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B-240654, Feb 6, 1991, Office of General Counsel

Number: B-240654

Date: 1991-02-06

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Cashiers - Relief - Illegal/improper payments - Fraud DIGEST: Relief is granted to finance officers who documented that they had in place at the time of the improper payments at issue adequate systems of procedures and controls to safeguard the funds in their care, and to their subordinates who followed these procedures. The improper payments resulted from criminal activity that even as adequate and effectively supervised system cannot always prevent.

The Honorable Donald B. Rice

Secretary of the Air Force:

This responds to your request that we grant relief to the following for improper payments totaling $73,830: Capt. T. Harrington, Accounting and Finance Officer (AFO), Lackland Air Force Base ($16,020); Capt. M. T. Radcliffe, AFO, Randolph Air Force Base ($16,000); Capt. David W. Tolbert, AFO, Luke Air Force Base ($16,020); Capt. I. J. Spratt, AFO, Bergstrom Air Force Base ($16,000); Maj. Allan K.W. Young, former AFO, March Air Force Base ($4,450); and Capt. H. Swims, former AFO, Norton Air Force Base ($5,340). For the reasons given below, we grant relief as you requested. In addition, we relieve the following, subordinate officers of any liability that they incurred with regard to the improper payments: Sgt. Kenneth Tennyson, cashier, Lackland Air Force Base; Leigh Kranes, cashier, Randolph Air Force Base; CM Sgt. Jerry L. Milan, Deputy AFO, and Mrs. Tamara Smith, cashier, Luke Air Force Base; and, A1C Patton, cashier, Bergstrom Air Force Base.

The improper payments occurred between November 6-13, 1987, when an individual purporting to be Maj. John E. Wheeler presented requests for travel advances, along with appropriate supporting documentation, at each of the locations identified above. In February 1988, the Air Force learned that an imposter had falsified travel orders, an identification card and other documents, and had fraudulently obtained the travel advances. An investigation by the Air Force Office of Special Investigations identified the imposter. The imposter was apprehended, but committed suicide before trial, and the Department of Justice determined that no estate was available against which collection of the improper payments could be made.

In cases such as this, both the persons who made the improper payments (the cashiers) and the persons in whose names the accounts are officially held (the AFOs) are liable as disbursing officials for the amounts of the improper payments. /1/ This Office has authority under 31 U.S.C. Sec. 3527(c) to relieve

a disbursing officer 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. B-229827, Jan. 14, 1988. Where subordinates of the finance officer actually disbursed the funds, as is the case here, we relieve the finance officer upon a showing that he properly supervised his subordinates, maintained an adequate system of procedures and controls to safeguard the funds, and took steps to ensure the system's implementation and effectiveness. B-228859, Sept. 11, 1987. The good faith and reasonable care of the cashier who made the payment can be shown by evidence that the cashier complied with these procedures, and that nothing occurred which should have made the cashier suspicious of fraud. B-229827, Jan. 14, 1988.

Your submission documents that these finance officers had instituted adequate systems of procedures and controls to safeguard the funds in their care, see Air Force Regulations 177-103, ch. 31 (Nov. 15, 1986), and that the subordinates identified above followed these procedures. Nothing in the record suggests that they should have been suspicious of the fraudulent nature of the transactions. Indeed, the improper payments were apparently the result of skillfully executed criminal activity that even an adequate and effectively supervised system cannot always prevent. See, e.g., B-232575, Nov. 8, 1990. Since there is no indication that the improper payments were the proximate result of bad faith or lack of reasonable care on their parts, relief is granted to the finance officers as requested and to the subordinate officials identified in your submission.

/1/ Consequently, we address the liability of the cashiers identified in your submission even though you did not request that we relieve them.