY THE RESULT OF CRIMINAL ACTIVITY OVER WHICH MAJ KIRTLAND HAD NO CONTROL. EVEN THE MOST CAREFULLY ESTABLISHED AND EFFECTIVELY SUPERVISED SYSTEM CANNOT PREVENT EVERY CONCEIVABLE FORM OF CRIMINAL ACTIVITY. SEE, E.G., B-213874, SEPT. 6, 1984. SINCE THERE IS NO INDICATION THAT THE IMPROPER PAYMENTS WERE THE PROXIMATE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE ON HIS PART, RELIEF IS GRANTED TO MAJ KIRTLAND.

THE CASHIERS, FORMER PFC KELLER AND MS. HUMPHREY, ARE ALSO ACCOUNTABLE OFFICERS IN THIS CASE. SEE 62 COMP.GEN. 479. WHERE A CASHIER APPEARS TO HAVE BEEN IN FULL COMPLIANCE WITH EXISTING DIRECTIVES AND NOTHING IN THE RECORD SUGGESTS A LACK OF DUE CARE, THIS OFFICE MAY GRANT RELIEF UNDER THE PROVISIONS OF 31 U.S.C. SEC. 3527(C). B-209717.2, JULY 1, 1983. HERE, THE RECORD INDICATES THAT BOTH CASHIERS FOLLOWED THE PRESCRIBED PROCEDURES FOR REDEEMING VOUCHERS. A CASHIER WHO IS PRESENTED A PROPERLY CERTIFIED DOCUMENT-- AS IT APPEARED IN THESE INSTANCES-- IS UNDER NO OBLIGATION TO INVESTIGATE THE CIRCUMSTANCES WHICH LED TO THE CERTIFICATION. CF. B-213550, APR. 6, 1984. OF COURSE, THE CASHIER SHOULD NOT MAKE A PAYMENT BASED ON A CERTIFIED DOCUMENT UNTIL THE PAYEE HAS PROPERLY IDENTIFIED HIMSELF AND THE VOUCHER IS INSPECTED FOR UNAUTHORIZED ALTERATIONS. ID. THERE ARE NO ALLEGATIONS LEVIED AGAINST THE CASHIERS FOR IMPROPER ACTIONS ON THE VOUCHERS IN THIS CASE, NOR CAN ANY SUCH ALLEGATIONS BE SUPPORTED. NOTHING IN THE RECORD SUGGESTS THAT EITHER CASHIER SHOULD HAVE BEEN SUSPICIOUS OF THE FRAUDULENT NATURE OF THE TRANSACTIONS. ACCORDINGLY, WE CONCLUDE THAT THE IMPROPER PAYMENTS WERE NOT THE RESULT OF BAD FAITH OR A LACK OF REASONABLE CARE ON THE PART OF EITHER CASHIER.

FINALLY, WE NOTE THAT COLLECTION ACTION, ALTHOUGH INITIATED BY THE FINANCE OFFICER, HAS NOT BEEN SUCCESSFUL. SHOULD THE WHEREABOUTS OF MR. TINDLEY BECOME KNOWN, THE ARMY SHOULD AGGRESSIVELY PURSUE COLLECTION. U.S.C. SEC. 3527(D)(2)(B). WE ACKNOWLEDGE THE ARMY'S PLEDGE TO DO SO.

IN CONCLUSION, MAJ KIRTLAND AND THE CASHIERS, FORMER PFC KELLER AND MS. HUMPHREY, ARE ALL ABSOLVED FROM LIABILITY FOR THE IMPROPER PAYMENTS TOTALING $846.

/1/ THE RECORD DOES NOT DISCLOSE WHO ACTUALLY MADE THE FIRST PAYMENT; HOWEVER, AS AN ADVANCE IT WOULD NOT BE BASED ON ANY FRAUD EXCEPT SO FAR AS MR. TINDLEY'S REQUEST MISSTATED HIS INTENTIONS. THE PAYMENT OF THE $68 WOULD THUS NOT BE ERRONEOUS EVEN THOUGH IT REMAINS A CLAIM AGAINST MR. TINDLEY.