



United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-247062

June 9, 1992

Captain Dennis F. McCoy  
Assistant Judge Advocate General  
Department of the Navy  
200 Stovall Street  
Alexandria, VA 22332-2400

RE: 7210 Ser 32515760

Dear Captain McCoy:

This responds to your request of December 13, 1991, that we relieve Ms. \_\_\_\_\_ of her personal liability for the improper payment of \$10,682.83 to Restorations of Tejas, Inc. (Restorations). For the reasons stated below, relief is granted.

The improper payment in this case resulted from Ms. \_\_\_\_\_ issuance of a successor or replacement check, dated September 12, 1989, based on Restoration's assertion that the original check, dated March 17, 1989, had been stolen. To support its claim, Restorations submitted TFS Form 1133 (Statement of the Claimant) to the Navy on June 28, 1989. Ms. \_\_\_\_\_ issued the replacement check after the Department of the Treasury, on August 8, 1989, authorized the Navy to issue the check. On January 25, 1991, Treasury informed the Navy that further investigation revealed that the person who cashed the original check, Mr. \_\_\_\_\_, was acting under authority of the corporation. The replacement check was, therefore, an improper payment.

Disbursing officers are personally liable for deficiencies in their accounts resulting from illegal, improper, or incorrect payments. B-238123, Feb. 27, 1991. However, under 31 U.S.C. § 3527(c) (1988), this Office may relieve a disbursing officer of liability when the record indicates that (1) the disbursing officer acted within the bounds of reasonable care as established by applicable regulations; (2) there is no evidence of bad faith on the part of the disbursing officer, and (3) a diligent effort was made to collect the overpayment. 62 Comp. Gen. 91 (1982); B-246369, Feb. 3, 1992.

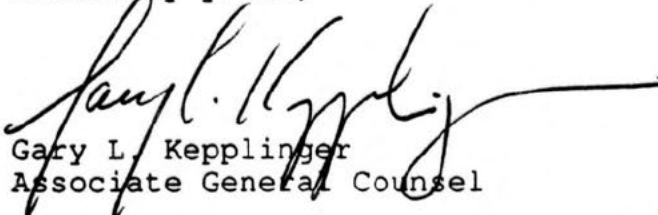
Ms. \_\_\_\_\_ followed Navy regulations, and thus, we can conclude that she acted with reasonable care. In this regard, Navy regulations require disbursing officers to

obtain a "Statement of the Claimant" in writing from a payee alleging nonreceipt of an original check to support the issuance of a successor check. Navy Comptroller's Manual, vol. 4, para. 042234-1c.<sup>1</sup> The statement is to 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 the successor check is an act of fraud carrying criminal and civil penalties. Id. Navy's regulations also require disbursing officers to submit an Unavailable Check Cancellation, Standard Form 1184 (SF 1184), to Treasury, as Ms.            did, upon a payee's allegation that a check has not been received. Disbursing officers may issue a replacement payment when the SF 1184 is prepared if the payee should receive immediate replacement and the risk of loss from overpayment to the payee is low. Otherwise, disbursing officers are to delay issuing the successor check until Treasury provides a status report on the check cancellation. Id. at para. 042234-10.

The record substantiates that Ms.            followed these regulations, and waited until receiving Treasury settlement authority on August 9, 1989, before she issued the replacement check to Restorations on September 12, 1989. Although Treasury later revoked settlement authority, the revocation occurred over a year after the replacement check was issued. Consequently, we conclude that under these circumstances, Ms.            exercised reasonable care.

The record also documents that when Treasury explained its reasons for revoking settlement authority, Ms.            undertook diligent and timely collection action, including the mailing of certified letters to the corporation (which were returned unclaimed), and contacting the corporation's attorney and bank to locate the corporation's president. For these reasons, and because there is no evidence that Ms.            acted in bad faith, we grant relief to Ms.            from liability for the improper payment of \$10,682.83.

Sincerely yours,



Gary L. Kepplinger  
Associate General Counsel

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<sup>1</sup>Navy issued revised regulations in May 1990. The new regulations regarding successor checks are not substantially different from those in effect at the time of the loss. See Navy Comptroller's Manual, vol. 4, chap. 4, § 6.