Text as published on gao.gov, https://www.gao.gov/products/b-241820, archived 2026-08-24. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-241820, Jan 2, 1991

Number: B-241820

Date: 1991-01-02

B-241820, Jan 2, 1991,

APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Cashiers - Relief - Physical losses - Theft DIGEST: 1. Relief is granted to Forest Service alternate imprest fund cashier for loss by theft of $1,477.57 since evidence showed loss was attributable to forced entry into safe by burglars and investigation revealed no connection between accountable officer and the theft. APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Funds - Security safeguards DIGEST: 2. We recommend that Forest Service accountable officers refamiliarize themselves with Treasury and Forest Service regulations regarding safekeeping of funds in reaction to a statement in Forest Service investigative report that security procedures in such offices are customarily lax.

Darold D. Foxworthy

Fiscal Director

Forest Service

U.S. Department of Agriculture:

This is in response to your letter of October 18, 1990, requesting relief for Edward D. Paniagua, alternate imprest fund cashier, Ranger District Office, Tonapah, Nevada, for a loss by theft of $1,477.57. For the following reasons we grant relief.

The record indicates that during the night of April 2-3, 1989, the Tonapah District Office was burglarized by an unknown person(s). The burglar(s) entered the District office by forcing a window open. Six offices were ransacked in an apparent search for the combinations to two safes located in one of the offices. The search proved unsuccessful since the perpetrators forcibly removed the entire imprest safe door and stole the $1,477.57, for which Mr. Paniagua was accountable. /1/ The burglar(s) also attempted and failed to force open the collection safe (which was bolted to the top of the imprest safe) by peeling back the safe door. The local Sheriff, Department of Agriculture Office of the Inspector General and the Federal Bureau of Investigation were immediately notified of the theft.

Under 31 U.S.C. Sec. 3527, our Office is authorized to relieve accountable officers of responsibility for a physical loss of government funds if we concur in the determination by the head of an agency that: (a) the loss occurred while the officer or agent was acting in the discharge of his or her official duties and (b) that there was no fault or negligence on the part of the cashier which

contributed to the loss. B-230796, Apr. 8, 1988. Anytime a physical loss of funds occurs there arises a rebuttable presumption of negligence on the part of an accountable officer. 54 Comp.Gen. 112, 115 (1974). However, when the evidence shows that a theft took place and an investigation reveals no connection between the accountable officer and the theft, the presumption of negligence is rebutted and we have granted relief to the accountable officer. See, e.g., B-232252, Jan. 5, 1989 (during Prison riot prisoners used blow torch to enter safe); B-214276, Sept. 17, 1984 (thief forced safe open by dismantling hinges).

You have made the requisite administrative determinations that Mr. Paniagua was acting in the discharge of his duties and that there was no fault or negligence on his part. Since there is ample evidence of forcible entry into the imprest safe and no evidence in the record to implicate Mr. Paniagua, we agree with your administrative finding that the loss was not the result of fault or negligence on his part.

We therefore grant relief to Mr. Paniagua. The loss may be charged to the proper appropriation in accordance with 31 U.S.C. Sec. 3527.

However, we note with concern the Forest Service's preliminary investigation report of the Tonapah burglary which states that:

"It is customary in Forest Service Offices for safe combinations to be stored in insecure locations and security procedures are often lax."

Although nothing in the record in this case indicates a lack of security in the Tonapah office, we are alarmed by the statement in the USDA report. We urge that Forest Service accountable officers refamiliarize themselves with the procedures governing the proper security for cash and the safekeeping of combinations and cash box keys found in the Department of the Treasury's Manual of Procedures and Instructions for Cashiers (July 1985) and the Forest Service's Imprest Fund Payments Handbook, see Forest Service Manual 6509.13b (1988). We remind you that in the past we have held that a failure to store keys or combinations in a secure manner in accordance with Treasury procedures constitutes negligence. B-240671, Oct. 5, 1990; B-182480, Feb. 3, 1975; see also B-193416, Oct. 25, 1979.

Commander James R. Powell, USN:

This action is in response to a request for reconsideration by Commander James R. Powell, USN, of our Claims Group's June 28, 1990, settlement denying waiver under 10 U.S.C. Sec. 2774 of overpayment of Aviation Career Incentive Pay (ACIP) made to him. For the reasons set forth below, we affirm the Claims Group's decision and deny waiver.

Commander Powell was injured while ejecting from an aircraft aboard the USS Enterprise on July 13, 1986. In accordance with applicable regulations, he continued to receive ACIP after his injury for 180 days. (Department of Defense Pay and Allowances Manual (DODPM) Paragraphs 20126, 21030.) He continued to receive the ACIP after the grace period until he was disqualified for aviation service in April 1988. At that time the Navy informed him that he had been erroneously paid ACIP from January 1987 and was indebted in the amount of $4,660.02. The debt was later determined to be $4,533.96.

In denying the waiver, the Claims Group pointed out that Commander Powell had

not performed flight duties during this time and that there was no indication that he questioned his entitlement to ACIP. /2/ They held that he was therefore at least partially at "fault" in the matter precluding waiver of the debt. In his request for reconsideration, Commander Powell states he did question his entitlement and claims that he was not at fault in the matter.

Commander Powell notes that he was selected for a flight command in October 1986 despite his nonflight status. He originally argued that he believed he had been entitled to ACIP since he had received orders which "involved flying" during the period after January 1987. He also stated that "disbursing was contacted" regarding his ACIP and that a meeting was held in January 1987 with his local disbursing officer. He states that he was offered no guidance by disbursing personnel who deferred to the commanding officer of the Naval hospital who recommended that there be no change in the flight pay status.

Contrary to Commander Powell's statements that he was unaware that he should not have been receiving ACIP, the position presented by the Navy is that members are aware of flying status requirements and whether qualifications are met for each month and that Commander Powell had not met the necessary flight requirements. If Commander Powell was unsure about his qualification and right to receive the ACIP he should have pursued the matter to verify his entitlement to ACIP. Additionally, the Navy stated that Commander Powell was aware that he had not had a flight physical following his accident to determine his qualification for aviation service, and could not have reasonably continued to accept ACIP. Commander Powell had the responsibility to question the appropriate officials. For these reasons, the Navy denied waiver of the overpayment.

Section 2774 of title 10 of the U.S.C. Sec. provides that the Comptroller General or the Secretary concerned may not exercise his authority under this section to waive any claim if in his opinion there exists any indication of fault, fraud, misrepresentation or lack of good faith on the part of the member. The word "fault" as used in section 2774 has been interpreted by this Office as including more than a proven overt act or omission by the member. Thus, fault is considered to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected.

It is our view that the denial of waiver by the Navy and our Claims Group was proper, since Commander Powell knew or should have known that, at best, his entitlement to ACIP was questionable. While there was no official disqualification of his flight status until April 1988, the fact remains that Commander Powell did not meet flight requirements during this time. Flight requirements for monthly ACIP are set forth in DOD paragraph 20126. As noted by the Navy, while ACIP regulations are complex, aviators are aware of the flight qualifications and whether or not their minimum requirements have been met.

Also, as noted, Commander Powell knew enough about the ACIP restrictions after his injury to meet with Navy officials at the time the 180-day grace period expired, regarding whether or not he was eligible to continue to receive ACIP. When the local disbursing officer was not able to tell him that he was entitled to ACIP, he should have taken further action to resolve the matter. In addition, since he was medically incapacitated for aviation duty and the medical officials did not change his status at that time, he should have known that continued receipt of the ACIP was questionable.

Accordingly it is our view that in light of the facts and Commander Powell's knowledge and experience, he should have known that his continued entitlement to ACIP was in question and pursued the matter. Since he did not, he is not without "fault" with regard to the erroneous payments. The denial of waiver by the Navy and our Claims Group is sustained.

Member of the Navy who was medically incapacitated for aviation duty and continued to receive Aviation Career Incentive Pay (ACIP) after the 180 day grace period had elapsed should have known that his continued entitlement was doubtful and should have taken action to have the matter resolved. Therefore, waiver is denied.

Director, Claims Group/GGD - Sharon S. Green

General Counsel - James F. Hinchman

Commander James K. Powell, USN (B-241802; Z-2903845) Returned herewith is your file Z-2903845, and our decision, Commander James K. Powell, USN, B-241802, dated today, sustaining your denial of waiver.

The Honorable Al Swift

Member, United States

House of Representatives

This refers to your letter of October 15, 1990 in which you request information regarding the request for waiver of Commander James Powell.

Enclosed you will find our decision Commander James R. Powell, USN, B-241802, of today, denying Commander Powell's request for waiver of overpayments of Aviation Career Incentive Payment. In view of the information provided to this Office we were unable to conclude that he was without fault in the matter and therefore waiver must be denied.

We trust this serves the purpose of your inquiry.

/1/ Mr. Paniagua has been alternate imprest fund cashier since January 1, 1979. At the time of the loss, accountability for the imprest fund was turned over to him because the principal cashier retired and the District Office was seeking a replacement.

/2/ We note that there is no evidence in the record before us that Commander Powell had met the flight requirements during this time period. Commander Powell states that his orders did include flying, but it is not clear whether he met flight requirements.