



GAO

Accountability \* Integrity \* Reliability

---

United States Government Accountability Office  
Washington, DC 20548

B-304233

August 8, 2005

Mr. Alexander Tripp  
Director  
Financial Assistance Office  
Chief Financial Office  
Veterans Health Administration  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, D.C. 20420

Subject: *Veterans Affairs—Liability of Alexander Tripp*

Dear Mr. Tripp:

This responds to your letter requesting relief from liability for payments totaling \$823 for a sunset cruise associated with a Department of Veterans Affairs (VA) staff retreat (hereinafter Tripp Request).<sup>1</sup> According to your request, the VA Inspector General concluded that you improperly certified this payment, and subsequently VA issued to you a bill of collection for the improper payment. Tripp Request. For the reasons discussed below, we find that you are not liable for the improper payment because you are not a designated certifying officer that is personally financially liable for the improper certification of appropriated funds. It is therefore unnecessary for us to determine relief under 31 U.S.C. § 3528(b)(1). While you are not personally financially liable for the improper payment, VA, at its discretion, may still impose administrative sanctions against you for your role in approving the improper payment. VA should attempt to recover the improper payment of \$823 from the payee, Edgewater Beach Resort. If VA is unable to recover from the payee, VA should pursue recovery of the

---

<sup>1</sup> We requested additional information from Mr. Tripp on December 23, 2004. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, Dec. 23, 2004. We also requested information from VA's General Counsel's Office. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, to Tim S. McClain, General Counsel, Department of Veterans Affairs, Dec. 23, 2004. We received a reply from Mr. Tripp on January 7, 2005 (Tripp Reply). We received a reply from VA's General Counsel's Office on January 28, 2005 (VA Reply).

improper payment from the designated certifying officer who certified the voucher authorizing payment for the sunset dinner cruise.

## Background

In August 2001, VA held a staff retreat for the Financial Assistance Office (FAO), a division of the Veterans Health Administration (VHA), which was subsequently the topic of a report by the VA Inspector General.<sup>2</sup> The staff spent a week of training at a resort in Florida. IG Report. Included in the cost of the retreat, totaling over \$21,000 for 20 staff members, was a charge of \$823 for a sunset dinner cruise. VA Reply, Attachment D(8); IG Report at 15. One of the issues discussed in the Inspector General's report was the use of appropriated funds for the sunset dinner cruise. The Inspector General described the sunset dinner cruise as an "entertainment expense," and noted that VA's appropriation does not specifically authorize using appropriated funds to pay for entertainment expenses. IG Report at 13, 15.

The Inspector General found you, as Director of FAO, liable for the improper payment<sup>3</sup> and recommended that the Chief Financial Officer of VHA issue to you a

---

<sup>2</sup> See Department of Veterans Affairs, Office of Inspector General, Administrative Investigation: "Contract and Employee Retreat Expenditure Issues, Financial Assistance Office, Veterans Health Administration," Report No. 03-01120-86, Feb. 18, 2004 (IG Report).

<sup>3</sup> The Inspector General's report, in pertinent part, says:

"As part of the 2001 retreat, [the contractor hired by Mr. Tripp to plan the retreat] arranged a 'sunset' cruise and reception for the Financial Assistance Office staff, at a cost of \$1,804, including \$600 for a catamaran, \$123 for transportation to and from the dock, \$100 for offsite catering, and the remaining amount for food, service charges, and gratuity. Mr. Tripp told us he did not request the cruise, but the hotel offered it at no additional charge. He said as long as the total billed price was consistent with the bid price, he 'felt comfortable' certifying the invoice for payment, which he did.

\* \* \* \* \*

"[Mr. Tripp] improperly spent appropriated funds on employee entertainment . . . .

\* \* \* \* \*

"The Chief Financial Officer for VHA should . . . ensure a bill of collection for \$823 is issued to Mr. Tripp to recoup the appropriated funds he allowed to be spent on a 'sunset' cruise."

*Id.* at 15-16 (The IG concluded that out of the \$1,804 charge for the sunset dinner cruise, charges totaling \$981 were permissible).

bill of collection for the \$823 spent on the sunset dinner cruise. *Id.* at 16. Specifically, the Inspector General found that you had “approve[d] the use of appropriated funds for personal entertainment.” *Id.* at 13. The VHA Chief Financial Officer concurred with the Inspector General’s recommendations and issued you a bill of collection on May 16, 2004. *Id.* at 17; VA Reply, Attachment H. After your administrative appeal failed and you were reissued a bill of collection on September 3, 2004, you requested our decision on this matter. VA Reply, Attachment H; Tripp Request.

## Analysis

The Inspector General determined that the use of VA’s appropriation for a sunset dinner cruise was improper. In responding to your request for relief from the improper payment, the threshold issue before us is whether you were the certifying officer who certified the improper payment and are, thus, pecuniarily liable. *See* 31 U.S.C. § 3528.

In 2001, during the staff retreat at issue, you held a supervisory audit position, titled Director, Financial Assistance Office. VA Reply. As such, you were primarily responsible for managing the performance of surveys and audits of VHA field facilities and VHA-wide programs to assess the effectiveness and efficiency of financial operations, compliance with applicable laws, regulations and policies, and the adequacy of internal control systems for the prevention and detection of fraud, waste, and mismanagement. VA Reply, Attachment A; Tripp Reply, Attachment 8.

The VHA Office of Finance held you financially liable for the improper payment of funds for the sunset dinner cruise because you had “approved” the use of funds while acting in the capacity of an agency official. IG Report at 13. As evidence, VHA pointed to your signature on the voucher, which contained the \$823 charge for the sunset cruise, accompanying the statement, “I certify that the articles or services listed hereon in the amount of \$21,342.71 have been received or rendered on August 20–21, 2001 and are proper for payment (except as noted) by the due date shown in the upper right hand corner of the invoice.” VA Reply.

Although the statement you signed includes the word “certify,” the statement, by its terms, does not appear to be a certification authorizing Treasury to make a payment; rather, it appears to be an approval, typically required of a program official, confirming that services were received and were satisfactory. VA regulations require that all vouchers be administratively examined by the administrative heads of the divisions and departments within the agency prior to payment. Department of Veterans Affairs, Office of Financial Management Directives, MP-4, Part III, Chapter 2, § 2.05. The quoted language is language used internally by VA to verify at the division level that the department received the property or services in the quantity and quality ordered. Department of Veterans Affairs, Office of Financial Management Directives, MP-4, Part III, Chapter 2, § 2.06. Therefore, the statement on the voucher which bears your signature was

not a certification, notwithstanding the use of the word “certify,” but an approval. However, no pecuniary liability attaches to “approving” officials. *See* B-247563.3, Apr. 5, 1996.

Your position at VA does not carry with it personal financial responsibility for agency funds. *See* B-280764, May 4, 2000. An agency is not authorized to assess pecuniary liability against its officials for losses resulting from improper expenditures unless a statute provides for such liability. *Id.* (“an agency may impose pecuniary liability only with a statutory basis”). We have found no statute establishing financial liability specific to your position as a supervisor or as an auditor which would authorize VA to hold you liable for improper expenditures.<sup>4</sup> *See generally* B-247563.3, Apr. 5, 1996.

Designated certifying officers are, on the other hand, held personally financially liable for improper payments that they certify. 31 U.S.C. § 3528(a)(4). A certifying officer is a government employee who by reason of his or her employment is responsible for government funds. 62 Comp. Gen. 476, 479 (1983); 59 Comp. Gen. 113, 114 (1979). A certifying officer who signs a voucher is strictly liable for the legality of the proposed payments and must repay any “illegal, improper, or incorrect” payments resulting from his or her inaccurate certifications. 31 U.S.C. § 3528(a)(4).<sup>5</sup> *See also* VA Handbook 4000, number 8(i).<sup>6</sup>

Any agency employee responsible for certifying vouchers to the Treasury must be properly designated as certifying officers in writing. 31 U.S.C. § 3325(a)(1);

---

<sup>4</sup> In 2002, Congress provided the Department of Defense the authority to impose liability on certain approving officials who are not certifying officers. *See* 10 U.S.C. § 2773a.

<sup>5</sup> GAO has statutory authority to relieve a certifying officer from liability under one of two situations. First, we may relieve a certifying officer if we find that the certification was based on official records and the certifying officer did not know, and by reasonable diligence and inquiry could not have discovered, the correct information. 31 U.S.C. § 3528(b)(1)(A). Second, we may relieve a certifying officer if we find that (1) the obligation was incurred in good faith; (2) no law specifically prohibited the payment; and (3) the United States government received value for the payments. 31 U.S.C. § 3528(b)(1)(B).

<sup>6</sup> “Certifying officers shall be held responsible for the existence and correctness of the facts recited in the certificate or otherwise stated on the voucher or supporting papers, and for determining the legality of the proposed payment under the appropriation or fund involved. They shall be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, misleading certificate made by them as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.” VA Handbook 4000, number 8(i).

1 TFM 4-1100, section 1145; 1 TFM 4-2000, section 2040.30. The Department of Treasury instructs all executive branch agencies to file with Treasury a Financial Management Service (FMS) Form 210 to designate authorized agency certifying officers. 1 TFM 4-1100, section 1145.10. Appropriated funds can only be disbursed from Treasury upon the signature of these authorized certifying officers. 31 U.S.C. § 3325(a)(1); 1 TFM 4-2000, section 2040.10.

You assert, and the VA Department acknowledges, that you are not an authorized certifying officer designated as such in writing with a FMS Form 210. Tripp Request; VA Reply (“The Department acknowledges that the FMS Form 210 does not exist nor were the procedures followed, outlined in VA Handbook 4000, regarding specifically designating Mr. Tripp as a certifying official.”). VA, instead, held you liable for the improper payment because you were “responsible for permitting the event to occur during the retreat” and because you “occup[y] a position of senior stature with responsibility for compliance with applicable laws.” VA Reply. Nevertheless, as we explained above, without a written authorization from the agency designating you as a certifying officer, VA cannot hold you personally financially liable for this improper payment. Therefore, you are not financially liable for the improper expenditure of appropriated funds for the sunset dinner cruise at the 2001 staff retreat. Accordingly, we need not consider your request for relief under 31 U.S.C. § 3528(b)(1).

VA should attempt to recover the improper payment of \$823 from the payee, Edgewater Beach Resort. Agencies should act diligently to collect improper payments from payees. *See* 31 U.S.C. § 3527(c). *See also* B-274364, Apr. 23, 1997; B-227632, Aug. 5, 1987. If VA is unable to recover from the payee, VA should identify the relevant certifying officer, who is strictly liable for improper payments, and charge him or her for the cost of the sunset dinner cruise. The record does not identify the certifying officer who certified the voucher which included the improper \$823 payment. We will consider relieving that officer, if appropriate, if VA identifies the officer and timely submits the necessary documentation of his or her actions.

Notwithstanding the conclusion that you have no financial liability for the improper payment, you admitted your role in approving the payment. Tripp Reply at 3 (“I only approved the voucher before it was duly certified by an authorized certifying officer.”). Because federal officials are responsible for ensuring that federal funds are not used improperly, VA, within its discretion, may still impose administrative sanctions against you for your role in approving the improper payment. *See generally* B-247563.3, Apr. 5, 1996; B-201965, June 15, 1982.

## Conclusion

The VA Inspector General found that the use of VA’s appropriation for payment of a sunset dinner cruise was an improper entertainment expense. You, however,

are not personally financially liable for this improper expense because you were never designated as an authorized certifying officer. It is not necessary, therefore, for us to determine the issue of relief.

Sincerely,

/signed/

Susan A. Poling  
Managing Associate General Counsel

The position of designated certifying officer carries with it personal financial liability for improperly certified payments. GAO has statutory authority to relieve a certifying officer from liability. 31 U.S.C. § 3528(b)(1). A Department of Veterans Affairs director, who acted as an approving official, is not a designated certifying officer and is therefore not personally financially liable for the improper certification of appropriated funds. The Department of Veterans Affairs should recover the improper payment from the payee, if possible, or from the certifying officer who actually certified the payment.