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United States General Accounting Office
Washington, DC 20548

B-287043

May 29, 2001

Mr. Ronald L. Miller
Chairperson
Committee of Inquiry into Fiscal Irregularities
Department of State

Subject: Relief of Accountable Officers - American Embassy, Harare, Zimbabwe

Dear Mr. Miller:

This responds to your request of December 20, 2000 that we relieve Ms. Gwendolyn A. Sawyer at the American Embassy in Harare, Zimbabwe, under 31 U.S.C. § 3528, for certifying improper payments in the amount of 8,811.82 Zimbabwean dollars (equivalent U.S. $505.94) resulting from fraudulent activity. We requested additional information from you on January 23, 2001, including information to clarify when the fraud was discovered, which we received on March 13, 2001. Because the 3-year limitation period expired at the end of February 2001, 31 U.S.C. § 3526(c), Ms. Sawyer, as well as the other accountable officers identified below, are relieved by operation of law. In our examination of the record you submitted, however, we find no evidence that the certifying officers, exercising reasonable care, could have detected the fraud, nor is there any indication that the improper payments were the result of bad faith on the part of the cashier disbursing the funds.

The American Embassy in Harare reported fraudulent payments of approximately 80,000 Zimbabwean dollars (about U.S. $5,000) during the period beginning in January 1996 and ending in February 1998. The improper payments occurred as the result of the fraudulent activities of two local General Services Office (GSO) employees, Shingirayi Kanenungo and Kuku Nsingo, both electricians, who colluded with a vendor to falsify petty cash receipts.

The petty cash procedure at the American Embassy consisted of the following steps: (1) an employee generally received a cash advance from the cashier based on the approval of a purchase request by the General Services Officer; (2) the employee would purchase the goods; (3) the employee would present the invoice to the Facilities Maintenance Supervisor, who would sign as the receiving officer; the embassy's procedures did not require that the receiving officer visually ascertain that the goods had been received prior to approval of the invoice; (4) the employee presented the approved invoice to the Class B cashier; and (5) the cashier batched the invoices on which he or she had made payments and provided the batch to the certifying officer for signature. The certifying officer's signature authorized a payment to reimburse the cashier's imprest fund.

The GSO employees apparently would submit an inflated purchase request to the General Services Officer for approval and then to the cashier for an advance payment. The vendor would sell a low-cost item or fewer items than specified in the purchase request to the two local GSO employees and only complete the vendor's copy of the receipt. The original receipt, given to the GSO employees, would be left blank for the GSO employees to complete with a higher price and quantity than paid to the vendor. The Facilities Maintenance Supervisor would approve the invoice, and the GSO employees would submit the original copy of the receipt, which they had altered, to the post cashier.

The fraudulent activity was discovered when the Facilities Maintenance Supervisor saw a stock of security lights in the warehouse and remembered that he had just signed a petty cash receipt for the purchase of the same type of lights. The GSO employees had claimed that the warehouse was out of stock.

The regional security office conducted an investigation and found that 125 altered receipts had been submitted to the approving officer and then to the Class B cashier for reimbursement during a period of at least 2 years. The regional security officer reported the fraud to the American Embassy in Harare on February 11, 1998. Both GSO employees admitted to falsifying the receipts. The embassy reported the fraud to the local police and requested that theft charges be filed against the two GSO employees.

Pursuant to 31 U.S.C. § 3526(c), the Comptroller General of the United States is authorized to settle accounts of accountable officers and to grant or deny relief "within 3 years after the date the Comptroller General receives the account." B-248555, June 3, 1992. In general, the 3-year limitation period begins to run when an agency's accounts are substantially complete for audit purposes, i.e., when the various documents supporting the applicable statement of accountability are available to the agency and the General Accounting Office for audit. B-239802, April 3, 1991. For losses caused by embezzlement, fraud, or other criminal activity, however, the 3-year period does not begin until the loss has been discovered and reported to the appropriate agency officials. 70 Comp. Gen. 616 (1991). In this case, the regional security officer who investigated the fraud reported it to the American Embassy in Harare on February 11, 1998; therefore, the 3-year limitation period expired in February 2001. Once the 3-year period has expired the account in question is considered settled by operation of law, and the accountable officers are no longer liable for any deficiency in the account. B-248555, June 3, 1992.

In your December 20 letter, you requested relief only for Ms. Sawyer. However, three certifying officers in addition to Ms. Sawyer certified payments during the period in which the fraudulent activity occurred. Ismail Asmal certified payments during January 1996 through August 1997, Barbara Hughes certified payments in April 1996, Stephen Nolan certified payments from February 1996 through October 1996, and Gwendolyn Sawyer certified payments from April 1997 through October 1998. The Class B cashier who made the improper payment also is liable as a disbursing officer for the amount of the improper payments. See B-241880, August 14, 1991. An accountable officer is any government officer or employee who by reason of his employment is responsible for or has custody of government funds. 72 Comp. Gen. 49, 50 (1992); 62 Comp. Gen. 476, 479 (1983). Such persons include certifying officers, disbursing officers, and cashiers, to name a few. B-248376, January 11, 1993. When the 3-year limitation period expired in February 2001, not only Ms. Sawyer, but the three additional certifying officers and the cashier were relieved as a matter of law.

This Office has authority pursuant to 31 U.S.C. § 3528(b) to relieve a certifying officer from liability where certification was based on official records and the official did not know, and by reasonable diligence could not have discovered, the correct information. The record established that the officials who certified the improper payments, did not know of, and by reasonable diligence could not have discovered, the fraudulent activity. The four certifying officers in this situation relied on original receipts approved and receipted by the Facilities Maintenance Supervisor. The record indicates that they did not know, and by reasonable diligence and inquiry could not have discovered, that fraudulent petty cash vouchers had been submitted for reimbursement. In this regard, the certifying officers and the cashier satisfied the statutory standard for relief.

This Office has authority pursuant to 31 U.S.C. § 3527(c) to relieve a disbursing officer from liability for a deficiency resulting from an improper payment when the record indicates that agency personnel acted within the bounds of due care as established by applicable regulation and that there is no evidence of bad faith on the part of the accountable officer. 62 Comp. Gen. 476 (1983); B-213824, July 2, 1984. The record indicates that the cashier followed the prescribed procedures for disbursing funds. In addition, nothing in the record indicates the cashier should have been suspicious of the fraudulent receipts presented by the two GSO employees and there is no indication that the improper payments were the proximate result of bad faith or lack of reasonable care on the cashier's part.

Also, the record established that the embassy undertook diligent collection actions as specified by 31 U.S.C. § 3527(c) and 31 U.S.C. § 3528(b)(2). The post applied funds withheld from the employees before their dismissal to the amount they owed due to the fraudulent activity. After that, the loss totaled U.S. $1,740.59. The embassy determined, however, that it was unlikely that any additional funds could be recovered from the two employees, and it referred the case to the Department of Justice (DOJ) to request approval to terminate collection action. Mr. Kanenungo is deceased and local police are unable to locate Mr. Nsingo. On October 12, 2000, the DOJ approved termination of collection efforts.

The record shows that the embassy has taken corrective action in order to detect and prevent fraudulent activity in the future. Following the investigation of the fraud, the embassy reduced the use of petty cash purchases, and thus cash advances, by initiating blanket purchase orders with local vendors who bill the embassy directly. These changes likely will reduce any future use of advance payments. In addition, the embassy revised procedures by requiring approval of all petty cash receipts by an American supervisor and visual confirmation of the products purchased.

Finally, we would like to point out that the General Services Officer and the Facilities Maintenance Supervisor are not accountable officers. They were not responsible for nor did they have custody of government funds, therefore, they cannot be held personally liable for any negligent performance of their duties. If, however, the State Department determines that these employees acted negligently in the performance of their assigned duties, it may respond through either authorized disciplinary actions or its performance appraisal process. B-280764, May 4, 2000.

Sincerely yours,

/signed/
Gary L. Kepplinger
Managing Associate General Counsel

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The record indicates that the officials who certified improper payments resulting from fraudulent activity did not know of, and by reasonable diligence could not have discovered, the fraudulent activity, and there is nothing to suggest that the cashier who disbursed the funds should have been suspicious of the fraudulent nature of the transactions. Apart from the cashier's exercise of due care, since the 3-year limitation period, 31 U.S.C. § 3526(c), has expired the accountable officers' account is settled by operation of law. Accordingly, the officers have no liability for any deficiency in the account.