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B-233937, May 8, 1989, Office of General Counsel

Number: B-233937

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief - Physical losses - Theft DIGEST: Drug Enforcement Agent denied relief under 31 U.S.C. Sec. 3527(a) for liability resulting from a theft of government funds where the exercise of due care on his part would have prevented the loss. See, B-214718, December 14, 1984. The loss occurred after the agent placed a bag containing government funds on a ledge in a crowded restaurant.

Mr. Lawn:

Your letter of December 14, 1988, requested relief for Special Agent Pilot Vance Huffman. Agent Huffman was the accountable officer for a $3,300 cash advance for operational expenses related to the use of DEA's aircraft. On March 2, 1988, the funds were stolen in a restaurant where Agent Huffman and three other DEA agents were having dinner. investigation by the DEA found that Agent Huffman was without fault or negligence. We disagree. We think Agent Huffman's careless handling of the bag containing the funds allowed the theft to take place. His negligence being the proximate cause of the loss, we must deny relief.

The facts stated in your submission are as follows. Agent Huffman was advanced $3,300 for operational expenses related to fuel, maintenance, landing fees, etc. for DEA's aircraft. Because of the lack of security at his apartment, Agent Huffman placed his wallet, credit cards, DEA credentials, official passport, and the $3,300 of official government funds in a small bag, which he kept with him at all times. On March 2, 1988, Agent Huffman went to dinner at a local restaurant and placed the small bag containing the government funds on a ledge next to his table, three to four inches from his left arm. While the agents where eating dinner, a Peruvian man and woman entered the restaurant and seated themselves at the table behind Agent Huffman. Evidently, the space between Agent Huffman and the Peruvian couple was quite narrow. In fact, the Peruvian man stood up several times in order to allow patrons to pass. The Peruvian woman stood up twice and attracted attention to herself, whether purposefully or not is unclear, by pushing her way to the front of the crowded restaurant and then returning to her seat. Shortly after one of these episodes, in which witnesses stated that the Peruvian man fumbled with his coat behind Agent Huffman, the Peruvian couple left the restaurant. Agent Huffman then discovered that the bag containing government funds was missing.

This Office is authorized under 31 U.S.C. Sec. 3527(a) to relieve an accountable officer or agent of liability on account of a physical loss of government funds if it concurs in the determinations by the head of the officer's agency that the loss occurred while the officer was acting in the discharge of his official

duties, and without fault or negligence. general, any government officer or employee who by reason of his or her employment is responsible for or has custody of government funds is an accountable officer. 59 Comp.Gen.113, 114 (1979).

On the basis of the facts presented, you have determined that the loss occurred while Special Agent Huffman was on official duty and without fault or negligence. Although Agent Huffman was on official duty while in Peru, we think that he was careless in placing the bag on the ledge in a crowded restaurant and directing his attention elsewhere, possibly for the duration of the dinner and that such carelessness allowed the bag to be stolen. We think Agent Huffman was negligent and that his negligence was the proximate cause of the loss because his actions gave the thief a clear opportunity to steal the bag and the funds.

Our analysis in this case is controlled by our previous decision in B-214718, December 14, 1984. In that case we denied relief to a Secret Service Special Agent in the amount of $1000. The facts of that case are very similar to those here. There, the agent, while in a crowded airport in Bogata, put his shoulder bag containing government funds on a counter near where he was standing and directed his attention, for approximately two to five minutes, to the business of purchasing a ticket. During that period of time, his bag was stolen. In the previous cases, as in the present case, the accountable officer failed to devote his full personal attention to the physical security of the government funds entrusted to his care and gave the thief a clear opportunity to steal the bag.

Under our decisions, an accountable officer is personally liable for a loss of government funds due to theft if the exercise of due care on his part would have prevented the loss. See, B-214718, December 14, 1984; and B-71445, June 20, 1949. If Special Agent Huffman had kept the bag under his immediate control, or had made other arrangements for the money's safekeeping, this theft would not have occurred. Accordingly we deny relief.