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B-226947, Jul 27, 1987, Office of General Counsel

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief - Physical losses - Embezzlement DIGEST: Relief is granted to present and former Officers in Charge at the San Francisco Assay Office (SFAO), United States Mint, from liability for two losses resulting from theft by former employees. Security measures did not afford adequate protection and were beyond the officers' control and SFAO determined that the losses occurred without fault or negligence on the part of the Officers in Charge.

The Honorable Donna Pope:

This responds to your request for relief from liability of the present and former Officers in Charge at the San Francisco Assay Office (SFAO) for two losses which occurred in the course of official business. Both losses resulted from theft by former employees. We grant relief for the reasons given below.

Relief is requested under 31 U.S.C. Sec. 3527(a) which authorizes the General Accounting Office to grant relief from liability to an accountable officer for a physical loss or deficiency upon concurrence with administrative determinations that (1) the loss or deficiency occurred while the officer was acting in the discharge of official duties, or that it occurred by reason of the act or omission of a subordinate of the officer, and (2) the loss or deficiency occurred without fault or negligence on the part of the officer. Losses due to theft are generally considered physical losses, and relief will be granted if the statutory requisites are met. The agency has made the required determinations in this case.

Relief is requested for Mr. Thomas Miller and Mr. Bland T. Brockenborough, Officers in Charge, SFAO, for losses of $4,877.76 and $28,629 resulting from theft by former employees. Mr. Miller, the current Officer in Charge, took over responsibility for the assets as of November 28, 1980, when his predecessor, Mr. Brockenborough, left.

Between August 1979 and January 1981, SFAO requested the Secret Service to investigate rumors of thefts at the South San Francisco Annex, a facility used by the Mint. In January 1980, the annual settlement of the Mint's various facilities revealed a loss of $4,877.76 which reflected a shortage of coins at SFAO. The Secret Service investigation revealed that an employee had concealed coins on his person when leaving for work at the end of his shift. The employee pled guilty to 18 U.S.C. Sec. 641 (theft of government property). These coins were not detected by the security guards who were in charge of monitoring all employee exits at the shift's end. The investigation attributed at least part of

the loss to this theft. Nevertheless, investigators were not able to recover any of the stolen coins.

In 1981, the annual settlement revealed a loss of $28,629. The Secret Service again was requested to investigate the matter. The investigation revealed that a temporary employee had been regularly stealing coins from the Annex. The coins were sold to a variety of sources. The employee pled guilty to violations of 18 U.S.C. Sec. 641 and was sentenced to 1 year in prison. We assume, although the submission does not explicitly state, that recovery could not be made in this case either. In both investigations, no evidence of wrongdoing on the part of Mr. Miller or Mr. Brockenborough was found.

As the submission points out, we have relieved accountable officers from liability for losses where security measures did not afford adequate protection and were beyond the officer's control, and the administrative office determined that the loss occurred without fault or negligence on the part of the accountable officer. B-196960, Nov. 18, 1980; B-196855, Dec. 9, 1981; B-197270, Mar. 7, 1980.

We are told that, during the 1970s, the SFAO was required to lease additional facilities due to an increase in its responsibilities. The South San Francisco Annex, leased during this time, was part of a large General Services Administration (GSA) warehouse complex constructed during World War II. As such, it was not capable of the level of physical security present at other Mint facilities.

In addition, security at the Annex was provided by a private guard company under contract with GSA. These contract guards, according to the submission, "did not have the training in protecting valuable assets that was given to the Mint police, nor did they demonstrate a consistent adherence to inspection procedures." In recognition of this, the Officer in Charge in May 1980 sought to have responsibility for security at the Annex transferred to the Mint police, but was unable to do so. The submission further points out that "even the most sophisticated security system may be compromised by individuals who are intimately familiar with it." Cf. B-224689, Oct. 31, 1986. (The former employee apprehended for the $28,000 theft was also a former security guard at the Annex.)

When it finally became apparent that measures under the control of the Officer in Charge would not be sufficient to assure adequate security, the Mint, in April 1981, transferred all coin assets to the SFAO.

In sum, the losses in question resulted from acts of theft by former Annex employees. The Annex was not designed for protection of valuable assets, nor were the guards adequately trained to secure such assets. Furthermore, the Annex staffing was beyond the control of the Officer in Charge. Since facility ownership and control was under the General Services Administration, security was provided by a private company which was not under contract to the Mint. Although the Officers in Charge through their security personnel made efforts to improve security, it was practically impossible to prevent the instant thefts.

In view of the foregoing, we concur that the losses occurred without fault or negligence on the part of the Officers in Charge, and grant relief as requested.