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B-232772, Oct 17, 1989, Office of General Counsel

Number: B-232772

Date: 1989-10-17

B-232772, Oct 17, 1989, Office of General Counsel

APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief - Illegal/improper payments - Substitute checks DIGEST: 1. Request for relief of finance officer for loss resulting from an improper payment when both the original and recertified check have been cashed is moot when funds are recovered from the bank that negotiated the original check and the finance officer's account is credited. APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Disbursing officers - Relief - Account deficiency - GAO authority 2. Record submitted with relief request did not contain adequate documentation for us to properly evaluate whether the agency's collection actions were diligent when it suspended collection action in response to a request from the Office of Command Security, for over 10 months from when the loss occurred.

Charles R. Coffee Acting Chief, Accounting and Finance Division Office of Comptroller Defense Logistics Agency Cameron Station Alexandria, Virginia 22303-5100

Mr. Coffee:

This responds to your request of September 15, 1988, that we grant relief to Michael D. Nielsen, DSSN 6551, former Accounting and Finance Officer (finance officer), Defense Construction Supply Center, Columbus Ohio, under 31 U.S.C. Sec. 3527(c), for an improper payment of a $699.24 payroll check payable to Mr. George A. Bartrum. The loss resulted when both the original and recertified checks were negotiated. While investigating this case, we found that the lost funds had been recovered from the negotiating bank and the finance officer's account has been credited.

This, of course, renders your request for relief moot. Nevertheless, we have some concerns over the completeness of the information provided with your request for relief and the collection efforts conducted by your agency.

Under 31 U.S.C. Sec. 3527(c), we are authorized to relieve accountable officers from liability for illegal, improper, or incorrect payments when we find that the payment is not the result of bad faith or lack of reasonable care on the part of the accountable officer. However, section 3527(c) also provides that we may deny relief when diligent collection action has not been pursued.

In cases that involve losses resulting from the negotiation of original and recertified checks, we have stated that a finance officer demonstrates diligent collection by referring losses to a collection division within three months from the time that Treasury notifies the Finance Office that a loss has occurred.

B-225932, March 27, 1987. In addition, Army regulations followed by DLA on losses attributable to recertified checks require the finance officer to notify the payee that the original check has been cashed before referring a loss to a collection division. This initial notification is important to the collection process because the potential debtor's response or lack of response to the notification will determine when or if referrals to a collection division should be made. The initial notification asks the payee to refund the overpayment if he or she negotiated the check or authorized its negotiation. If the payee fails to respond, the finance officer is to proceed with the collection process.

If the payee alleges non-involvement in the negotiation of the check, the payee must complete and sign a TFS Form 1133, "Claim Against the United States for the Proceeds of a Government Check." This form basically asks the payee to verify the circumstances surrounding the loss of the check and to provide samples of his or her signature for handwriting comparison. The claim form is returned to the Finance Office which forwards it to Treasury. Treasury then adjudicates payee's claim. forgery is determined, Treasury seeks reclamation with the bank that negotiated the check and recovered funds are credited to the finance officer's account. This is what occurred in this case.

The record submitted with your request shows that Treasury notified the Finance Office on July 31, 1987, that the original check had been cashed. The Finance Office notified the Office of Command Security (OCS) to investigate the case, and OCS requested that all contact with the payee be suspended. Collection action remained suspended until a successor Finance Officer to Mr. Nielsen sent the first notification letter to the payee on May 11, 1988, almost 10 months after the loss occurred. Because of the on -going criminal investigation, the Finance Office held a meeting with OCS on May 27, 1988, and the parties agreed that contact with the payee should proceed and would not interfere with any potential criminal investigation. Subsequently, the finance office sent a second notification letter dated May 31, 1988, to the payee. The two notification letters were returned unclaimed, and the Finance Office proceeded with collection by requesting the Office of Personnel Management (OPM) to offset payee's retirement account on June 27, 1988. The matter was referred to a collection division in August 1988. After OPM began offsetting the payee's retirement account, he signed a TFS Form 1133 on October 4, 1988. On the basis of the completed TFS Form 1133, Treasury determined that payee's signature on the check had been forged. Action was then taken against the bank that negotiated the forged check and the funds were recovered.

The above shows that because of the delay caused by the criminal investigation, the Finance Office did not comply with our requirement to refer losses to a collection division within three months of being notified of the loss. However, the record is almost devoid of information that would allow us to evaluate whether the delay was justified. For instance, no contemporaneous evidence of the initial contact with OCS was provided with your request. The only documentation submitted of the initial contact with OCS was the memorandum written by the successor finance officer almost a year after the relationship with OCS arose. Also, neither this memorandum nor any other documentation submitted for the record, such as DLA regulations or guidelines, describes the agency's policy on pursuing collection action during a criminal investigation, the circumstances under which collection actions may be suspended, and the process for making a suspension decision. We note that while OCS apparently instructed that collection actions be suspended in 1987, a collection action was taken on May 11, 1988, without OCS's approval.

In any event, based largely on the initiative of my staff, we obtained documentation that successful reclamation has been completed against the negotiating bank and that the recovered funds have been credited to the finance officer's account. Although circumstances have rendered moot your request for relief, we would ask that future requests explain and document any departures from the requirement for diligent collection action.