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B-244723 October 29, 1991

Number: B-244723

Date: 1991-10-29

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William L. Kendig Director of Financial Management U.S. Department of the Interior Washington, D.C. 20240

Dear Mr. Kendig:

This letter is in response to your request that we relieve Ms. Francis Phillips, impress fund cashier at the Fish and Wildlife Service field office in Jackson, Mississippi, from liability due to a forced entry and theft of $1,098 in cash. For the following reasons, we grant relief.

According to the record, between the close of business Friday, March 29, 1991 and Saturday, March 30, 1991, the Jackson office was burglarized and various items were stolen including a safe that contained the cash. The safe was later found badly damaged and the cash was not in the safe. Ms. Phillips claims to have locked the safe before the close of business on Friday, March 29, 1991. Two suspects were apprehended for the burglary and one has been convicted and imprisoned for the crime. The other, we understand, is presently a fugitive from justice. The cash was never recovered.

Under 31 U.S.C. Sec. 3527(a) (1988), this Office has the statutory authority to relieve accountable officers from liability when we concur with an agency's determination that the loss occurred during the discharge of official duties and was not the result of bad faith or lack of reasonable care by the officer. Any time a physical loss of funds occurs there arises a rebuttable presumption of negligence on the part of an accountable officer. B-237420, Dec. 8, 1989. However, when evidence shows that a forcible entry and theft occurred and an investigation reveals no connection between the accountable officer and the burglary, the presumption of negligence is rebutted and we have granted relief to the accountable officer. Id. (armed holdup of VA cashier); B-230796, Apr. 8, 1988 (forced opening of safe by inmates at Oakdale detention facility).

Although you did not make the requisite determination that the loss occurred while Ms. Phillips was acting in the discharge of her official duties, recital of the facts makes it clear this was your conclusion. See, e.g., B-203726, July 10, 1981.

You have made the requisite administrative determination that the loss of funds occurred through no fault or negligence on the part of Ms. Phillips. Since evidence in the record shows that Ms. Phillips was not implicated in the crime or aided the perpetrator(s), we agree with your administrative conclusion that the loss was not the result of her fault or negligence. We understand that

appropriate collection action is being pursued against the suspects mentioned above. Accordingly, we grant relief to Ms. Phillips in the amount of $1,098.00. The loss may be changed to the proper appropriation in accordance with 31 U.S.C. Sec. 3527.

Sincerely yours,

Gary L. Kepplinger Associate General Counsel