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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-196790

[Request for Relief From Liability]

Mr. Conrad R. Hoffman
Controller
Veterans Administration
Washington, D.C. 20420

AGC00016

FEB 7 1980

Dear Mr. Hoffman:

This is in answer to your request (Reference: 047C1:1-3) that relief be granted in the amount of \$501.85 on behalf of Ms. Teresa Anderson, Alternate Class-B Cashier at the Veterans Administration Medical Center, Brentwood, California. This loss occurred in the advance account of *DL603841* Ms. Nancy M. Stanley, Class-B Cashier.

The information submitted indicates that a cashier's check, issued on May 9, 1978, by Wells Fargo Bank and drawn to the order of Thomas Wm. Sullivan III, a patient at Brentwood Hospital, in the amount of \$501.85, was presented on September 12, 1978, to Ms. Anderson, the Alternate Class-B Cashier at Brentwood Hospital by a fellow patient named Murdock. The check was deposited to Mr. Sullivan's "Personal Funds of Patient" account. On September 13, 1978, Mr. Sullivan withdrew all of the money from his account and left the Hospital. *DL603845*

The Bank refused to honor the check when presented for payment by the Hospital because, unknown to personnel at the Hospital, Mr. Sullivan had gone to the Bank on May 17, 1978, and stated that he had never received the Bank's cashier check. The Bank then stopped payment on the check and refunded its face value - \$501.85 - to Mr. Sullivan. Mr. Sullivan thus cleverly managed to double his bank account by collecting the same funds twice.

All efforts to collect the amount due from Mr. Sullivan have been unsuccessful. Although Mr. Sullivan has since been readmitted to the Hospital, he has not opened a "Personal Funds of Patient" account. According to the Administration, access to such an account is the only way it could collect the amount owed by Mr. Sullivan.

You have determined that the shortage in the advance account occurred without fault on the part of Ms. Anderson and that established procedures concerning the acceptance of cashier's checks were followed. Therefore, you request that our office relieve Ms. Anderson of liability for the \$501.85 shortage, pursuant to the provisions of 31 U.S.C. § 82a-1 (1976).



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Section 82a-1 authorizes us to grant relief to an accountable officer "charged with responsibility on account of physical loss or deficiency of Government funds, vouchers, records, checks, securities, or papers in his charge" upon our concurrence in determinations by the agency head:

"* * * (1) That such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent.* * *"

In this case, the Administration has explicitly made the requisite determinations. We agree that the loss occurred while Ms. Anderson was acting in the discharge of her official duties. The question of relief, therefore, turns on our concurrence in the Administration's determination that the loss occurred through no fault or negligence of Ms. Anderson.

While there is a presumption that an accountable officer has been negligent in the loss of any funds for which she or he is responsible, it is rebuttable by evidence to the contrary. See, 54 Comp. Gen. 112, 115 (1974).

The Administration determined that Ms. Anderson followed established procedures concerning the acceptance of cashier's checks. The Administration points out that the age of the check, about four months, was the only clue that it was different from any other cashier's check. However, the Administration's internal procedures do not prescribe a period of time beyond which checks should not be accepted. Moreover, the check, on its face, implied that the bank regarded it as fully negotiable until at least six months old, stating that "The payment of this instrument is subject to service charges if not presented for payment within six (6) months from the date hereof."

If a particular activity of an accountable officer is governed by a regulation, if the accountable officer then fails to follow the regulation and a loss results, the failure to follow the regulation must be considered negligence and relief must be denied. Where there are no regulations covering the actions in question, however, we would consider whether the accountable officer exercised the judgment to be expected of a "reasonably prudent and careful man" in similar circumstances, in order to determine the presence or absence of negligence. 54 Comp. Gen. supra, at 116 (1974). Here, no regulation prohibited acceptance of the check. We conclude that it was not negligent to accept a cashier's check dated four months earlier.

The question remains as to whether it was negligent to allow Mr. Sullivan to withdraw the funds from his account the day after the cashier's check was deposited. The Administration's internal procedures are silent. A deferred credit period, normally 10 days during which credit to the patient's account will not be allowed, to allow time for payment by the drawee bank, is only imposed on deposits of personal checks. Again, based on the nature of a cashier's check, which is drawn by a bank on its own funds and is treated more like cash, as opposed to personal checks, and the fact that internal procedures do not prescribe a deferral period, we believe that a reasonably prudent and careful person would have allowed Mr. Sullivan to close his account.

Therefore, we concur in the administrative determination that Ms. Anderson should be relieved of liability in this case. We also relieve Ms. Stanley, whose account suffered the loss. The appropriation chargeable with the loss is 3600160, Medical Care, VA.

Aside from the question of relief, however, the Administration should make further efforts to collect this debt. Assuming, as the record indicates, that there is no basis on which to withhold veteran's benefits in order to collect from Mr. Sullivan, we see no reason why the Administration may not look to the Bank for payment. A cashier's check is a "bill of exchange drawn by a bank upon itself and accepted in advance by the act of its issuance and not subject to countermand by either its purchaser or the issuing bank." Pennsylvania v. Curtiss National Bank, 427 F.2d 395, 398, (5th Cir. 1970). Accordingly, under the Uniform Commercial Code, the Bank must honor the check as presented (id. at 400), and cannot stop payment. The Administration is apparently a holder in due course and therefore should seek recovery from the Bank which, in turn, can pursue its remedy against Mr. Sullivan.

Sincerely yours,

~~Milton J. Socolar~~

Milton J. Socolar
General Counsel