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B-237343, Jan 23, 1991, Office of General Counsel

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Disbursing officers - Relief - Illegal/improper payments - Substitute checks DIGEST: U.S. Army disbursing official is relieved of liability pursuant to 31 U.S.C. Sec. 3527(c) for the improper payment resulting from payee's negotiation of both original and recertified checks. The disbursing official followed the proper procedures in the issuance of the recertified check; there is no indication of bad faith on the part of the disbursing official; and he initiated collection action in a timely and adequate manner.

Colonel David H. Parrish

Chief of Staff:

This responds to your letter requesting that we grant relief under 31 U.S.C. Sec. 3527(c) to Lt. Col. D.E. Emory, Finance Corps, Disbursing Station Symbol Number 5058, Finance and Accounting Office, San Francisco, California, for an improper payment in the amount of $2,890.32. For the reasons stated below, we grant relief.

The loss resulted when the payee, Maj. Martin J. Cook, negotiated both the original and a recertified check. The finance office issued the recertified check after Maj. Cook alleged non-receipt of the original. The Army may issue recertified checks under authority delegated by the Department of the Treasury (Treasury). 31 C.F.R. Sec. 245.5 (1990).

Under section 3527(c), this Office may relieve a disbursing official from liability for an improper payment if we determine that the payment was not the result of bad faith or a lack of reasonable care by the official. appears from your submission that Lt. Col. Emory acted reasonably and with due care when he issued the recertified check to Maj. Cook. See Army Regulation 37-103, Disbursing Operations for Finance and Accounting Offices, ch. 5, sec. IX (Jan. 4, 1988). Army regulation contemplates the issuance of a recertified check upon the submission of a claim by a payee that the payee did not receive the original check within 3 business days from the date the check should have been received, and the collection of an overpayment from the payee if the Treasury later advises that both the original and recertified checks were negotiated by the payee. Id. In accordance with this regulation, Lt. Col. Emory requested and received from Maj. Cook a signed statement of non-receipt of the original check, and Lt. Col. Emory prepared and processed a stop payment order on the original check. Id., para. 5-45, 5-46 and 5-47. There is no indication of bad faith on the part of the disbursing officer, and the Army has undertaken collection

efforts in a timely and adequate manner. Accordingly, we grant the requested relief. See B-236229, Oct. 31, 1989.

Although we have granted relief in this instance, we question the procedures that the finance office employed in notifying the Treasury to stop payment on the check originally issued to Maj. Cook. The finance office submitted the first stop payment order to Treasury on January 8, 1987, the day that Lt. Col. Emory issued the recertified check. That attempt to stop payment failed due to the use of an incorrect check number; the finance office requested the Treasury to stop payment on check number 10,452,827 instead of the correct number, 10,452,825. The finance office corrected this error and, between January 16, 1987, and January 8, 1988, submitted five separate stop payment orders, all of which Treasury rejected for reasons that, according to the finance office, were not clear.

The finance office's former Chief of Disbursing states that whenever the Treasury rejected a submission, the finance office had to identify the incorrect information that caused the rejection, correct the information, then re-submit the information in the proper format. The finance office maintains that the stop payment orders submitted after January 8, 1987 were correct and should have been accepted, but the finance office never found out why the Treasury rejected them.

We suggest that the finance office include, as part of its procedures, direct correspondence with Treasury, in instances such as this, to determine Treasury's reasons for rejecting stop payments if those reasons are not clear.