



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

Office of the General Counsel  
B-241085

October 4, 1990

Rear Admiral (Sel) John T. Kavanaugh, SC, USN  
Commander, Navy Accounting and Finance Center  
Washington, D.C. 20376-5601

Dear Admiral Kavanaugh:

This responds to your August 23, 1990, request for an advance decision under 31 U.S.C. § 3529 (1988) on two questions. First, you ask whether certain U.S. Navy regulatory requirements for issuing successor checks may be waived for U.S. Navy allotment checks lost in transit to the Philippines. Second, you ask us to grant relief in advance to a Disbursing Officer at the Navy Finance Center in Cleveland, Ohio, for any loss that may occur if both original and successor checks are negotiated. For the reasons stated below, we conclude (1) that the Navy may waive its requirement to obtain signed statements from each allotment payee before issuing a successor check, and (2) that while the record before us does not indicate any lack of due care, it is premature to grant relief for possible future losses.

#### Background

Your submission indicates that on August 7, 1990, the U.S. Embassy in the Philippines informed the Navy Finance Center in Cleveland, Ohio, that one of the three boxes containing U.S. Navy checks for August 1990 civilian allotment payments had not been received. This box contained 4,671 checks with a total value of \$552,345.45. The record indicates that the Finance Center transports these checks in bulk each month to the U.S. Embassy, and that Embassy officials then turn the checks over to the Philippine postal system for delivery to the individual payees.

The record also indicates that Finance Center and Embassy officials have taken steps to determine whether the checks were lost in transit or actually were delivered to the allotment payees. The Finance Center asked the Embassy to contact 17 randomly selected allotment payees to determine if they received the August 1990 checks. The Embassy has indicated that contacting the allotment payees is difficult because of the effects of the recent earthquake, heavy rains, and restrictions on travel due to political unrest in the Philippines. However, some payees initiated contact with the Embassy to report that they had not received their August

allotment checks. In addition, your office has advised us that since your submission, the Navy has submitted to Treasury an SF 1184, Unavailable Check Cancellation, for each of the checks, and has been advised by Treasury that none of the checks have been presented for payment.

The Finance Center sent letters to all the payees advising them that they must submit to the U.S. Embassy a written certification that they have not received their August 1990 allotment checks before they will be issued successor checks. This action was based upon a provision of the Navy Comptroller Manual which states that "[u]nder all circumstances, the disbursing officer must obtain a statement, in writing, from the payee prior to issuing a replacement or successor check." Vol. 4 Navy Comptroller Manual, para. 04040602. However, because the Finance Center believes there is sufficient justification to support the conclusion that the original checks were lost and not received by the intended payees, and distance and communication difficulties will create hardships if successor checks are not issued until claimant statements are received, your office has waived the requirement in this case. Since the Disbursing Officer at the Navy Finance Center "will not provide carte blanche issuance of successor checks to the payees" without approval from our office, you requested our advance decision as to whether that waiver is proper.<sup>1/</sup> You also asked our office to grant advance relief to the Disbursing Officer if both original and successor checks are negotiated.

#### Legal Discussion

Before deciding whether the Navy may waive the requirement to obtain statements from payees prior to issuing successor checks, we must consider whether the requirement is implemented by the Navy itself or is imposed upon the Navy by some other authority. The Navy could not waive a requirement properly imposed upon it by some other agency. In this regard, we note that the 31 U.S.C. § 3331 (1988) gives the Secretary of the Treasury the authority to issue "substitute checks" when "original checks" are lost. However, section 3331 also empowers Treasury to delegate its authority under whatever conditions the Secretary prescribes. Thus, we must determine whether Treasury has delegated this authority to the Navy, and whether that delegation includes a requirement to

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<sup>1/</sup> We understand that since your submission over 2000 checks have been issued to claimants who notified the Embassy that original checks were not received and submitted the required statements. Accordingly, your request pertains only to successor checks issued to the remaining payees who have not submitted the required statements.

obtain statements from payees in advance of issuing replacement checks.

Beginning January 1, 1984, Treasury instituted new procedures for issuing replacement checks under 31 U.S.C. § 3331. Instead of Treasury reissuing old checks (i.e., producing a check bearing the same check symbol and serial number as the original check), agencies now "recertify" payments. Treas. Fiscal Requirements Manual Bulletin No. 83-28, Aug. 2, 1983 and 54 Fed. Reg. 35,647 (1989). These recertifications result in new checks being issued to the same payee as the lost original check. *Id.* As a non-Treasury disbursing agency under 31 U.S.C. § 3521, the Navy issues these new checks pursuant to "recertifications" made by Navy officials. Navy Comptroller Manual, para. 04090603; see also T.F.R.M. Bull. No. 82-27, Sept. 30, 1982, 54 Fed. Reg. 35,647, and 62 Comp. Gen. 193 (1987). Thus, the Navy is authorized by Treasury to issue successor checks.

Treasury's regulations governing the issuance of replacement checks encourages, but does not require, that a signed statement be obtained in advance. "In each case where a claim is proper, based on records in the agency, a personally signed statement should be obtained for the agency's records." Treas. Finance Manual, Vol. 1, § 4-7060.20. Thus the requirement to obtain a written statement in advance is imposed by the Navy, not by the Treasury Department.

The U.S. Supreme Court has stated that as a general principle,

"it is always within the discretion of . . . an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it."

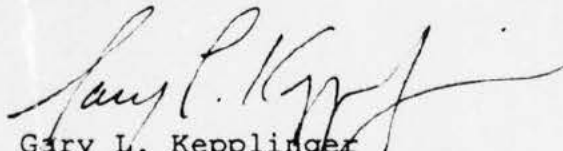
American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 539 (1970), quoting NLRB v. Monsanto Chemical Co., 205 F.2d 763, 764 (8th Cir. 1953). The Navy requirement for statements in advance is adopted for the orderly transaction of business in issuing replacements for lost checks.

Thus, we agree that the Navy has the authority to waive its requirement for claimant statements before successor checks are issued. Further, we do not disagree with Navy's determination that the waiver is appropriate in this case. The circumstances here fit within other criteria specified in both the Treasury and Navy regulations which indicate that successor checks should be issued expeditiously. For example, both regulations state that recipients of recurring payments (which may be offset against any overpayments) are low-risk situations for issuing replacement checks. 1 T.F.M. § 4-

7060.20e; Vol. 4 Navy Comptroller Manual, para. 040603. Moreover, we have no reason to question the Navy's determination that contacting all 4,671 payees will take some time because of the current difficulties in reaching people in the Philippines, and that waiting for signed statements in advance from all the payees is likely to cause delay and hardship. Therefore, we will not consider the Disbursing Officer's issuance of successor checks without first obtaining signed statements from claimants to be a lack of due care in this case. Contra B-223932, Mar. 27, 1987 (issuance of a second check without obtaining a statement of the claimant as required by agency regulations showed a lack of due care).

In regard to your request that we grant the Disbursing Officer at the Navy Finance Center advance relief for any overpayments which may occur because both original and successor August 1990 allotment checks are cashed, we consider the request to be premature. Inherently, we cannot grant relief to an accountable officer for a loss until the loss occurs. 66 Comp. Gen. 192 (1987). If there is a loss in the future, it may very well be recovered by collection action, making a request for relief unnecessary. Furthermore, since the original checks were apparently lost in bulk transit to the U.S. Embassy, the Navy may seek to take advantage of the claims provisions in the Government Losses in Shipment Act, 40 U.S.C. §§ 721-729 (1988), and its implementing regulations, 31 C.F.R. Parts 361 and 362 (1989). Therefore, while the record before us does not indicate any lack of due care, we will not grant relief for any future losses until such losses occur and the factual record is complete.

Sincerely,



Gary L. Kepplinger  
Associate General Counsel