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B-241478, Apr 5, 1991, Office of General Counsel

Number: B-241478

Date: 1991-04-05

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Cashiers - Relief - Physical losses DIGEST: 1. This Office has no authority under 31 U.S.C. Sec. 3527(a) (1988) to grant relief from liability for the physical loss of $1,358.76 to Department of Veterans Affairs cashier since agency head failed to make the required determination that the loss was not the result of fault or negligence on the cashier's part. 2. Cashier's exemplary prior record and the hardship that repayment of lost money from personal funds would present doe not provide this Office with a basis to grant relief from liability for a physical loss under 31 U.S.C. Sec. 3527(a) (1988).

Frank D. Derville

Deputy Assistant Secretary for Financial Management:

This responds to your request of October 1, 1990, that we relieve Ms. Virginia Fraley (Agent Cashier, Veterans Affairs Medical Center) for the loss of $1,358.76. For the reasons stated below, relief is denied.

BACKGROUND

Based on your submission, the facts of this case are as follows. Ms. Fraley was the Agent Cashier at the Veterans Affairs Medical Center, North Little Rock Division. Ms. Fraley attempted to balance her account prior to the start of business on February 1, 1990, since she had not counted her entire advance at the close of business on the previous day. At that time, she noticed a shortage in her account of $1,358.76. With the assistance of an alternate cashier, Ms. Fraley again unsuccessfully attempted to balance her account. Ms. Fraley searched the surrounding area and confirmed the previous day's transactions, but was unable to find the missing money.

Ms. Fraley offers no explanation for the loss. She states that an engineer changed the combination on her safe and door on January 31, 1990, but that he was not left unattended at any time. The engineer, according to Ms. Fraley, was the only other person in her office on that day. addition, although Ms. Fraley and the alternate cashier worked out of the same safe, they had separate cash boxes with separate keys. Therefore, the alternative cashier did not have access to the cash in Ms. Fraley's cash box. Further, your submission states that there was no evidence of theft.

DISCUSSION

An accountable officer is held to a high standard of care with respect to funds with which the officer is charged and is automatically liable at the moment a physical loss occurs. 54 Comp.Gen. 112 (1974); B-240671, Oct. 5, 1990. However, under 31 U.S.C. Sec. 3527(a) (1988), this Office is authorized to relieve an accountable officer of liability for a physical loss of government funds if we concur in the determination of the head of the agency that: (a) the loss occurred while the officer was carrying out his official duties and (b) that the loss was not the result of fault or negligence on the part of the officer. The agency head's findings trigger this Office's jurisdiction; thus, we are only authorized to grant relief under section 3527(a) after the agency head has made the two determinations required by the statute. B-217724, March 25, 1985; B-211962, March 6, 1985.

Your submission of October 1, 1990, does not contain the required determination that the loss of funds in this case was not the result of fault or negligence on the part of Ms. Fraley. Instead, it merely requests "a finding of no negligence" from this Office because repayment of the lost money from personal funds would present a hardship for Ms. Fraley. /1/ Further, according to the record, no official has ever made the required determination. To the contrary, the Medical Center Director stated that "we are ... reluctant to say that Ms. Fraley was negligent ..." and another official stated that he had found "neither a basis for negligence nor for relief." Since the record does not contain the determination required by section 3527(a), we do not have jurisdiction over the matter and cannot grant relief.

Moreover, even if we inferred a determination of no fault or negligence from your support of a "request for a finding of no negligence," the record contains no evidence to support such a determination. When a loss of funds occurs, the accountable officer is presumed negligent and, to obtain relief, must rebut this presumption with convincing evidence that the loss was not caused by her negligence or lack of reasonable care. B-240671 at 2. The mere absence of evidence implicating the accountable officer in the loss is not sufficient to rebut the presumption of negligence. B-209569, April 13, 1983.

The record submitted on October 1, 1990, contains no actual evidence to rebut the presumption of negligence. Compare B-235458, Aug. 23, 1990 (granting relief due to evidence that funds were stolen) and B-229778, Sept. 2, 1988 (granting relief due to evidence that more than one person had access to the accountable officer's cash box). It contains neither evidence of theft nor any indication that an individual other than Ms. Fraley had access to the funds at the time of the loss. Rather, it merely establishes that an unexplained loss occurred while Ms. Fraley was involved in the discharge of her official duties. Thus, if we had jurisdiction over the matter, we would deny Ms. Fraley relief based on the present record.

Section 5512 of title 5, United States Code, requires that you withhold Ms. Fraley's salary until the debt of $1,358.76 is repaid. Since Ms. Fraley is employed by the Government, we presume that she will be able to pay the debt such that termination of collection action would not be appropriate. See B-180957-O.M. However, you will satisfy the requirement of section 5512 by withholding Ms. Fraley's salary in the installments that you determine to be appropriate. See 64 Comp.Gen. 606 (1985). This should enable you to mitigate the financial hardship that you cite in your request for relief.

/1/ We note that considerations such as Ms. Fraley's exemplary prior work record

and the hardship of repaying the lost money from personal funds that apparently prompted your request are irrelevant since they provide us with no basis on which to grant relief. See B-216279.2, Dec. 30, 1985; B-204173, Nov. 9, 1982.