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B-221398, Dec 30, 1985, Office of General Counsel

Number: B-221398

Date: 1985-12-30

B-221398, DEC 30, 1985, OFFICE OF GENERAL COUNSEL

DISBURSING OFFICERS - RELIEF - ERRONEOUS PAYMENTS - NOT RESULT OF BAD FAITH OR NEGLIGENCE DIGEST: RELIEF IS GRANTED ARMY DISBURSING OFFICIAL AND HIS SUPERVISOR UNDER 31 U.S.C. SEC. 3527(C) FROM LIABILITY FOR IMPROPER PAYMENT RESULTING FROM PAYEE'S NEGOTIATION OF BOTH ORIGINAL AND SUBSTITUTE MILITARY CHECKS. PROPER PROCEDURES WERE FOLLOWED IN THE ISSUANCE OF THE SUBSTITUTE CHECK, THERE WAS NO INDICATION OF BAD FAITH ON THE PART OF THE DISBURSING OFFICIAL AND HIS SUPERIOR, AND SUBSEQUENT COLLECTION ATTEMPTS ARE BEING PURSUED. HOWEVER, IN THE FUTURE, WE WILL DENY RELIEF IF ARMY DELAYS MORE THAN 3 MONTHS IN PROCESSING THE DEBIT VOUCHER.

MR. CLYDE E. JEFFCOAT:

PRINCIPAL DEPUTY COMMANDER

U.S. ARMY FINANCE AND ACCOUNTING CENTER

INDIANAPOLIS, INDIANA 46249

THIS RESPONDS TO YOUR REQUEST OF DECEMBER 2, 1985, THAT WE RELIEVE LIEUTENANT COLONEL (LTC) W. H. HILL, FINANCE CORPS, FINANCE AND ACCOUNTING OFFICER, III CORPS AND FORT HOOD, FORT HOOD, TEXAS, AND HIS DEPUTY, MS. JUNE MILLSAP, UNDER 31 U.S.C. SEC. 3527(C) FOR AN IMPROPER PAYMENT OF A $203.16 CHECK PAYABLE TO MR. ERNEST L. ADAMS. FOR THE REASONS STATED BELOW, RELIEF IS GRANTED.

THE LOSS RESULTED WHEN THE PAYEE NEGOTIATED BOTH THE ORIGINAL AND A SUBSTITUTE CHECK. BOTH CHECKS WERE IN THE SAME AMOUNT. THE SUBSTITUTE WAS ISSUED ON THE BASIS OF THE PAYEE'S ALLEGATION THAT THE ORIGINAL CHECK HAD NOT BEEN RECEIVED AND A REQUEST FOR STOP PAYMENT HAD BEEN MADE. BOTH CHECKS WERE ISSUED BY THE ARMY UNDER AUTHORITY DELEGATED BY THE DEPARTMENT OF THE TREASURY. 31 C.F.R. SEC. 245.8.

THIS OFFICE HAS AUTHORITY UNDER 31 U.S.C. SEC. 3527(C) TO RELIEVE A DISBURSING OFFICER FROM LIABILITY WHEN THE RECORD INDICATES THAT THE DISBURSING OFFICER ACTED WITHIN THE BOUNDS OF DUE CARE AS ESTABLISHED BY APPLICABLE REGULATIONS, THAT THERE IS NO EVIDENCE OF BAD FAITH ON THE PART OF THE DISBURSING OFFICER AND THAT A DILIGENT EFFORT WAS MADE TO COLLECT THE OVERPAYMENT. 62 COMP.GEN. 91 (1982).

THE SUBSTITUTE CHECK HERE WAS SIGNED BY THE FINANCE AND ACCOUNTING OFFICER'S DEPUTY WHICH REQUIRES THAT WE RELIEVE THE FINANCE AND ACCOUNTING OFFICER IN HIS SUPERVISORY CAPACITY AS WELL AS THE DEPUTY DISBURSING OFFICER. WE HAVE CONCLUDED

THAT WHERE A SUBSTITUTE CHECK IS PROPERLY ISSUED THE SUPERVISOR IS NO MORE NEGLIGENT THAN THE DEPUTY WHO ACTUALLY SIGNED THE CHECK, B-212576, ET AL., DECEMBER 2, 1983.

IT APPEARS THAT THE REQUEST FOR STOP PAYMENT AND THE ISSUANCE OF A SUBSTITUTE CHECK IN THIS CASE WERE WITHIN THE BOUNDS OF DUE CARE AS ESTABLISHED BY ARMY REGULATIONS. SEE AR 37-103, PARAS. 4-161, 4-162 AND 4 -164. THERE WAS NO INDICATION OF BAD FAITH ON THE PARTS OF THE DISBURSING OFFICERS AND IT APPEARS THAT ADEQUATE COLLECTION EFFORTS ARE NOW BEING MADE. ACCORDINGLY, WE GRANT RELIEF.

ALTHOUGH WE HAVE GRANTED RELIEF TO THE DISBURSING OFFICERS IN THIS CASE, WE DO NOT THINK THAT THE ARMY'S COLLECTION PROCEDURES TAKEN TOGETHER MEET THE DILIGENT CLAIMS COLLECTION REQUIREMENT OF 31 U.S.C. SEC. 3527(C). ONCE NOTICE OF THE LOSS WAS RECEIVED FROM TREASURY, IT TOOK ARMY OVER 14 MONTHS TO REFER THE MATTER TO YOUR COLLECTION DIVISION. AS WE INDICATED IN OUR LETTER TO YOU, B-220836, NOVEMBER 29, 1985, WE WILL NO LONGER GRANT RELIEF IF ARMY DELAYS MORE THAN 3 MONTHS IN PROCESSING THE DEBIT VOUCHER FOR COLLECTION BY THE ARMY'S COLLECTION DIVISION. HOWEVER, SINCE THIS CASE OCCURRED PRIOR TO THE TIME SPECIFIED IN OUR NOTICE TO YOU, WE WILL NOT DENY RELIEF HERE.