GAO

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Office of the General Counsel

B-271608

June 21, 1996

David J. Bechtol
Director for Field Support
Defense Finance and Accounting Service
Cleveland Center
1240 East Ninth Street
Cleveland, Ohio 44199-2056

Dear Mr. Bechtol:

This responds to your letter of March 20, 1996, concerning liability for $214,883.21 resulting from improper payments that appear to have been made between August 1993 and May 1994 at the U.S. Navy Personnel Support Activity Detachment (Detachment), Sigonella, Italy. Your letter characterizes the improper payments as (1) seventeen cases of dishonored checks, totalling $3,251.45, cashed by former Navy personnel, and (2) dishonored Italian lire checks, totalling $211,631.76, cashed by foreign nationals. Former Lt. Paul E. Sessions was the disbursing officer accountable for these funds when the improper payments were made. LTJG V.F. Milano is the disbursing officer currently responsible for this account; the amount of these improper payments is currently recorded as a deficiency in the account.

You request that we deny relief from liability to former Lieutenant Sessions, grant relief to LTJG Milano, and remove the $214,883.21 deficiency from the account. As explained below, we fully agree with your characterizations of the loss and of former Lieutenant Sessions' actions, and accordingly, deny relief to him. LTJG Milano is not an accountable officer with respect to the improper payments, and relief is therefore unnecessary. Moreover, under these circumstances, the Secretary of Defense is authorized under 31 U.S.C. § 3530 to make the necessary adjustments to this account to remove the deficiency.

We first address former Lieutenant Sessions' liability. At the time the dishonored checks were cashed by the Detachment's disbursing office, Lieutenant Sessions was the disbursing officer authorized to make payments from the Detachment's account, and in whose name the account was held. In response to questions raised about disbursing management at the Detachment, an Inventory Board was set up by the

Personnel Support Activity, Europe, to perform a cash count during an unannounced audit of all items in the possession of Lieutenant Sessions. The Inventory Board issued a cash verification report finding an indefinite number of dishonored checks.[1] You state in your letter that "[a]s a result of [the dishonored checks] and other major discrepancies in his accountability, Lieutenant Sessions was relieved for cause on June 3, 1994." On January 12, 1995, he was found guilty at a General Court Martial of four specifications of the Uniform Code of Military Justice, Article 92, three specifications of dereliction of duty, and one specification of an orders violation.

As the account's cognizant disbursing officer at the time the dishonored checks were cashed, Lieutenant Sessions is personally liable for the dishonored checks as improper payments from his account. B-261312, Feb. 5, 1995; B-161457, Oct. 30, 1969. This Office has authority under 31 U.S.C. § 3527 to relieve a disbursing officer from liability for improper payments if we determine that the payments were not the result of bad faith or a lack of reasonable care. B-261312, Feb. 2, 1995; B-246418, Feb. 3, 1992. In cases where a subordinate rather than the disbursing official actually disbursed the funds, we have granted relief to the supervisory disbursing officer upon a showing that the official properly supervised the subordinate, 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. The record shows that Lieutenant Sessions was the supervisory disbursing officer with regard to the improper payments at issue here.

In this regard, the Navy found that Lieutenant Sessions "did not exercise due care" as evidenced by his failure to follow prescribed procedures. Lieutenant Sessions failed to make timely deposit of the seventeen checks cashed by former Navy personnel, totalling $3,251.45, as required by volume 4, paragraph 04030403 of the Navy Comptroller Manual (Manual); he violated paragraphs 04030410.1 and 04190100 of the Manual by his failure to record the debit vouchers in the cashbook immediately upon receipt; and, he failed to pursue the established collection procedures outlined in paragraph 04031001. The Italian lire checks, totalling $211,631.76, were cashed by foreign nationals in direct violation of the check cashing procedures established in volume 5, paragraph 040103 of DOD's Financial Management Regulation. The cash verification report noted that Lieutenant Sessions "admittedly states that he was well aware of the contentious practice of cashing Italian lire checks."

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[1]The Naval Criminal Investigative Service and the Guardia Finanza are conducting an investigation into these dishonored checks.

We have no basis to question the Department's findings concerning Lieutenant Sessions' lack of good faith and failure to exercise reasonable care. In cases such as this, where the Department has fully investigated the facts surrounding the improper payments and the resulting loss of federal funds and court-martialed the disbursing officer for his actions, we do not perform an independent investigation of the facts, but defer to the findings of the agency as represented in the record submitted to us.[2] Relief from liability, therefore, is denied Lieutenant Sessions.

The record indicates that Gianni Ferrante, an Italian agent cashier, cashed many, if not all, of the checks of foreign nationals that were subsequently dishonored. As such, he is jointly and severally liable for those improper payments. B-248532, Oct. 26, 1992. There is no basis in the record from which we can determine whether relief is available to him. You should consider whether relief is appropriate, and if not, take collection action against him.[3]

With respect to LTJG Milano's liability for this loss, we note that he was not the accountable officer for this account when the loss occurred. LTJG Milano did not assume responsibility for the account until Lieutenant Sessions was released from his duties. He, therefore, is not liable for the loss, and it is unnecessary to grant him relief. See 62 Comp. Gen. 476 (1983).

You also request that we remove the deficiency in the amount of $214,883.21 from the account. Under 31 U.S.C. § 3530, government agencies are authorized to charge current operating appropriations with amounts necessary to restore deficiencies in accounts resulting from the fault or negligence of accountable officers when the head of the agency determines that the loss cannot be recovered from the accountable officer or any other party liable for the loss. See GAO, Policy and Procedures Manual for Guidance of Federal Agencies, tit. 7, § 8.14D (1993). The Department has determined that the loss cannot be collected from former Lieutenant Sessions. The Department should also determine whether any collection action can be taken against Mr. Ferrante. The Department can then make the necessary adjustments to the account without further involvement by our Office. We stress that under the provisions of 31 U.S.C. § 3530(b), the determination that

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[2]Cf. B-211660, Dec. 15, 1983. (The record submitted by the agency was conclusory; it did not include any explanation for the conclusion. Although we denied relief, we indicated a willingness to reconsider the matter upon the agency's presentation of supporting evidence.)

[3]In this regard, the record indicates that Mr. Ferrante was dismissed in August, 1994, and is facing charges in an Italian court for illegally cashing checks.

amounts remain uncollectible and are subsequently adjusted does not affect the personal financial liability of the disbursing officers for the loss, should collection action become feasible in the future. B-235405, Mar. 19, 1990.

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel

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1. Where a military department fully investigates the facts surrounding an improper payment and court-martials the disbursing officer for the actions related to the improper payments, we have no basis to question the department's findings concerning the officer's good faith and exercise of reasonable care.

2. Under 31 U.S.C. § 3530, government agencies are authorized to charge current operating appropriations with amounts necessary to restore deficiencies in accounts resulting from the fault or negligence of accountable officers when the head of the agency determines that the loss cannot be recovered from the accountable officer or any other party liable for the loss.