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B-246369, Feb 1, 1992

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David L. Gagermeier, Assistant General Counsel Defense Finance and Accounting Service:

This responds to your October 9, 1991, request that we relieve Major R.R. Donoho, Finance Corps, Finance and Accounting Office, U.S. Army Transportation Center, Fort Eustis, Virginia, under 31 U.S.C. Sec. 3527(c) from his personal liability for the improper payment of a $1,318.56 check payable to Mr. Carlos D. Cotton. The loss resulted when the payee negotiated both the original and a recertified check. The amount of relief requested is $1,091.07 because $227.49 was withheld from Mr. Cotton's pay and applied to the debt. For the reasons stated below, we grant relief.

BACKGROUND

On March 20, 1990, the Army discharged Mr. Cotton. On the same date, Major Donoho issued a United States Treasury check to Mr. Cotton for his military final separation pay which Mr. Cotton was to pick up at the Finance and Accounting Office (FAO) cashier window. However, the Army inadvertently sent the check to Mr. Cotton's Florida home.

Under the Army disbursing procedures, a finance officer is required to have the payee or claimant submit in writing and sign a statement of nonreceipt of an original check or to complete and sign a DA Form 3037, "Statement of Claimant Requesting Stoppage of Payment on Check," before issuing a recertified check. Army Regulation 37.103, paragraph 5-46, January 4, 1988. Mr. Cotton signed the DA Form 3037 as well as an appendix in which he acknowledged in writing his responsibility to return the original check to the disbursing station. Mr. Cotton stated that he did not have enough money to travel to Florida and, requested that a stop payment be made on the original check and a substitute check be issued. After Mr. Cotton signed the Form 3037, Major Donoho issued a recertified check made payable to Mr. Cotton on March 21, for $1,318.56.

In accordance with office procedure, Major Donoho prepared a SF 1184 (unavailable check cancellation) requesting a status on the original check. Disbursing officers may issue a replacement payment when the SF 1184 is prepared if the payee needs an immediate replacement and the risk of loss from overpayment to the payee is low.

On July 2, 1990, Treasury notified the finance office that the original check had been negotiated. Thereafter, Major Donoho's successor, Captain Leonard sent for the status of the recertified check and also sent Mr. Cotton two collection

letters on July 19 and August 30, 1990, which he never answered. On October 24, 1990, Treasury advised the finance office that the recertified check also had been negotiated.

Discussion

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 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, and that a diligent effort was made to collect the overpayment. 62 Comp.Gen. 91 (1982)] B-225932, Mar. 27, 1987.

In this case, there is no suggestion of bad faith on the part of Major Donoho or his successor. Therefore, the question is whether Major Donoho exercised reasonable care for purposes of 31 U.S.C. Sec. 3527(c).

The Army's regulations regarding successor checks provide that after reviewing the case, the FAO may authorize an immediate payment or opt to delay recertification until the status of the original check has been received from the U.S. Treasury. See DACA-FAP-B (Letter of Instruction concerning recertification of checks disbursing and accounting procedures). It is a matter of the disbursing officer's judgment when a successor check will be issued.

We do not fault the accountable officer's decision to authorize an immediate recertification under the circumstances. At the time of the March 21 recertification, Major Donoho knew that the original check mailed to Florida on March 20 could not have been negotiated. Further, Major Donoho had no reason to suspect that the payee would negotiate both checks and that issuance of the successor check would not be in the Army's best interest. Finally, Mr. Donoho followed the applicable procedures for issuing successor checks. Accordingly, we find that the accountable officer exercised reasonable care for purposes of 31 U.S.C. Sec.3527(c). See 70 Comp.Gen. 9 (1990).

Major Donoho's successor, Captain Leonard sent Mr. Cotton two collection letters on July 19 and August 30, 1990, which were received but not answered. Captain Leonard subsequently forwarded the case to the Defense Finance and Accounting Service - Indianapolis Center's Accounting and Debt Management Operations and to the Office of General Counsel for further collection action. The record shows that Mr. Cotton was instructed to report for active military duty in February 1991 in support of Desert Storm. However, he was discharged in February 1991 based on medical unfitness for active duty. The disbursing office recognized that Mr. Cotton had an outstanding debt and withheld Mr. Cotton's pay of $227.49 for the interim duty and applied it to the debt. The disbursing office also requested Mr. Cotton to pay the remaining balance of $1,091.07. When no payment was made, and since Mr. Cotton was no longer in a pay status with the active Army, Army Reserve nor is he on the Army retired rolls, the disbursing office requested that the case be reopened for relief action. The record also states that the Accounting and Debt Management Operations division is pursuing collection action against Mr. Cotton in accordance with the Federal Claims Collection Act. We find that the actions taken constitute diligent effort to collect the overpayment. Accordingly, we grant Major Donoho relief for the $1,091.01 overpayment.

In B-244972, Oct. 22, 1991, we authorized the Secretary of Defense or his designee to process relief requests for Department of Defense disbursing officers for deficiencies in their accounts because of erroneous or improper payments in duplicate check cases where the amount involved does not exceed $3,000. Therefore, duplicate check cases involving requests for relief for an improper payment not exceeding $3,000 need not be submitted to our Office for relief action.