



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

Gen
ms. Yudenfriend

13769

B-188733

May 19, 1980

[Liability for loss of Imprest Funds]

Ms. Jo Butcher
Columbia Basin Civilian
Conservation Center
2402 24th Street
Moses Lake, Washington 98837

Dear Ms. Butcher:

In your recent letter to our Office you protested our decision rendered on March 29, 1979, B-188733, and our January 17, 1980 reconsideration of that decision which held that you were liable for the loss of \$1000 of Department of Labor imprest funds. The funds were stolen while they were in your custody as imprest cashier. The person who was actually responsible for the theft admitted his guilt and attempted to make restitution but died without repaying the money.

Although both you and your alternate cashier, Julie Grammer, maintain that the safe was locked, evidence in the record indicates that it was not properly secured at the time of the theft. The thief apparently turned the dial of the safe in one direction until it clicked, tried the latch and removed the money when the safe opened. Presumably, but for the improperly secured safe, the funds would not have been stolen. Because it was your responsibility to make certain that the safe was locked, you were charged with the loss. You base your appeal on the following three factors: 1) your excellent record as a cashier for eleven and a half years; 2) your firm conviction that the safe was locked during the time that the theft apparently took place; and 3), an additional statement made by Ms. Grammer which asserts that the theft took place at an earlier time. The first two factors were considered in our earlier decisions. Because you do not present any new evidence with respect to these factors, we cannot do anything more than explain to you once again that as a Government employee charged with handling public funds, you are required to exercise the highest degree of care with respect to those funds. Regardless of your past record, if there is a loss you are presumed to have been negligent unless you can rebut this presumption with specific, complete and convincing evidence. Your statement that the safe was locked is the only evidence you presented to rebut this presumption.

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In situations where there is no physical type of evidence of forcible entry into the safe, and the loss which occurs is unexplained, we cannot tell whether a thief gained access to the safe by obtaining the combination or by twirling the dial of an improperly secured safe. In such a case, the unrefuted evidence presented by the accountable officer which states that he or she locked the safe prior to the loss might be sufficient to rebut the presumption of the accountable officer's negligence. This was the situation that existed in the case of Mr. Gwin which you mentioned in your letter.

In your particular situation, the loss is not unexplained. We know that a theft occurred and the evidence indicates that the person responsible for the theft opened the safe in a non-forcible manner and without knowledge of the combination. The thief merely turned the dial and opened the safe. This is based not only on statements made by the thief but also on a statement by a locksmith who had worked on this safe and others at your office for approximately ten years. The locksmith indicated that the safe had not been tampered with. He also stated that in order to open such a safe from a full locked position without knowing the combination and without force, very sophisticated knowledge and some equipment would be needed.

This evidence refutes your statement that you locked the safe prior to the theft. Thus, the presumption of your negligence has not been effectively rebutted and you were properly charged with the loss of the funds.

Ms. Grammer's additional statement presents a new theory. She maintains that instead of taking place over the weekend, as is stated in our decisions, the theft might really have occurred on the Friday before the weekend. Ms. Grammer implies that this is significant because if the theft took place during the workday, the dial on the safe would have been set in a partial combination position which is referred to as a "day-lock" and could have been opened by merely turning the dial once until it clicked and pulling the latch. Under this theory, she concludes that you would not have been negligent for failing to lock the safe and should not have been charged with the loss.

Ms. Grammer's theory assumes that the use of the day-lock in this case was proper. We do not agree with such an assumption. The safe was located in the women's restroom. You and Ms. Grammer had offices elsewhere and did not watch the safe at all times. Although a key was required to enter the restroom, the use of that area was presumably not restricted to persons authorized access to the safe. Thus, any person entering the restroom could have turned the dial and opened the safe since it was daily set in a partial combination. Therefore, the use of the day lock was negligent. If, as Ms. Grammer suggests, the money was stolen under these circumstances, you would have also been charged with the loss because the safe had not been properly locked.

B-188733

Unless you can present us with new evidence which will rebut the presumption of your negligence, we are unable to grant you relief. We hope that this explanation has been helpful to you.

Sincerely yours,

Harry R. Van Cleave

for Milton J. Socolar
General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO: B-188733

May 19, 1980

The Honorable Warren G. Magnuson
United States Senate

Dear Senator Magnuson:

This is in response to your inquiry on behalf of your constituent, Jo Butcher. Ms. Butcher has asked your assistance in appealing the initial decision of our Office that she is liable for the loss of \$1,000 of Department of Labor funds which were stolen while in her custody as imprest cashier. We also reaffirmed that decision upon reconsideration at the request of Representative Mike McCormack on January 17, 1980. A copy of our reconsideration is enclosed.

Some days before we received your communication, we received a letter from Ms. Butcher directly. She provided no new evidence or arguments to justify a reversal of our previous findings that she must be held responsible for the imprest fund loss.

We are sending you our response to Ms. Butcher in duplicate and returning the enclosures to your letter, in accordance with your request. We are sorry we could not be of assistance to your constituent.

Sincerely yours,

for *Murray R. Van Cleave*
Milton J. Socolar
General Counsel

Enclosures