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[Comments on USDA Employee's Liability for Stolen Food Stamps]

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Under 31 U.S.C. Sec. 3527 (1982), GAO has no authority to relieve a Federal employee from financial liability for the loss of "Food Stamps" entrusted to him, unless it concurs with a determination by the agency to which the debt is owed that the loss occurred without fault or negligence on the part of the employee. Since the agency has not made such a determination, the employee's request for relief must be returned without action and without prejudice to a future submission, should the agency later make the necessary determinations.

Attorneys

Scott A. Koltun, Esquire Solerwitz & Leeds Attorneys and Counselors at Law 170 Old Country Road Mineola, L.I., New York 11501

Dear Mr. Koltun:

This responds to your letters of January 19, 1936 and December 31, 1985, concerning the liability to the united States Department of Agriculture (USDA) of Mr. Leonard Ringel for food stamps valued at $880 which disappeared while entrusted to him. Please accept our apologies or the delay in our reply. Apparently, in the course of his official duties, Mr. Ringel was entrusted with food stamps valued at approximately $2,960, while assigned to temporary duty in Buffalo, New York. While there, he stayed at a Holiday Inn that he had frequently used without incident in the past. Mr. Ringel states that he placed the coupons in a shopping bag and covered them with work papers. /1/ That bag was placed inside another bag which was then placed in a suitcase which he left in his hotel room. When he next checked the suitcase, he discovered that $880 worth of coupons was gone. Mr. Ringel suspects that an unidentified "white blond male, early 20's wearing the uniform of a Holiday Inn employee" entered his room with a pass key and stole the $880, leaving the balance of the food stamps in the bag.

According to the materials you submitted, several USDA officials have considered this case and concluded that Mr. Ringel was negligent. For this reason, USDA held Mr. Ringel financially liable for the value of the missing food stamps and proposed to collect it back from him. However, USDA suspended collection pending our review of the matter.

Under the law, Mr. Ringel became an "accountable officer" when he accepted custody of the food stamps entrusted to him. Cf., e.g., 59 Comp. Gen. 113, 114 (1974); 64 Comp.Gen. 456, 459 (1985) (Travelers checks are "official Government funds" because the Government "is liable for the loss of Citicorp travelers

checks as though they were cash * * *."). Accountable officers are automatically and strictly liable for Government funds entrusted to them. 64 Comp.Gen. 606 (1985). Under 5 U.S.C. Sec. 5512(a) (1982), agencies are required to recoup losses incurred by accountable officers through salary deductions. At the same time, however, GAO is authorized by 31 U.S.C. Sec. 3527 (1982) to relieve an accountable officer from liability for a financial loss, if GAO concurs with administrative determinations made by the agency to whom the debt is owed to the effect that the loss occurred while the accountable officer was acting in the discharge of official duties, and that the loss occurred without fault or negligence on the part of the accountable officer.

The materials submitted on Mr. Ringel's behalf clearly indicate that USDA found him negligent. Moreover, there is nothing to indicate that USDA recommends that he be relieved of this liability. On the contrary, USDA found that the debt should be collected. Where a relief statute requires administrative determinations as a prerequisite to granting relief, we cannot act without them: The agency. determinations are necessary to trigger GAO's jurisdiction. In their absence; we have no legal authority to grant relief. E.g., B-204464, Jan. 19, 1982; B-198124, June 20, 1980. For this reason, we find that we cannot act favorably on Mr. Ringel's request for relief. Of course, should USDA later choose to make the required administrative determinations, we will be happy to reconsider this matter.

In the event that USDA initiates its salary offset under 5 U.S.C. Sec. 5512(a), you and your client may wish to consider the provisions of section 5512(b), concerning one of the rights that an accountable officer retains in this type of situation. Copies of 64 Comp.Gen. 605 (1985), and 64 Comp.Gen. 606 (1985), which discuss this statute in greater detail, are enclosed for your information. We are also enclosing copies of the other GAO decisions cited in this letter. If you have further questions regarding this matter, please feel free to contact Mr. Neill Martin-Rolsky of my staff, at (202) 275-5544.

Sincerely yours,

Robert H. Hunter Assistant General Counsel

Enclosures

1. Mr. Ringel maintains that he was physically and legally unable to place more than $500 of the food stamps entrusted to him in a hotel safe. Due to the press of official business, however, none of his coupons were so placed in this instance.