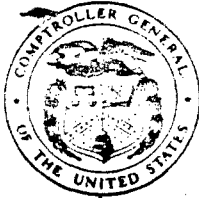


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Liability for Loss of Funds]

FILE: B-200404

DATE: February 12, 1981

MATTER OF: Travel Advances of Allen Lupfer and Edwin Ulrich

DIGEST: Employees who were directed to put travel advances in custody of cashier are not personally liable for loss of funds sustained in robbery of office safe. Travel advances are normally treated as personal funds of recipient employee, but when returned pursuant to official request and for convenience of Government, funds reverted to status of public monies. See Comp. Gen. Decs. Cited.

This is an advance decision to C.E. Tipton, Authorized Certifying Officer of the Forest Service, Department of Agriculture, concerning the propriety of reissuing final salary withheld pursuant to 5 U.S.C. § 5705 in satisfaction of unused and unreturned travel advances. The advances, in the amount of \$300 each, were originally issued to Allen Lupfer and Edwin Ulrich, members of the Young Adult Conservation Corps, employed in the Forestry Sciences Laboratory in Olympia, Washington (the claimants/employees). The funds were stored in a cash box in the Laboratory office safe, along with imprest fund cash, completed vouchers and a former employee's undelivered salary check. On February 26 or 27, 1979, the safe was opened without force and the cash box was removed by an unknown person or persons. In our opinion the circumstances of the loss are such that the employees should not be held personally liable and the salary checks may be issued at this time.

Briefly, the facts are as follows. Shortly before Messrs. Lupfer and Ulrich received their \$300 advances, two other Corps members at the Olympia Laboratory had terminated their employment without returning their unused travel advances. The claimants' supervisor, after receiving permission to use the office safe for the voluntary deposit and safekeeping of travel advances, had requested that the claimants place their travel advances in the custody of the cashier. This they did on February 20, 1979, at which time Mr. Lupfer turned over the full \$300 and Mr. Ulrich turned over \$280, promising to bring the rest later. The cashier was then told how much to disburse to each employee for each trip. This procedure was followed during the week of February 20th, when, at the direction of the supervisor, the employees were given \$50 each for a trip. On their return they each turned in a voucher for \$48 and \$2 in cash. This left \$252 of Alan Lupfer's advance and \$232 of Edwin Ulrich's in the safe at the time of the robbery.

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The robbery was apparently accomplished by someone who knew the combination to the safe. In addition to the cashier, an alternate had been given the combination. The alternate wrote the combination on a card, which she placed in an unmarked file in a bookcase behind her desk. The alternate had disclosed the location of the combination card when, in the presence of Edwin Ulrich, she removed the card, consulted it while opening the safe, and replaced it in the bookcase file. The lock had not been changed since the previous principal cashier left, and so the former cashier would have known the combination. Also, the project manager kept a copy of the combination in a sealed envelope in his office.

Two other facts are significant in analyzing this case. First, an FBI investigation of the theft was conducted but on December 16, 1979, that investigation was suspended indefinitely. Additionally, on March 27, 1980, the Forest Service's Director of Fiscal Management determined that both accountable officers were negligent in the loss of the imprest fund. The entire \$212 imprest fund loss was assessed against the alternate cashier, and has been collected by withholding from her retirement fund on termination of employment.

Forest Service officials initially determined that the two claimants, not the cashiers, were personally liable for the lost travel advances. They based this conclusion on our decisions holding that travel advances are in the nature of personal loans from the Government, for which the recipient alone is personally responsible in the event of a loss. 54 Comp. Gen. 190 (1974), and B-183489, June 30, 1975. This conclusion relies heavily on the assertion that employees voluntarily placed the funds with the cashier.

There is at least some doubt in the record that the surrender of the funds was truly voluntary. However, we think the relevant test to determine the claimants' personal liability is whether they had totally relinquished dominion and control over the funds, not whether they did so voluntarily. In other words, one should ask whether, if they had gone to the cashier at any time and demanded the return of the travel funds for any reason, they would have been accommodated without question or delay. Based on the record, we think the answer to this question is "no".

At the request of their supervisor, and for the convenience of the Government, the claimants had returned complete dominion and control over the funds to the cashier. This altered the character of the funds, converting them from personal loans to public monies.

In B-170012, August 11, 1970, we held an accountable officer liable for a travel advance returned to her custody. In that case, a planned trip was postponed and the traveler's supervisor directed that the travel advance be returned to the cashier for safekeeping.

Shortly thereafter, the advance was discovered to be missing from the safe where it was stored. On reconsideration, the accountable officer raised the same argument that the Forest Service applied here, that travel advances are in the nature of personal loans for which the employee-recipient is personally responsible in the event of a loss. We said:

"The contention of [the cashier] that these were personal funds of [the traveler] for which she is not accountable, rather than public funds, is without merit. Even if it be conceded that travel advance funds lose their identity as public funds when advanced to a Federal employee, such funds when returned to the Federal Government by such employee pursuant to official request or direction would again become public funds." B-170012, reconsideration, May 3, 1971.

By the same token, these funds when returned unconditionally to the cashier, resumed their character as public funds. Because they were public funds, the employees cannot be held responsible for their loss.

Mr. Ulrich owes \$20 for the portion of the travel advance which was never turned over to the cashier and not accounted for when he terminated his employment, and \$19.67, the undepreciated value of workboots which were purchased for him. Mr. Lupfer owes \$40 for a cash advance made to purchase supplies and unaccounted for at the time of his separation. These amounts should be set off against the final paychecks.

A subsidiary question raised by the certifying officer here is whether the accountable officer must be held liable for the loss. The answer to this question is affirmative. B-170012, August 11, 1970, cited above. Furthermore, the Forest Service's previous determination of negligence as to the imprest fund would appear to be binding as to this increment to the loss. However, a basis may exist for relieving the accountable officer in this case.

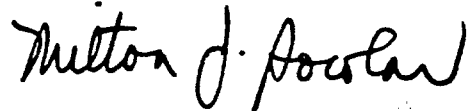
The Forest Service has apparently held both the cashier and the alternate cashier liable. Ordinarily, only one person is accountable for public funds at any given time and there is no joint liability. The accountable officer is whoever had custody or control of the funds at the time of the loss. On this record, that would be the cashier. However, the Service should be aware of our holding in B-191440, May 25, 1979. In that case, we granted relief to an accountable officer, notwithstanding evidence of negligence in the record. Our reasoning was that it was impossible to place responsibility for a loss definitely on a cashier or an alternate where both operated from the same safe and cash box or drawer. Citing the

Treasury Department "Manual of Procedures and Instructions for Cashiers" (1976) at section 0402, we noted that each cashier must have exclusive control of funds entrusted to his/her care. We said:

" * * * [A]lthough it is clear that there was negligence, we are unable, because of the administrative laxity in fundhandling procedures, to assign responsibility for the loss to either clerk. Accordingly, [the cashier] is hereby relieved of liability."

See also B-182386, April 24, 1975. This case would appear to provide a possible basis for relief of the cashier if the Forest Service wished to request it.

In accordance with the foregoing, vouchers for payment of final salary, less any debts other than the travel advances stolen from the Laboratory safe, may, if otherwise proper, be certified for payment.



For the Comptroller General
of the United States