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B-241880, Aug 14, 1991, Office of General Counsel

Number: B-241880

Date: 1991-08-14

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Disbursing officers - Relief - Illegal/improper payments - Fraud DIGEST: Relief is granted to Finance Officer who documented that he had in place at the time of the improper payments at issue an adequate system of procedures and controls to safeguard the funds in his care, and to the cashiers who followed these procedures. The improper payments resulted from criminal activity that even an adequate and effectively supervised system cannot always prevent.

Colonel Garry D. Foster:

Finance Corps, Chief of Staff

Department of the Army

U.S. Army Finance and Accounting Center

Colonel Foster:

This letter responds to your request that we relieve Major D. J. Wotring, Finance Officer, Disbursing Station Symbol Number 5053, U.S. Army Soldier Support Center, Fort Benjamin Harrison, Indianapolis, Indiana 46216, from liability for six improper payments totalling $31,813.60. For the reasons stated below, we grant relief to Major Wotring. We also relieve the cashiers, although not identified in your submission, who actually made the improper payments.

The improper payments in this case resulted from a fraudulent scheme carried out by Specialist 4 (SP4) Phil W. Powell, Jr., Specialist (SP) Tony J. Brown, Mr. Cary W. Brown (former soldier and brother of Specialist Tony J. Brown), Specialist (SP) Robert D. Verhaaren, Mr. Tracy C. Cox, civilian, and Ms. June Terrel, civilian. The scheme involved presenting false permanent change of station (PCS) orders to the Transportation Office for the movement of nonexistent mobile homes. SP4 Tony Brown had been issued PCS orders in February 1988 by Fort Benjamin Harrison and these orders were apparently used to prepare the fraudulent documents.

An investigation into the scheme by the Criminal Investigation Division (CID) was initiated after SP4 Powell requested an advance payment of $5,468.80 from the Transportation Office on December 8, 1988. During the processing of SP4 Powell's orders, the Finance and Accounting Office found that Powell had received in September 1988 an advance payment of $5,115.60 for movement of a mobile home. The Finance and Accounting Office's research into this matter

revealed that the PCS orders were false.

CID's subsequent investigation uncovered the extent of the criminal conspiracy. Specifically, the investigation disclosed that SP Brown had used false documentation to obtain one advance payment of $1,109.00 on March 3, 1988 and a second payment on August 1, 1988 in the amount of $5,167.00. Mr. Cary Brown submitted fraudulent PCS orders dated February 24, 1988, and on August 22, 1988, he received $5,068.00. SP Verhaaren submitted fraudulent PCS orders dated February 28, 1988, and he received $5,167.40 on October 27, 1988. Mr. Cox submitted fraudulent PCS orders dated July 29, 1988, and he received $5,019.20 on December 5, 1988. Ms. Terrell submitted fraudulent PCS orders dated July 27, 1988, and on November 24, 1988 she received $5,167.40.

On March 27, 1989, SP4 Powell was tried and convicted by General Court Martial for his wrongful acts. SP Verhaaren was also found guilty by General Court Martial. The Commander's Report of Action is pending against SP Tony Brown. The Collections Division is pursuing collection action against SPs Powell, Verhaaren, and Tony J. Brown in accord with the Federal Claims Collection Standards. Prosecutive action pertaining to Mr. Cary Brown, Mr. Cox, and Ms. Terrell, the three civilians involved in the conspiracy, is being handled by the U.S. Secret Service.

As the Finance Officer and supervisory disbursing official, Major Wotring is liable for the improper payments in this case. The cashiers who made the improper payments are also liable as disbursing officials for the amount of the improper payments, and consequently, we address their liability even though you did not request that we relieve them. This Office has authority under 31 U.S.C. Sec. 3527(c) to relieve a disbursing officer from liability for improper payments if we determine that the payments were not the result of bad faith or 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-240654, Feb. 6, 1991; 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.

The supporting documents establish that Major Wotring implemented and maintained an adequate system of controls over travel claims procedures, and that the cashiers followed these procedures. Moreover, there is no indication in the record of inadequate supervision. B-224832, July 2, 1987; B-213824, July 13, 1987. In this case, the improper payments were apparently the result of skillfully executed criminal activity that even an adequate and effectively supervised system cannot always prevent. B-240280, May 22, 1991; B-232575, Nov. 8, 1990.

Accordingly, since there is no indication of bad faith or lack of due care on the part of Major Wotring or the cashiers, we grant relief to them from liability for the loss.