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[Request for Relief From Liability for Navy Disbursing Officer]

Number: B-223840

Date: 1986-11-05

B-223840, NOV 5, 1986, OFFICE OF GENERAL COUNSEL

APPROPRIATIONS/FINANCIAL MANAGEMENT - ACCOUNTABLE OFFICERS - DISBURSING OFFICERS - ILLEGAL/IMPROPER PAYMENTS - LIABILITY RESTRICTIONS - STATUTES OF LIMITATION DIGEST: 1. UNDER 31 U.S.C. 3526(C), ONCE THE 3-YEAR STATUTORY PERIOD HAS EXPIRED AN ACCOUNTABLE OFFICER CAN NO LONGER BE FINANCIALLY LIABLE FOR AN IMPROPER PAYMENT AND AS SUCH THERE IS NO NEED FOR OUR OFFICE TO CONSIDER WHETHER OR NOT TO GRANT RELIEF. APPROPRIATIONS/FINANCIAL MANAGEMENT - ACCOUNTABLE OFFICERS - DISBURSING OFFICERS - RELIEF - ACCOUNT DEFICIENCY - GAO AUTHORITY 2. ALTHOUGH THE RUNNING OF THE STATUTE OF LIMITATIONS DOES NOT EXTEND TO THE AMOUNT RESTORED TO AN ACCOUNT, WE ARE WITHOUT THE AUTHORITY TO REIMBURSE THE ACCOUNTABLE OFFICER FOR A DEFICIENCY IN HER ACCOUNT THAT SHE HAS PAID FOR WHERE THE DEFICIENCY WAS THE RESULT OF AN ILLEGAL, IMPROPER OR INCORRECT PAYMENT.

THE HONORABLE CHASE UNTERMEYER:

THIS RESPONDS TO YOUR REQUEST OF JULY 23, 1986, THAT WE RELIEVE MS. J. A. FRESE, DISBURSING OFFICER, PERSONNEL SUPPORT ACTIVITY, PHILADELPHIA, PENNSYLVANIA, UNDER 31 U.S.C. SEC. 3527(C) FOR THE IMPROPER PAYMENT OF $3,659 WORTH OF TRAVEL ADVANCE CHECKS ISSUED TO A MR. JAMES R. WATSON. EXPLAINED BELOW, SINCE THE 3-YEAR STATUTE OF LIMITATION PERIOD HAS EXPIRED IN THIS CASE, THE ACCOUNT IN QUESTION MUST BE CONSIDERED TO BE SETTLED AND THE ACCOUNTABLE OFFICER INVOLVED CANNOT BE HELD LIABLE FOR ANY ERRONEOUS PAYMENT.

THE INFORMATION SUBMITTED INDICATES THAT ON OCTOBER 15, 1982, THE DISBURSING OFFICER, MS. FRESE, WAS NOTIFIED BY THE AUDITING DIVISION OF FLEET ACCOUNTING AND DISBURSING CENTER OF SUSPECTED FRAUD CONCERNING ADVANCE TRAVEL VOUCHERS PAID OUT BY HER STAFF TO A YN1 JAMES R. WATSON ON SEPTEMBER 30 AND OCTOBER 4, 1982, TOTALING $3,659. APPARENTLY, THE INDIVIDUAL IDENTIFYING HIMSELF AS "WATSON" PRESENTED FRAUDULENT TRAVEL ORDERS ALONG WITH SUPPORTING DOCUMENTS TO STAFF AT THE PERSONNEL CUSTOMER SERVICE CENTER OF THE SUPPORT ACTIVITY IN PHILADELPHIA. BASED UPON WHAT APPEARED TO BE VALID DOCUMENTATION AND IDENTIFICATION "WATSON" RECEIVED THE PAYMENTS FROM VARIOUS CASHIERS. AN ADDITIONAL $1,130 HAD BEEN PAID TO "WATSON" ON OCTOBER 15, 1982, ON ONE TRAVEL VOUCHER AND A SECOND VOUCHER WAS ABOUT TO BE PAID OUT WHEN MS. FRESE, AFTER RECEIVING THE FRAUD ALERT, WENT TO THE TELLER CAGE AND INSTRUCTED CASHIER ROSALIE MCHALE TO NOT MAKE ANY PAYMENTS TO A "JAMES R. WATSON" AND EXPLAINED THE SITUATION. AT THAT TIME THE INDIVIDUAL IDENTIFYING HIMSELF AS "WATSON," BECAME SUSPICIOUS AND FLED THE OFFICE.

IN YOUR SUBMISSION, YOU RECOMMEND MS. FRESE BE RELIEVED OF LIABILITY BECAUSE THE IMPROPER PAYMENTS WERE THE RESULT OF CRIMINAL ACTIVITY AND NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE BY MS. FRESE OR HER STAFF. YOU INDICATE THAT MS. FRESE ON HER OWN ACCORD HAS PAID THE $1,130 DISBURSED ON OCTOBER 15, 1982.

YOU FURTHER ADVISE US THAT COLLECTION ACTIONS HAVE NOT BEEN PURSUED BECAUSE THE PAYEE ESCAPED APPREHENSION AND THE NAVAL INVESTIGATIVE SERVICE HAS NO FURTHER LEADS OR SUSPECTS. ACCORDING TO THE RECORDS SUBMITTED, THE LOSS HAS BEEN REFLECTED IN YOUR ACCOUNTS SINCE DECEMBER 1982.

UNDER 31 U.S.C. SEC. 3526(C), OUR OFFICE IS AUTHORIZED TO SETTLE ACCOUNTS OF ACCOUNTABLE OFFICERS, AND HENCE TO GRANT OR DENY RELIEF, "WITHIN 3 YEARS AFTER THE DATE THE COMPTROLLER GENERAL RECEIVES THE ACCOUNT" EXCEPT WHERE THE LOSS IS DUE TO FRAUD OR CRIMINALITY BY THE ACCOUNTABLE OFFICER (OR DURING WARTIME). AS A RESULT OF CHANGES IN AUDIT METHODS, ACCOUNTS ARE NOW RETAINED BY THE VARIOUS AGENCIES WHERE THEY ARE SUBJECT TO AUDIT AND SETTLEMENT BY OUR OFFICE. TO REFLECT THIS CHANGE, OUR OFFICE NOW CONSIDERS THE DATE OF RECEIPT BY THE AGENCY OF SUBSTANTIALLY COMPLETE ACCOUNTS, OR, WHERE ACCOUNTS ARE RETAINED AT THE SITE, THE END OF THE PERIOD COVERED BY THE ACCOUNT, AS THE POINT FROM WHICH THE 3-YEAR PERIOD BEGINS TO RUN. OUR OFFICE HAS CONSISTENTLY HELD THAT ONCE THE 3-YEAR STATUTORY PERIOD HAS EXPIRED, THE ACCOUNT IN QUESTION IS CONSIDERED SETTLED AND THERE IS NO NEED FOR OUR OFFICE TO CONSIDER WHETHER OR NOT TO GRANT RELIEF. SEE 62 COMP.GEN. 476, 480 (1982).

IN THIS CASE IT IS CLEAR THE LOSS HAD BEEN ACKNOWLEDGED BY DECEMBER OF 1982. SINCE THERE IS NO EVIDENCE OF FRAUD OR CRIMINALITY ON THE PART OF ACCOUNTABLE OFFICERS INVOLVED, 3-YEAR PERIOD WITHIN WHICH OUR OFFICE IS REQUIRED TO SETTLE THIS ACCOUNT COULD HAVE EXPIRED NO LATER THAN DECEMBER 1985. THIS WAS OVER 6 MONTHS PRIOR TO THE DATE ON WHICH OUR OFFICE RECEIVED YOUR RELIEF REQUEST. THEREFORE, THE ACCOUNT MUST BE REGARDED AS SETTLED BY OPERATION OF LAW. ACCORDINGLY, SINCE THE ACCOUNTABLE OFFICERS CAN NO LONGER BE FINANCIALLY LIABLE FOR THE IMPROPER PAYMENT, THERE IS NO NEED FOR OUR OFFICE TO CONSIDER WHETHER OR NOT TO GRANT RELIEF. B-221720, MAY 8, 1986.

TO AVOID THIS KIND OF PROBLEM IN THE FUTURE, AFTER A REASONABLE TIME FOR COLLECTION OF THE LOSS FROM THE RECIPIENT, RELIEF SHOULD BE REQUESTED FROM THIS OFFICE. NORMALLY, WHERE THERE IS AN IDENTIFIED PERSON OTHER THAN THE ACCOUNTABLE OFFICER AGAINST WHOM COLLECTION CAN BE PURSUED, WE THINK 2 YEARS WILL PROVIDE A REASONABLE PERIOD TO GAIN RECOVERY.

AFTER 2 YEARS REQUESTS FOR RELIEF SHOULD BE DIRECTED TO THIS OFFICE TO ALLOW TIME FOR CONSIDERATION OF THE RELIEF REQUEST WITHIN THE 3-YEAR SETTLEMENT PERIOD. IN THIS CASE, THE REQUEST FOR RELIEF COULD HAVE BEEN MADE AS SOON AS IT WAS DETERMINED THAT THE PERSON REPRESENTING HIMSELF AS "JAMES R. WATSON" WAS NOT LIKELY TO BE FOUND. PLEASE REFER TO 7 GAO POLICY AND PROCEDURE MANUAL SEC. 28.14.

WE NOTE THAT THE RUNNING OF THE STATUTE OF LIMITATIONS DOES NOT EXTEND TO THE AMOUNT MS. FRESE RESTORED TO HER ACCOUNT. WE ARE UNABLE, HOWEVER, TO RELIEVE HER AS TO THIS AMOUNT. UNLIKE IN THE CASE OF PHYSICAL LOSSES, WE ARE WITHOUT AUTHORITY TO REIMBURSE ACCOUNTABLE OFFICERS WHO ARE LIABLE FOR ILLEGAL IMPROPER OR INCORRECT PAYMENTS FOR DEFICIENCIES IN THEIR ACCOUNTS THAT THEY HAVE PAID FOR. COMPARE SUBSECTION (A) AND (B) WITH (C) OF 31 U.S.C. SEC. 3527.