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B-245586, Nov 12, 1991, Office of General Counsel

Number: B-245586

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DIGEST: Relief is granted Department of the Treasury disbursing official under 31 U.S.C. Sec. 3527 for a duplicate check overpayment. The overpayment occurred after 392,000 checks were reissued because of improper processing. One original check was delivered to the payee rather then shredded. The overpayment was not the result of bad faith, an adequate system of procedures and controls was maintained, and diligent collection actions were taken.

Gerald Murphy, Fiscal Assistant Secretary, U.S. Department of the Treasury:

This responds to your September 7, 1990, request that we relieve Beverly A. Robinson, Director of the Chicago Regional Financial Center, Financial Management Service (FMS), Department of the Treasury, under 31 U.S.C. Sec. 3527(c) (1988) from her personal liability for the improper payment of $1,158 to Sandra Hall for the children of Ted A. Hall, deceased. The improper payment occurred when Ms. Hall was inadvertently issued original and replacement checks for $1,158. For the following reasons, we grant relief.

On February 14, 1989, officials of the Financial Center discovered an error in the processing of about 392,000 checks. The machine that wraps envelopes around the checks was misaligned, obscuring the names and addresses of the check payees which should have shown through the envelope windows. Financial Center officials determined that removing the 392,000 checks from their envelopes and rewrapping them would cause the checks to be delivered late. Therefore, the officials decided to reissue and process the 392,000 checks, and to void (and shred) the original checks. The original $1,158 check issued to Ms. Hall was inadvertently delivered rather than shredded.

Disbursing officers are personally liable for deficiencies in their accounts resulting from illegal, improper, or incorrect payments. However, under 31 U.S.C. Sec. 3527(c) (1988), this Office may relieve a disbursing officer of his liability when the record indicates that the disbursing officer acted within the bounds of reasonable care as established by applicable regulations and that there is no evidence of bad faith on the part of the disbursing officer. Where, as here, the incorrect payments were made by the disbursing officer's subordinates, we generally will find that the disbursing officer acted with reasonable care for purposes of 31 U.S.C. Sec. 3527(c) upon a showing that the officer properly supervised his employees.

"Proper supervision is demonstrated by evidence that the supervisor maintained an adequate system of procedures and controls to avoid errors and that appropriate steps were taken to ensure the system's implementation and

effectiveness."

62 Comp.Gen. 476 at 480 (1983), B-237082 et al., May 8, 1990. This evidence must be sufficient for us to determine independently whether adequate procedures were in place. See B-235037, Sept. 18, 1989.

Your submission included a copy of the applicable operating procedures in effect at the time the overpayment occurred. The record reflects that the employees involved had been trained and were aware of applicable procedures. Further, supervisors were available to assist the employees and periodic checks were conducted. Additionally, the record reflects that the checks to be shredded were handled and accounted for in accordance with the procedures. Because Ms. Robinson appears to have maintained and implemented an adequate system of procedures and controls, we conclude that the overpayment was not the result of a lack of reasonable care by Ms. Robinson. We also conclude that there is no evidence that Ms. Robinson acted in bad faith.

Finally, we have stated that we will exercise our discretion under section 3527(c) to deny agency requests for relief unless an agency demonstrates that it pursued collection of the erroneous payment in compliance with the Federal Claims Collection Standards, 4 C.F.R. Sec. Parts 101-105 (1990); 62 Comp.Gen. 476. We find that the agency substantially complied with the Federal Claims Collection Standards by repeatedly attempting to contact the payee and reclaim the erroneous payment. Accordingly, we grant Ms. Robinson relief for the $1,158 overpayment.

In B-243749, Oct. 22, 1991, we delegated to the FMS the authority to relieve accountable officers from liability for certain types of losses not exceeding $3,000. Losses resulting from mechanical or clerical errors during the check issuance process were included in that delegation.

The request to relieve Ms. Robinson therefore is the type of case which would now fall under the delegation.