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B-239387, Apr 24, 1991

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Relief - Physical losses - Theft DIGEST: Relief is denied an employee of the Administrative Office of the United States Courts for a deficiency resulting from stolen Government Transportation Requests (GTRs) which were subsequently used for unauthorized travel. The Office did not, and could not, make the required determination under 31 U.S.C. Sec. 3527(a) that the loss was not the result of employee fault or negligence, and consequently, administrative relief under title 7 of GAO's Policy and Procedures Manual is also not possible. As an accountable officer for purposes of safeguarding his GTRs the employee has not overcome the presumption of negligence against him. Relief may also not be granted on equitable grounds despite the employee's continuing potential liability for the remaining missing GTRs.

L. Ralph Mecham, Director:

This responds to your letter in which you requested that we relieve Mr. Gregory A. Mahin, an employee of the Administrative Office of the United States Courts (Office), from liability for $1,096.00, as well as from potential future liability, resulting from the unauthorized use of a booklet of missing or stolen Government Transportation Requests (GTRs). For the reasons indicated below, we deny relief.

In October 1982 a booklet of ten GTRs was issued to Mr. Mahin and in April of 1983 he discovered that the booklet, containing nine unused GTRs, was missing. Although action was subsequently taken to attempt to prevent their use, several GTRs were used by unauthorized individuals for air travel. In each case, the General Services Administration determined that the Office had to pay the airlines for honoring the GTRs because the GTRs appeared valid on their face. /1/ Meanwhile, in a memorandum dated January 30, 1985, the then Director of the Administrative Office determined that Mr. Mahin would be personally liable for expenditures incurred by the Office because, under the circumstances of the loss, there was no basis to ask the Comptroller General to relieve Mr. Mahin of liability. Mr. Mahin paid $3,508 to the Office for the costs of the five GTRs that had been used unauthorized travel.

In June 1988, Mr. Mahin was notified that he was again liable, this time for $1,096.00, when another GTR was used. You are now requesting, under the provisions of 31 U.S.C. Sec. 3527, that relief from liability be granted to Mr. Mahin for the $1,096.00 in expenses incurred by the Office due to the unauthorized use of this GTR, and for any expenses that might be incurred incident to the unauthorized use of the three GTRs that are still missing.

In order for us to grant relief, 31 U.S.C. Sec. 3527(a) requires that the requesting agency make a determination that "the loss or deficiency was not the result of fault or negligence by the official or agent" responsible. In the present case such a determination has not been made. These findings are necessary to trigger the Comptroller General's jurisdiction, and in their absence the Comptroller General does not have authority to grant relief, notwithstanding the merits of the case. B-216279.2, December 30, 1985.

It appears, however, that the Administrative Office of the Courts could not, in good faith, make the requisite determinations in this case. The record indicates that the losses were caused by Mr. Mahin's negligence in not safeguarding the GTRs. /2/ We "may not grant relief if there is any evidence of negligence on the part of the accountable officer, when the negligence was the proximate cause of the loss." B-204173, November 9, 1982.

In your letter you also ask us to relieve Mr. Mahin on equitable grounds in that you "believe that it is not equitable for Mr. Mahin to face indefinitely the specter of hundreds or thousands of additional dollars of liability" should the remaining GTRs be used in the future. While it is unfortunate that Mr. Mahin's liability continues, relief may not be granted on the basis of equitable considerations. B-204173, November 9, 1982.

Additionally, you state that if we do not relieve Mr. Mahin that you would be inclined to grant him administrative relief up to the maximum amount now $1,000 permitted under title 7, chapter 8.9 of our Policy and Procedures Manual for Guidance of Federal Agencies (February 1990). However, in granting administrative relief you must still apply the same standard for relief that we use under 31 U.S.C. Sec. 3527(a), and as we observed above, our opinion is that this standard would not be met in this case.

/1/ See Federal Property Management Regulations, 41 C.F.R. Sec. 101 41.208-1 (1990).

/2/ When a loss occurs, the accountable officer is presumed negligent, and he or she has the burden of presenting convincing evidence that the loss was not caused by negligence on his or her part. B-235167, Jan. 8, 1990; B-212605, Apr. 19, 1984.