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B-232773, Jan 12, 1989, Office of General Counsel

Number: B-232773

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Certifying officers - Relief - Illegal/Improper payments - Substitute checks DIGEST: Relief is granted DLA disbursing official under 31 U.S.C. Sec. 3527 from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and adequate collection efforts were made.

Charles R. Coffee, Acting Accounting and Finance Office of Comptroller

Defense Logistics Agency:

This responds to your request of September 15, 1988, that we grant relief to Ms. Ellen J. Tarran, DSSN 5287, Accounting and Finance Officer, Defense Depot Ogden, Utah, under 31 U.S.C. Sec. 3527(c), for an improper payment of a $766.21 check payable to Mr. Rafael A. Vela. The amount of relief requested is $664.61 because the original amount of loss was offset by $101.60 in annual leave not paid when Mr. Vela left government service. The loss resulted when the payee negotiated both the original and a recertified check. For the reasons stated below, we grant relief.

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 Regulation 37-103, paragraph 5-46, January 4, 1988. The recertified check was issued on the basis of the payee's written statement that the original check had not been received and a request for stop payment had been made. 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 and Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies, Bulletin No. 83-28. See also Department of Defense Directive No. 5105.22, August l5, 1986. Since the recertified check was issued after receiving the payee's written statement as provided in applicable regulations, it appears that the issuance of the recertified check in this case was within the bounds of due care. There is no indication of bad faith on the part of the disbursing officer.

Additionally, we find that the diligent collection requirements of 31 U.S.C. Sec. 3527(c) have been met. To meet the diligent collection test, an agency must demonstrate compliance with the Federal Claims Collection Standards issued

jointly by the General Accounting Office and Department of Justice. 4 C.F.R. Parts 101 through 105 (1988); 62 Comp.Gen. 476, 478 (1983). GAO also 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. B-225932, March 27, 1987.

The Defense Logistics Agency follows Army collection procedures on recertified checks when the original check has been negotiated. Under paragraph 5-51 of AR 37-103, a finance officer must begin immediate collection action once notice is received from the Treasury that the original check has been cashed and the payee fails to respond to inquiries on allegations of non-involvement in the negotiating of the check as provided in TFS Form 1133, "Claims Against the United States for Proceeds of a Government Check." The regulation requires that the finance officer send two progressively stronger worded certified letters at 30 day intervals to payee's last known address if the individual is no longer in active Federal service. When it is determined that further communication would be futile, the case must be sent to the collection division for further action not late than 85 days from notification that both the original and recertified checks were cashed.

In this case, Treasury notified you on February 26, 1988, that the original check had been cashed. Your first letter dated March 16, 1988, asked the payee to repay the overpayment or to complete TFS Form 1133 if he had not endorsed the original check. When the payee did not respond, you sent a certified letter dated April 27, 1988. This letter was returned to you unclaimed. You resent the letter to a different address on June 10, 1988, which the payee accepted on June 18. On August 4, 1988, you received notice from the Treasury that the recertified check also had been cashed.

The matter was referred to your collection division on August 9, and you state that all collection efforts were unsuccessful.

We believe these actions satisfy the due diligence requirements of 31 U.S.C. Sec. 3527(c). Accordingly, we grant relief.