Text as published on gao.gov, https://www.gao.gov/products/b-233870, archived 2026-09-03. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-233870, May 30, 1989, Office of General Counsel

Number: B-233870

Date: 1989-05-30

B-233870, May 30, 1989, Office of General Counsel

APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Disbursing officers - Relief - Illegal/improper payments - Substitute checks DIGEST: 1. Relief will be granted to an accountable officer who properly supervised subordinates who made an improper payment. Proper supervision is indicated since the supervisor issued a Standing Operating Procedure several weeks before the loss occurred which, if followed, should have prevented the loss. 2. Standard requiring U.S. Army Finance and Accounting Officers to forward loss matters to the Collections Division of the U.S. Army Finance and Accounting Center within three months of discovering the loss apply to losses, other than just those caused by the negotiation of original and duplicate checks. 3. Agency's collection efforts are insufficient to grant relief under 31 U.S.C. Sec. 3527(c) when the Finance and Accounting Office does not refer a loss to the agency's collection office for at least eleven months after the loss is discovered, and the finance and accounting office's own actions did not meet the Federal Claims Collection Standards. 4. Despite an agency's insufficient collection efforts, relief is granted to an accountable officer since U.S. Internal Revenue Service Notices of Federal Income Tax Lien were filed against the creditor before it received the payment, the debtor's assets were insufficient to retire the tax liens, and the prior tax liens and low value of the debtor's assets would have made collection efforts futile.

Colonel D.W. Mikkelson

Chief of Staff

U.S. Army Finance and Accounting Center:

This decision responds to your December 12, 1988 request, as supplemented by your office's April 4, 1989 submission of additional information, that we relieve Lieutenant Colonel (LTC) B.R. Barker, (the Finance and Accounting Officer for the U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma) of his personal responsibility for a $648.00 improper payment made out of his accounts. Your request is based on our authority to relieve disbursing officials under 31 U.S.C. Sec. 3527(c) (1982). explained below, we do not consider the Army's efforts to collect the improper payment from the debtor to have satisfied the collection standards we have prescribed under section 3527(c). However, we also note that U.S. federal income tax liens filed against the debtor who received the improper payment in this case would have precluded any recovery of the $648.00. Accordingly, for the limited reasons discussed below, we grant relief to LTC Barker.

Your original submission shows that the improper payment was made out of the Commercial Accounts Office under LTC Barker's responsibility. The improper payment occurred on July 13, 1987, when a check in payment for computer printer supplies was issued to the wrong payee. The original purchase order (Number DABT39-86-W-3349) ordered the supplies from the firm of D.S. Agency for the price of $560.00. An amendment to the purchase order later substituted the firm of Adams Marketing and increased the price to $648.00. When payment for this purchase order was processed by the Commercial Accounts Office, the $648.00 check was issued and mailed to D.S. Agency rather than the correct payee, Adams Marketing.

The statute which authorizes this office to grant relief states:

"The Comptroller General may relieve a present or former disbursing official of the agency responsible for a deficiency in an account because of an illegal, improper, or incorrect payment, and credit the account for the deficiency, when the Comptroller General decides that the payment was not the result of bad faith or lack of reasonable care by the official. However, the Comptroller General may deny relief when the Comptroller General decides the head of the agency did not carry out diligently collection action under procedures prescribed by the Comptroller General."

31 U.S.C. Sec. 3527(c)(1982).

In this matter, the improper payment was not the direct result of any action by LTC Barker. Rather, the payment was the result of error by LTC Barker's subordinates in the Commercial Accounts Office.

"The basic rule is that a disbursing agent, officially responsible for an account, is personally liable for the wrongful payments made by his subordinates. In such cases, we grant relief to the supervisor upon a showing that the disbursing officer properly supervised his employees. Proper supervision is demonstrated by evidence that the supervisor maintained an adequate system of procedures and controls to avoid errors and that appropriate steps were taken to ensure the system's implementation and effectiveness."

62 Comp.Gen. 476, 480 (1983).

The clerk responsible for processing the improper payment, Staff Sergeant Wayne L. Campbell, states that he posted the changed amount of the purchase order modification but failed to post the change of the payee. This error was not detected by Mr. Campbell's supervisor, and your original submission attributes the loss to their negligence. However, your original submission also shows that LTC Barker issued a Standard Operating Procedure (SOP) for the Commercial Accounts Section which, if followed, should have prevented this improper payment. The SOP required that purchase orders and all modifications be reviewed prior to making payments, and was issued by LTC Barker on April 9, 1987, about three months before the loss occurred. The fact that LTC Barker, issued a SOP about three months before the loss occurred, and his subordinates reviewed the purchase order and posted the changed amount consistent with the SOP, indicates that LTC Barker maintained an adequate system of controls to avoid this loss and that appropriate steps were taken to ensure that those controls were implemented, notwithstanding the loss that resulted from the subordinates' failure to note the change of the payee during their review. Accordingly, we view Mr. Campbell's and his supervisor's failure to change the name of the payee

to have been the type of clerical error which will occasionally occur in even a well-supervised office. Accord B-231551, September 18, 1988; B-212336, August 8, 1983.

However, the information contained in your request shows that the Army "did not carry out diligently collection action under procedures prescribed by the Comptroller General." 31 U.S.C. Sec. 3527(c). B-220836, November 29, 1985, we stated that we would no longer grant relief to Finance and Accounting Officers who delay more than three months after their office becomes aware of a deficiency in referring the matter to the Collections Division of the U.S. Army Finance and Accounting Center. Although this standard was originally announced for cases involving deficiencies resulting from the negotiation of original and duplicate checks, we have indicated that the standard is applicable to other losses as well. B-221471, January 7, 1986 (improper amount paid on a final separation voucher).

Your original submission shows that this collection standard has not been met. The record shows that the Finance and Accounting Office at Fort Sill was aware of this deficiency no later than September 10, 1987, the date of the first collection letter sent to D.S. Agency over LTC Barker's signature. This matter was not submitted to the Collections Division until August of 1988, at least eleven months after the Finance and Accounting Office at Fort Sill was aware of the loss. This is clearly outside the three month standard our decisions have established.

Even if we were to consider whether the actions taken by the Fort Sill Finance and Accounting Office satisfied the Army's requirement to diligently pursue collection, we would still conclude that the requirement of section 3527(c) has not been met. Our decisions have specifically outlined the collection actions we require.

"We will exercise our discretion under section 3527(c) and grant relief only where there is evidence that a diligent collection effort has been made. In order to show that such effort has been made a relief request must demonstrate compliance with the Federal Claims Collection Standards issued jointly by the General Accounting Office (GAO) and the Department of Justice."

62 Comp.Gen. at 478. The Federal Claims Collection Standards require as an initial action that a demand letter be sent to a debtor which, among other things, establishes a due date for payment within thirty days of the date of the letter. 4 C.F.R. Sec. 102.2. A total of three progressively stronger written demands should be sent at intervals of no more than thirty days. Id.

The collection actions taken by LTC Barker's office do not meet the Federal Claims Collection Standards. The initial letter sent out over LTC Barker's signature did not specify a due date for repayment of the $648.00, nor did it satisfy the other requirements of 4 C.F.R. Sec. 102.2. Your submission also shows that a second collection letter was not sent to D.S. Agency until December 4, 1987, and that this letter was identical to the September 10, 1987 letter. This does not meet the standard of sending progressively stronger demands at no more than thirty day intervals.

In summary, your request fails to establish that adequate collection efforts were undertaken in this matter. Accordingly, absent some compelling circumstances in this case, we would normally deny your request that we relieve

LTC Barker of the $648.00 deficiency.

Your original submission stated that assets of D.S. Agency were seized by the Internal Revenue Service (IRS) during 1987. This raised the possibility that at the time the Army was required by our decisions to pursue collection action, there were no assets of D.S. Agency available to repay the $648.00 loss. In January 1989, we informally advised your office that the requirements for relief had not been met in this case and suggested that additional information about the seizure of assets be obtained.

On April 4, 1989 your office submitted additional information about the IRS's seizure of D.S. Agency's assets. The record now shows that the IRS filed Notices of Federal Tax Lien totalling over $78,000 against D.S. Agency in the records of the Texas Secretary of State, and of Lubbock County, Texas (where the offices of D.S. Agency were located). These liens were on file by May 21, 1987 - several weeks before the erroneous payment was made to D.S. Agency. After the Commercial Accounts Office made the improper payment, the IRS levied against D.S. Agency's banks, and seized and sold the assets of the company. According to IRS officials, the proceeds from these levies and sales of assets left over $40,000 of the amount of the tax liens outstanding.

Under section 6323 of the Internal Revenue Code of 1986, any claim by the Army to recover the $648.00 payment made in July 1987 could not be paid until the $78,000 in tax liens were paid. Since the proceeds the IRS has obtained through execution on D.S. Agency's assets has still left $40,000 in outstanding tax liens, it is clear that the Army was never going to be able to recover the $648.00 erroneous payment. In our decision B-229903, January 11, 1988, we noted that a debtor's entrance into bankruptcy proceedings before a deficiency in an accountable officer's account is discovered would render collection efforts futile. Similarly, the tax liens filed by the IRS in amounts which were greater than the value of D.S. Agency's assets also rendered collection efforts futile in this case. Because of this unusual circumstance, we will grant relief notwithstanding the Army's failure to diligently pursue collection efforts in this case.