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B-225932, Mar 27, 1987, Office of General Counsel

Number: B-225932

Date: 1987-03-27

B-225932, MAR 27, 1987, OFFICE OF GENERAL COUNSEL

APPROPRIATIONS/FINANCIAL MANAGEMENT - ACCOUNTABLE OFFICERS - DISBURSING OFFICERS - RELIEF - ILLEGAL/IMPROPER PAYMENTS - SUBSTITUTE CHECKS DIGEST: RELIEF IS GRANTED DEFENSE LOGISTICS AGENCY (DLA) DISBURSING OFFICIAL UNDER 31 U.S.C. SEC. 3527(C) FROM LIABILITY FOR IMPROPER PAYMENTS RESULTING FROM PAYEE'S NEGOTIATION OF BOTH ORIGINAL AND RECERTIFIED CHECKS. ALTHOUGH PROPER PROCEDURES WERE NOT FOLLOWED IN THE ISSUANCE OF THE RECERTIFIED CHECKS THIS WAS NOT THE PROXIMATE CAUSE OF THE LOSS. THERE WAS NO INDICATION OF BAD FAITH ON THE PART OF THE DISBURSING OFFICIAL, AND SUBSEQUENT COLLECTION ATTEMPTS ARE BEING PURSUED. HOWEVER, FOR CASES INVOLVING NOTICES OF LOSSES RECEIVED AFTER JUNE 1, 1986, WE WILL DENY RELIEF IF DLA DELAYS MORE THAN 3 MONTHS IN FORWARDING THE DEBT TO ITS COLLECTION DIVISION.

PETER H. TOVAR, CHIEF, ACCOUNTING & FINANCE DIVISION, OFFICE OF COMPTROLLER:

THIS RESPONDS TO YOUR REQUEST OF DECEMBER 16, 1986, THAT WE RELIEVE MS. ELLEN J. TARRAN, DSSN 5287, ACCOUNTING AND FINANCE OFFICER, DEFENSE DEPOT OGDEN, OGDEN, UTAH, UNDER 31 U.S.C. SEC. 3527(C), FOR AN IMPROPER PAYMENT OF $569.75 CHECK PAYABLE TO MR. JOSE M. FERRER. FOR THE REASONS STATED BELOW, RELIEF IS GRANTED.

THE LOSS RESULTED WHEN THE PAYEE NEGOTIATED BOTH THE ORIGINAL AND A RECERTIFIED CHECK. THE RECERTIFIED CHECK WAS ISSUED ON THE BASIS OF THE PAYEE'S ORAL ALLEGATION THAT THE ORIGINAL CHECK HAD NOT BEEN RECEIVED. ALTHOUGH A DA FORM 3037, "STATEMENT OF CLAIM REQUESTING STOPPAGE OF PAYMENT ON CHECK," WAS SENT TO THE PAYEE, IT WAS NEVER SIGNED AND RETURNED TO THE FINANCE OFFICE. BOTH CHECKS WERE ISSUED BY THE DEFENSE LOGISTICS AGENCY UNDER AUTHORITY DELEGATED BY THE DEPARTMENT OF THE TREASURY 31 C.F.R. SEC. 245.8 (1985). SEE ALSO, DEPARTMENT OF DEFENSE DIRECTIVE NO. 5105.22, AUGUST 15, 1986; AND TREASURY FISCAL REQUIREMENTS MANUAL FOR GUIDELINES OF DEPARTMENTS AND AGENCIES, BULLETIN NO. 83-28.

AS YOU ARE AWARE, 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 DEFENSE LOGISTICS AGENCY FOLLOWS THE DISBURSING PROCEDURES OF THE ARMY. UNDER THESE PROCEDURES, A FINANCE OFFICER IS REQUIRED TO HAVE THE PAYEE OR CLAIMANT SUBMIT AND SIGN A STATEMENT OF NONRECEIPT OF AN ORIGINAL CHECK IN WRITING OR TO COMPLETE AND SIGN A DA FORM 3037, "STATEMENT OF CLAIMANT REQUESTING STOPPAGE OF PAYMENT ON CHECK," BEFORE ISSUING A RECERTIFIED CHECK.

ARMY'S RECERTIFICATION OF CHECKS DISBURSING AND ACCOUNTING PROCEDURES, LETTER OF INSTRUCTION (LOI), OCTOBER 11, 1983, LOI, FEBRUARY 6, 1985 AND LOI, JULY 17, 1986.

THE DA FORM 3037 (OR SIGNED STATEMENT) IS AN IMPORTANT STEP IN THE ISSUANCE OF A RECERTIFIED PAYMENT. THE FORM PROVIDES THE AUTHORITY FOR THE FINANCE OFFICER TO SUBMIT AN SF 1184, "UNAVAILABLE CHECK CANCELLATION" TO TREASURY. IT PROVIDES THE FINANCE OFFICER WITH THE CIRCUMSTANCES SURROUNDING THE LOSS, THE CURRENT ADDRESS OF THE PAYEE OR CLAIMANT, AND OTHER PERTINENT INFORMATION. THE DA FORM 3037 ALSO PROVIDES A WARNING TO THE PAYEE OR CLAIMANT THAT A KNOWINGLY FALSE STATEMENT MAY CARRY A CIVIL OR CRIMINAL PENALTY. IN ADDITION, THE FORM PROVIDES A MEANS FOR THE FINANCE OFFICER TO KEEP A RECORD OF REQUEST MADE FOR SUBSTITUTE AND RECERTIFIED PAYMENTS.

IN THIS CASE, THE FINANCE OFFICER ISSUED THE RECERTIFIED CHECK ON THE PAYEE'S ORAL ALLEGATION THAT HE HAD NOT RECEIVED THE ORIGINAL CHECK. WAS THE NORMAL PRACTICE OF THIS FINANCE OFFICE TO MAIL THE RECERTIFIED CHECK TOGETHER WITH THE DA FORM 3037 FOR THE PAYEE TO SIGN AND RETURN TO OUT-OF-STATE EMPLOYEES. /1/ THE PAYEE HERE NEVER RETURNED THE FORM. ALTHOUGH THIS WAS THE NORMAL PRACTICE OF THE FINANCE OFFICE, ISSUING A RECERTIFIED CHECK PRIOR TO RECEIVING DA FORM 3037 WAS NOT IN ACCORD WITH APPLICABLE REGULATIONS. UNDER THESE CIRCUMSTANCES, WE CANNOT FIND THAT THE FINANCE OFFICER EXERCISED DUE CARE IN ISSUING THE RECERTIFIED CHECK.

HOWEVER, IN ORDER FOR US TO DENY RELIEF ON THIS BASIS, WE MUST FIND THAT THE LACK OF DUE CARE WAS THE PROXIMATE CAUSE OF THE IMPROPER PAYMENT. COMP.GEN. 112, 115 (1974); B-200108, B-198558, JANUARY 23, 1981. ALTHOUGH WE RECOGNIZE THAT THE DA FORM 3037 (OR A SIGNED STATEMENT) IS AN IMPORTANT SAFEGUARD IN ISSUING A RECERTIFIED CHECK, THE LOSS IN A DUPLICATE PAYMENT CASE OCCURS WHEN THE SECOND CHECK IS WRONGFULLY PRESENTED AND PAID. COMP.GEN. 91, 94 (1982). THEREFORE, ISSUING A RECERTIFIED CHECK PRIOR TO RECEIVING A SIGNED DA FORM 3037 OR A SIGNED STATEMENT WOULD NOT BE THE PROXIMATE CAUSE OF A LOSS IN A DUPLICATE PAYMENT CASE.

ACCORDINGLY, SINCE WE FIND THAT THE LACK OF A SIGNED DA FORM 3037 WAS NOT THE PROXIMATE CAUSE OF THE LOSS, AND THERE WAS NO INDICATION OF BAD FAITH ON THE PART OF THE DISBURSING OFFICER, IT APPEARS THAT ADEQUATE COLLECTION EFFORTS ARE NOW BEING MADE, WE GRANT RELIEF.

ALTHOUGH WE HAVE GRANTED RELIEF TO THE DISBURSING OFFICER HERE, WE DO NOT FIND THAT THE COLLECTION PROCEDURES IN THIS CASE MEET THE DILIGENT COLLECTION REQUIREMENTS OF 31 U.S.C. SEC. 3527(C). ONCE THE CHARGEBACK WAS RECEIVED FROM TREASURY, IT TOOK OVER 20 MONTHS TO REFER THE LOSS TO YOUR DESIGNATED COLLECTION AGENT. GAO HAS DETERMINED THAT THE DILIGENT COLLECTION STANDARD REQUIRES THAT A LOSS BE REFERRED TO YOUR COLLECTION DIVISION WITHIN 3 MONTHS FROM THE TIME THAT TREASURY NOTIFIES YOU THAT A LOSS HAS OCCURRED. HOWEVER, WE HAVE AGREED NOT TO INSTITUTE THIS REQUIREMENT FOR CASES INVOLVING NOTICES OF LOSSES RECEIVED BEFORE JUNE 1, 1986. SINCE THE CHARGEBACK FROM TREASURY WAS RECEIVED PRIOR TO THAT DATE, WE WILL NOT DENY RELIEF HERE.

/1/ WE HAVE BEEN INFORMED THAT THIS IS NO LONGER THE PRACTICE AT THE FINANCE OFFICE. A DA FORM 3037 OR A SIGNED STATEMENT IS NOW A PREREQUISITE TO ISSUING A RECERTIFIED CHECK.