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B-245127 September 18, 1991

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DIGEST

Captain Dennis F. McCoy Assistant Judge Advocate General (Civil Law) Department of the Navy Office of the Judge Advocate General 200 Stovall Street Alexandria, Virginia 22332-2400

Dear Captain McCoy:

This letter responds co your request that we relieve Gunnery Sergeant Randall S. Schumacher, agent-cashier at the Marine Corps Aviation Support Group 90, Naval Air Station Memphis, from liability for an improper payment of $377.00. For the reasons stated below, we grant relief to Sergeant Schumacher. We also grant relief o Captain Kenneth J. Knotts in whose name the account was officially held.

The improper payment occurred on October 30, 1989, when Sergeant Schumacher paid a transient/reaccession payment of $377 to an individual posing as marine reservist Timothy L. Jackson. The imposter produced all supporting documentation and his military identification card. In November of 1989, the Marine Corps Finance Center notified the Memphis disbursing office that the social security number used by the impostor was Incorrect. A search of the Marine Corps personnel roster did rot locate a Timothy L. Jackson with the same social security as that used by the importer. In March of 1990 it was discovered by the disbursing office that the real Timothy L. Jackson had a different social security number /1/ and that at the time of the improper payment he was attending school at Camp Lejeune, North Carolina. The disbursing office immediately contacted the Naval Investigative Service (NIS) to report the erroneous payment and requested a formal investigation. The NIS, however, decided that further investigation was unwarranted because the fraud trail was "cold". Since the identity of the person who committed the fraud has not been established, the Marine Corps has not been able to initiate any collection action other than to formally investigate the matter.

In cases such as these, both the person in whose name the account is officially held, Captain Knotts, and the cashier who made the payment are liable as disbursing officials for the amount of the improper payment. /2/ This Office has authority under 31 U.S.C. Sec. 3527(c) to relieve a disbursing official from liability for a deficiency resulting from an improper payment if we determine that the payment was not the result of bad faith or lack of reasonable care by the disbursing official. B-240280, May 22, 1991. We have granted relief to a supervisory disbursing officer upon a showing that he properly supervised his

subordinates by maintaining an adequate system of procedures and controls to safeguard the funds, and took steps to ensure the system's implementation and effectiveness. B-240440, Mar. 27, 1991; B-232575, Nov. 8, 1990. The good faith and reasonable care of the cashier who made the payment can be shown by evidence that he complied with established procedures and that nothing occurred which should have made him suspicious of the fraud. B-229827, Jan. 14, 1988.

The supporting documents establish that Captain Knotts maintained an adequate system of controls over transient payments. These controls included requirements that original orders be presented and that the cashier verify the person receiving cash by positively identifying that person against the photo on his/her military identification card. See Standard Operating Procedure No. 3, Section l(b) (in effect at the time of the improper payment). Another precaution required giving the pay record and original orders to an auditor for verification. Further precautions and procedures were recommended by She U.S. Marine Corps investigating officer.

The supporting documents also indicate that Gunnery Sergeant Schumacher followed these established procedures and that there was no reason whatsoever that he should have been suspicious of fraud. The improper payment was apparently the result of skillfully executed criminal activity that even an adequately and effectively supervised system cannot always prevent. See, e.g., 3-240280, May 22, 1991; B-240654, Feb. 6, 1991. Since there is no indication that the improper payment was the proximate result of bad faith on lack of reasonable care, relief is granted to Captain Knotts and Gunnery Sergeant Schumacher.

Sincerely yours,

Gary L. Kepplinger Associate General Counsel

1. The social security number used by the imposter was traced to a Teresa M. Butts a resident of the State of Washington. A U.S. Marine Corps investigation determined that neither Mr. Jackson nor Ms. Butts were involved in the improper payment.

2. Thus, we address he liability of the disbursing officer even though you did not request that he be relieved.