

B-255237

DIGEST

Former U.S. Marine Corps disbursing officer is relieved of liability pursuant to 31 U.S.C. § 3527(c) for the improper payment of both original and recertified checks. The disbursing officer followed the proper procedures in the issuance of the successor check; there is no indication of bad faith on the part of the disbursing official; and collection action was initiated in a timely and adequate manner.



Office of the General Counsel

B-255237

February 8, 1994

Mr. Gregory P. Bitz
Director
Defense Finance and Accounting Service
Kansas City Center
Kansas City, Missouri 64197-0001

Dear Mr. Bitz:

This responds to your September 30, 1993, request for relief of _____, U.S. Marine Corps, Retired, under 31 U.S.C. § 3527(c), from personal liability for the duplicate payment of \$3,723 to former Marine Staff Sergeant _____. _____ was a disbursing officer at the Defense Finance and Accounting Service (DFAS), Kansas City, when the payment was made. The cause of the duplicate payment was an administrative deficiency in DFAS' processing of returned canceled pay checks. For reasons set forth below, we grant relief.

BACKGROUND

On February 12, 1991, a military payroll check for \$3,723 in advance pay (original check) was issued by the disbursing office and mailed to _____. On February 28, 1991, the disbursing office received a telefaxed copy of a "Statement of Claimant" from _____, dated February 28, 1991, stating that he had not received the February 12 check and requesting a replacement for it.

The Department of the Navy requires disbursing officers to obtain a written "Statement of Claimant" from a payee alleging nonreceipt of an original check to support the issuance of a successor check. See Navy Comptroller's Manual (NAVCOMPTMAN), Vol. IV, chap. 4, sec. 6, para. 0602. The statement must contain a certification that the payee is entitled to the proceeds of only one check and that willful and knowing negotiation of both the original and successor checks is an act of fraud, carrying criminal and civil penalties. _____ written request for a successor check contained the required certification. On March 1, 1991, the disbursing office mailed a successor check to _____.

On March 1, 1991, the disbursing office also submitted a Standard Form (SF) 1184, "Unavailable Check Cancellation," to the U.S. Treasury to cancel the original check if it had not been negotiated. See NAVCOMPTMAN, Vol. IV, chap. 4, sec. 6, para. 0601. Treasury failed to respond to the initial SF 1184, leaving the disbursing office uncertain of the status of the original check. The disbursing office, therefore, resubmitted the SF 1184 to Treasury four more times over a 16-month period. Treasury finally responded on September 30, 1992, advising that the original check had been canceled.

A DFAS investigation determined that when the original check was canceled, it had been returned to DFAS' Centralized Disbursing Operations Office. DFAS credited the amount of the check to _____ pay account and included it in his April 1, 1991, paycheck which was directly deposited into his credit union account. Prior to that date, on March 5, 1991, _____ had negotiated the successor check and deposited the proceeds into his credit union account. These events resulted in the duplicate payment.

DISCUSSION

Disbursing officers are personally liable for deficiencies in their accounts resulting from illegal, improper, or incorrect payments. The duplicate payment of the same entitlement is considered an improper or illegal payment. NAVCOMPTMAN, Vol. IV, chap. 3, sec. 14, subsec. 1400, para. 3. Accord B-246369, Feb. 3, 1992. Under 31 U.S.C. § 3527(c), 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, 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. 70 Comp. Gen. 298, 299 (1991).

It appears from your submission that the disbursing officer acted with reasonable care in issuing the successor check to _____

The payee had signed a statement of nonreceipt of the original check containing the required certification. Also, the disbursing officer complied with Navy requirements by submitting a form SF 1184 to Treasury canceling the original check, and in the concurrent issuance of the successor check. Generally, disbursing officers are encouraged to delay issuing successor checks until Treasury has responded to the SF 1184 by providing a status report on the check cancellation. NAVCOMPTMAN, Vol. IV, chap. 4, sec. 6, para. 0603. Treasury, however, has authorized Navy disbursing officers to issue a successor check immediately where, as here, the payee is a military member and the original check was for payment of pay and allowances. Id.

There is no indication of bad faith on the part of the disbursing officer. The duplicate payment resulted because at the time the canceled original check was returned to DFAS, the collection division did not have any procedure in place which required, prior to crediting the payee's account, the verification of whether a successor check had been issued. We have been advised that the disbursing office was not aware, prior to this case, that their failure to verify whether a successor check had been issued presented the potential for overpayment. DFAS now manually performs this verification.

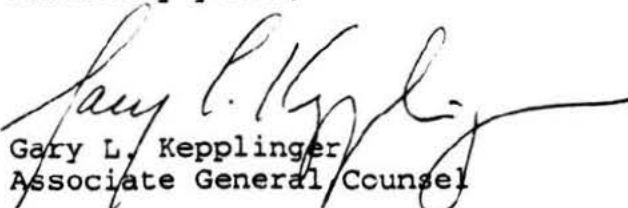
To satisfy the statutory requirement of diligent collection action, a disbursing officer must demonstrate the agency's compliance with the Federal Claims Collection Standards, 4 C.F.R. parts 101-105 (1993). 62 Comp. Gen. 476, 478-79 (1983). The Federal Claims Collection Standards require as an initial action that a demand letter be sent to the debtor which, among other things, establishes a due date for payment within 30 days of the date of the letter. 4 C.F.R. § 102.2. The regulations further require the agency to send a total of three progressively stronger written demands at intervals of no more than 30 days unless a response to the first or second demand indicates that further demands would be futile and the debtor's response does not require rebuttal. Id. The agency must refer a claim to the appropriate authority when its collection action proves unsuccessful. 4 C.F.R. § 105.1.

We find that the Marine Corps took timely and aggressive collection action that substantially complied with the Federal Claims Collection Standards. On October 16, 1992, a notification of indebtedness was mailed to requesting repayment of the \$3,723 that was paid in error. By this time, he had separated from the Marine Corps and DFAS was therefore unable to offset the debt against his pay. On November 10, 1992, a second letter was mailed to requesting repayment of the debt. On November 18, 1992, called the disbursing office. He admitted receiving and negotiating the successor check, but denied receiving the original check in his April 1, 1991 paycheck which was directly deposited into his credit union account. The disbursing office contacted his credit union which verified that it had credited the original check to account on April 1, 1991. A third letter of indebtedness was mailed to

on November 27, 1992, but the letter was returned by the U.S. Postal Service with a notation that he had moved and left no forwarding address. This case was referred to the DFAS Indebtedness Division for further collection efforts on behalf of the Marine Corps.

Accordingly, we grant relief.

Sincerely yours,



Gary L. Kepplinger
Associate General Counsel