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[Request for Relief From Liability for VA Employee]

Number: B-221447

Date: 1986-04-02

B-221447, APR 2, 1986, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - PHYSICAL LOSSES, ETC. OF FUNDS, VOUCHERS, ETC. - EMPLOYEE LIABILITY DIGEST: THE UNEXPLAINED LOSS OF PATIENT FUNDS WHICH WERE DEPOSITED WITH A VETERANS ADMINISTRATION HOSPITAL IS PRESUMED TO BE DUE TO THE NEGLIGENCE OF THE ACCOUNTABLE OFFICER WHO HAD CUSTODY OF THE FUNDS. DENIAL OF NEGLIGENCE IS NOT SUFFICIENT TO REBUT THE PRESUMPTION OF NEGLIGENCE, NOR IS PROOF THAT LAX PROCEDURES FOR THE ACCEPTANCE AND STORAGE OF PATIENT FUNDS EXISTED, WHEN THEY WERE NOT SHOWN TO HAVE BEEN THE PROXIMATE CAUSE OF THE LOSS OF FUNDS.

MR. CONRAD R. HOFFMAN:

DIRECTOR, OFFICE OF BUDGET AND FINANCE

VETERANS ADMINISTRATION

WASHINGTON, D.C. 20420

YOU REQUEST THAT DAVID C. FOULK, MEDICAL ADMINISTRATIVE ASSISTANT AT THE VETERANS ADMINISTRATION (VA), SAN FRANCISCO MEDICAL CENTER (CENTER), BE RELIEVED OF LIABILITY IN THE AMOUNT OF $2,000 PURSUANT TO 31 U.S.C. SEC. 3527(A). THE SHORTAGE OF FUNDS RESULTED FROM AN UNEXPLAINED LOSS OF CASH ACCEPTED BY MR. FOULK UPON A PATIENT'S ADMITTANCE. FOR THE REASONS STATED BELOW, RELIEF IS DENIED.

ON FEBRUARY 19, 1985, A SHORTAGE OF $2,000 WAS DISCOVERED IN THE CENTER'S PERSONAL FUNDS OF PATIENTS (PFOP) ACCOUNT, WHEN A PATIENT TENDERED A RECEIPT FOR THAT AMOUNT UPON HIS DISCHARGE FROM THE CENTER, AND THE SUM WAS FOUND MISSING FROM THE SAFE. MR. FOULK HAS ACCEPTED THE MONEY FROM THE PATIENT ON FEBRUARY 13, 1985, SIGNED A RECEIPT, ATTACHED TWO COPIES OF THE RECEIPT TO THE MONEY, AND THEN DEPOSITED THE MONEY INTO THE AFTER- HOURS SAFE. IN CONFORMANCE WITH CENTER POLICY, NO OTHER RECORD OF THE DEPOSIT WAS MADE.

INVESTIGATORS WITHIN THE VA OFFICE OF INSPECTOR GENERAL CITED PROCEDURAL IRREGULARITIES SURROUNDING AFTER-HOURS SAFE DEPOSITS OF PATIENT PERSONAL FUNDS IN THE CENTER AS PRIMARY CAUSES OF THE UNEXPLAINED LOSS OF FUNDS. THE IRREGULARITIES MENTIONED INCLUDED A LACK OF WRITTEN RECORDS OF, COUNTERSIGNATURES FOR, AND WITNESSES TO SAFE DEPOSITS. THE INVESTIGATORS ALSO POINTED TO A MALFUNCTIONING DROP SAFE. AFTER THE INVESTIGATORS' CONCLUSION WERE REPORTED, PROCEDURES FOR AFTER-HOURS RECEIPT OF PATIENT PERSONAL FUNDS WERE MODIFIED TO REQUIRE WRITTEN RECORDS, COUNTERSIGNATURES, AND WITNESSES, WHEN ACCEPTING AND DEPOSITING PERSONAL PATIENT FUNDS.

OUR OFFICE IS AUTHORIZED TO GRANT RELIEF TO ACCOUNTABLE OFFICERS LIABLE FOR THE LOSS OF PUBLIC FUNDS IN THEIR CUSTODY WHEN THE OFFICIALS ARE CARRYING OUT OFFICIAL DUTIES WHEN THE LOSS OCCURS; WHEN THE LOSS IS NOT THE RESULT OF FAULT OR NEGLIGENCE BY THE OFFICIAL; AND WHEN OUR OFFICE AGREES WITH THE DECISION OF THE HEAD OF THE AGENCY. 31 U.S.C. SEC. 3527(A). WHILE THE MONEY INVOLVED HERE WAS PATIENT MONEY, NOT GOVERNMENT MONEY, WE HAVE HELD THAT THE LOSS OF PATIENT FUNDS FROM A VA HOSPITAL WHILE IN THE CUSTODY OF THE UNITED STATES CONSTITUTES A LIABILITY OF THE GOVERNMENT FOR WHICH AN ACCOUNTABLE OFFICER MAY BE LIABLE. B-215477, NOV. 5, 1984. SINCE MR. FOULK ACCEPTED THE $2,000 IN HIS OFFICIAL CAPACITY, AND SINCE THE UNITED STATES HAD CUSTODY OF THE MONEY WHEN IT WAS LOST, IT MAY BE CONSIDERED A LOSS OF PUBLIC MONEY FOR THE PURPOSES OF 31 U.S.C. SEC. 3527(A).

YOU HAVE CONCLUDED THAT MR. FOULK WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES WHEN THE LOSS OCCURRED, AND THAT THE PHYSICAL LOSS OF FUNDS OCCURRED WITHOUT FAULT OR NEGLIGENCE OF HIS PART.

WHEN AN UNEXPLAINED LOSS OF FEDERAL FUNDS OCCURS, A REBUTTABLE PRESUMPTION OF NEGLIGENCE ON THE PART OF THE ACCOUNTABLE OFFICER ARISES. SEE, 63 COMP.GEN. 489, 492 (1984). IN THE INSTANT CASE, THE ACCOUNTABLE OFFICER'S STATEMENT IS OFFERED AS REBUTTAL EVIDENCE. IN THAT STATEMENT, MR. FOULK RECOUNTS HIS RECEIPT AND DEPOSIT OF THE $2,000 IN PATIENT FUNDS ON FEBRUARY 13, 1985, IN CONFORMANCE WITH THEN EXISTING PROCEDURES FOR AFTER-HOURS DEPOSIT OF PATIENT FUNDS IN A SAFE PROVIDED FOR THAT PURPOSE.

ASSERTIONS OF THE ABSENCE OF NEGLIGENCE, ALONE, ARE NOT SUFFICIENT TO REBUT A PRESUMPTION OF NEGLIGENCE. B-213427, MARCH 14, 1984. IN THIS CASE, IT IS CLEAR FROM THE RECORD THAT LAX PROCEDURES GOVERNED THE RECEIPT AND STORAGE OF PATIENT PERSONAL FUNDS AT THE CENTER AT THE TIME OF THE UNEXPLAINED LOSS. HOWEVER, BECAUSE THE LAX PROCEDURES HAVE NOT BEEN SHOWN TO HAVE CONTRIBUTED TO THE UNEXPLAINED LOSS OF FUNDS FROM THE SAFE, THEY MAY NOT BE DEEMED THE PROXIMATE CAUSE OF THE LOSS. SEE, B-182386, APRIL 24, 1975.

THE SAFE WHERE MR. FOULK SAYS HE DEPOSITED THE $2,000 IS A TWO PART SAFE. THE TOP PORTION IS AVAILABLE FOR NIGHT DEPOSITS WITH A SYSTEM FOR DROPPING A DEPOSIT INTO A LOWER PORTION WITH A SEPARATE ACCESS. THE TOP PART OF THE SAFE WAS ACCESSIBLE TO AT LEAST EIGHT EMPLOYEES WHO KNEW THE COMBINATION. THE LOWER PART OF THE SAFE REQUIRED ONE PERSON WHO KNEW THE COMBINATION AND ONE PERSON WHO HAD A KEY TO OPEN IT. THE RECORD INDICATES THAT WHEN THE TWO PERSONS OPENED THE LOWER SAFE THE NEXT DAY, IT WAS EMPTY. THE RECORD CONTAINS A NOTE THAT THE DROP SAFE OCCASIONALLY MALFUNCTIONED AND PREVENTED MONEY DEPOSITED IN THE TOP PORTION FROM FALLING TO THE BOTTOM PORTION OF THE SAFE. THE INVESTIGATION APPEARS TO HAVE ESTABLISHED THAT THIS MALFUNCTION DID NOT OCCUR WHEN MR. FOULK MADE HIS $2,000 DEPOSIT, SINCE HE SAID SEVERAL TIMES THAT HE HEARD THE MONEY DROP.

SINCE THE INVESTIGATION DID NOT EXPLORE THIS POSSIBILITY IN ANY OTHER WAYS, WE MUST ACCEPT THE TESTIMONY OF MR. FOULK. IF THERE WERE A SIGNIFICANT LIKELIHOOD THAT THE MONEY HAD NOT DROPPED, THE FACT THAT EIGHT EMPLOYEES HAD ACCESS TO THE FUNDS WOULD HAVE SUPPORTED THE REQUEST FOR RELIEF. WE HAVE FREQUENTLY RELIEVED ACCOUNTABLE OFFICERS FROM LIABLILITY FOR LOSSES WHEN A NUMBER OF PEOPLE HAD ACCESS TO THE FUNDS THROUGH KNOWLEDGE OF THE SAFE COMBINATION. B-199034, FEB. 9, 1981.

IN CONCLUSION, WE ARE UNABLE TO INDEPENDENTLY AGREE WITH YOUR DETERMINATION THAT MR. FOULK ACTED WITHOUT NEGLIGENCE IN THE LOSS OF PUBLIC FUNDS FOR WHICH HE WAS

ACCOUNTABLE. THEREFORE, RELIEF IS DENIED TO DAVID C. FOULK. IF THERE IS ANY FURTHER EVIDENCE THAT WOULD EXPLAIN THE LOSS, WE WOULD CERTAINLY RECONSIDER THIS DECISION.

Full Report

Full Report

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