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B-228884, Oct 13, 1987, Office of General Counsel

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Cashiers - Relief - Physical Losses - Theft DIGEST: Relief granted to Ms. Mildred Hyman, Imprest Fund Cashier for the U.S. Environmental Protection Agency, New York New York, for a $963 imprest fund loss under 31 U.S.C. Sec. 3527(a). Although cashiers are held to a standard of strict liability, relief is granted because of a finding of faulty agency security and the fact that more than one person had knowledge of the safe combination.

Ms. Goerl:

This letter is in response to your request that Ms. Mildred Hyman, Imprest Fund Cashier for the U.S. Environmental Protection Agency, Region II, New York, New York, be granted relief from liability for a $963 imprest fund loss. The loss occurred apparently because of theft between close of business, Friday, April 20, 1984, and the morning of Monday, April 23, 1984. For the reasons set forth below, we grant relief.

BACKGROUND

The record submitted shows that at approximately 5:00 p.m., on Friday, April 20, 1984, Ms. Hyman placed her imprest fund in a combination lock cash box within a standard Diebold combination safe, and locked it. On the following Monday, April 23, 1984, Ms. Hyman opened the safe to check paid petty cash vouchers but did not notice anything amiss because she had no need to check the cash box. Later that morning at approximately 9:48 a.m. Ms. Lisa Grande, Alternate Cashier, opened the safe to disburse petty cash from the imprest fund cash box and discovered the loss.

The FBI and the Secret Service were notified, and investigations were conducted by GSA Federal Protective Service Investigations and EPA's Office of Inspector General. The investigations revealed that $963.00 in cash was missing from the petty cash fund along with $60.00 in office welfare monies. An envelope containing the safe and lock box combinations, kept in the safe, was also missing.

It has long been recognized that accountable officers in physical custody of government funds are held to a standard of strict liability. Under this standard, an accountable officer becomes automatically liable the moment a physical loss occurs. 54 Comp.Gen. 112, 114 (1974). In other words, a presumption of negligence on the part of the accountable officer is raised, and that officer has the burden of presenting convincing evidence that the loss was

not due to his or her negligence. A lack of implicating evidence will not rebut this presumption. While the basic legal liability of an accountable officer is strict, automatic, and seemingly harsh, lack of fault or negligence may provide a basis for relief. Under 31 U.S.C. Sec. 3527(a), this Office has the authority to grant such relief if we agree with the determination by the head of an agency that the loss in question occurred while the accountable officer was discharging his or her official duties and that the loss occurred without the cashier's fault or negligence.

Ordinarily, cases of unexplained loss result in the denial of relief as there is no evidence to rebut the presumption of negligence on the part of the accountable officer. 48 Comp.Gen. 566, 567-68 (1969). We have recognized, however, that if there is no sign of forcible entry and no indication of fault or negligence on the part of the accountable officer, evidence of faulty agency security will rebut the presumption of negligence and result in relief. B-211649, August 2, 1983; B-202597, May 6, 1983; B-182386, April 24, 1975.

EPA's Inspector General's Audit of the Imprest Funds in Region II showed such faulty agency security . Listed among these faults were

1. A copy of the safe and lock box combinations was kept in the imprest fund safe; and

2. An unsigned envelope containing the combination was placed in the safe of the Administrative Officer.

Both were cited as internal control deficiencies as stated in the Department of the Treasury manual.

Furthermore, we will grant relief in cases in which persons other than the accountable officer have access to funds through knowledge of the safe combination, under the theory that definite placement of responsibility for the loss is not possible. B-217945, July 23, 1985; B-209569, April 13, 1983; B-199034, February 9, 1981. In the present case both Ms. Hyman and the Alternate Cashier Ms. Grande knew the combination for the safe and the cash box.

The agency has determined that Ms. Hyman "did not deviate from her official duties, that the loss was not the result of fault or negligence on her part and was not the result of an illegal or incorrect payment." For the above reasons we concur with this administrative determination and grant relief from liability to Ms. Hyman.