



Office of the General Counsel

B-257068

October 22, 1994

Mr. Bruce Morrison
Chairman, Committee of Inquiry
into Fiscal Irregularities
U.S. Department of State

Dear Mr. Morrison:

This responds to your letter dated January 25, 1994, received in our Office on April 18, 1994, requesting review of a case involving a shortage of funds in the State Department's Main State Head Cashier operation. Specifically, you ask whether Mr. [redacted] the Head Cashier, was an accountable officer with respect to missing funds in the Main State Cashier operation, and whether there is a basis for relieving him from liability for those missing funds. For the reasons discussed below, we conclude that Mr. [redacted] was an accountable officer during the period when the loss occurred. However, we are unable to grant relief since the requisite agency determinations required by 31 U.S.C. § 3527(a) are not evident from the materials you submitted.

BACKGROUND

The missing funds are travel advance reimbursements that were paid to the Main State Cashier's Office (MSCO) while Mr. [redacted] was the Head Cashier. Based on your submission, the following procedures for collection of cash payments for repayment of travel advances were in effect at the time of the loss.

A teller would receive the cash from the employee and write out a receipt for the money. The teller would then place the money in an envelope, with the amount of money in the envelope written on the outside of the envelope and the receipt attached to it. The teller would also note the accounting data for the payment on either the receipt or the envelope. The envelope and the receipt would then be given to Mr. [redacted] by the teller. When the cash deposits accumulated to a \$1,000 aggregate, Mr. [redacted] would deposit the money in a local bank. Mr. [redacted] would then forward the deposit slips and the MSCO receipts to his supervisors in Rosslyn, Virginia. Based on an audit revealing travel advance delinquencies, an investigation confirmed that all the receipts were for cash payments to the MSCO but that there was no record of any corresponding deposits.

Mr. [redacted] as Head Cashier by job description and by operation was to receive all cash payments made to the MSCO from the two MSCO tellers. Mr. [redacted] acknowledged that the questioned receipts reflect funds that were under his control at the time he was Head Cashier, but asserted that he had no knowledge concerning the questioned receipts. The two MSCO tellers, Mr. [redacted] and Mr. [redacted], also had no specific recollection of the questioned receipts.

The record also reflects that Mr. [redacted] noted that the system for receiving cash deposits at the MSCO was not a good one, particularly because this money was not included in the daily cash flow balance, resulting in funds being retained for a period of time for which there was no record. In addition, the mechanical receipt machine, which issued the numbered receipts, would often foul up the receipts as they came out. No accounting was kept of these damaged receipts, they were just thrown away. Mr. [redacted] stated that the traveler received the original receipt, the yellow receipt copy was kept by the cashier, attached to an envelope, and the pink copy remained in the machine. He also asserted that he brought this issue forward to his supervisors on several occasions but nothing was ever done to correct the lack of controls.

The Office of Inspector General determined that \$3,131 was missing from MSCO funds during Mr. [redacted] tenure as Head Cashier and should be recovered from him. The matter was presented to the Assistant U.S. Attorney, for the District of Columbia, who declined criminal prosecution of Mr. [redacted] in favor of administrative recovery of funds.

Accountable Officer

Any government officer or employee, civilian or military, who by reason of his or her employment is responsible for or has custody of government funds is an accountable officer. 61 Comp. Gen. 313, 314 (1982); 59 Comp. Gen. 113, 114 (1979). Thus, an officer or employee who receives or collects money for the government is accountable to the government for all money collected.

As the Head Cashier of the MSCO, Mr. [redacted] was a Fiscal Assistant and a Class B cashier responsible for: (1) organizing the cashiering work of the MSCO; (2) providing advice and assistance to sub-cashiers; (3) interpreting regulations and developing internal guidelines; (4) assuring implementation of internal controls; and (5) preparing office reports. Specifically, he was responsible for controlling and maintaining an imprest fund for the payment of travel advances and travel reimbursement vouchers. It is clear from the record and Mr. [redacted] status as a Class B cashier that he was accountable in his own name to the Department of State for the entire amount advanced to him, including any amounts he advanced to others. See Treasury Financial Manual, Vol. I, section 4-3020.

Relief from Liability

This Office is authorized to relieve an accountable officer for a physical loss upon its concurrence with a determination by the head of the agency that (1) the loss or deficiency occurred while the accountable officer was carrying out official duties, or because of the acts or omissions of subordinates, and (2) the loss or deficiency was not the result of fault or negligence by the accountable officer. 31 U.S.C. § 3527(a). The agency head's determination triggers this Office's jurisdiction and we are authorized to grant relief under section 3527(a) only after the agency head has made the determinations required by the statute. See B-241478, April 5, 1991 and cases cited therein.

The record as submitted does not contain the requisite agency determinations that the loss of funds in this case occurred (1) in the discharge of Mr. [redacted] official duties or by reason of the acts or omissions of his subordinates, and (2) without fault or negligence of Mr. [redacted]. Instead, your submission asks ". . . if he was an accountable officer, whether there may be a basis for relieving him from liability, perhaps on the grounds that his actions were not the proximate cause of the shortage."

Ordinarily, the loss of funds entrusted to an accountable officer raises a rebuttable presumption of negligence on the officer's part. 54 Comp. Gen. 112, 115 (1975); B-203646, Nov. 30, 1981. As we observed in B-189084, Jan. 3, 1979,

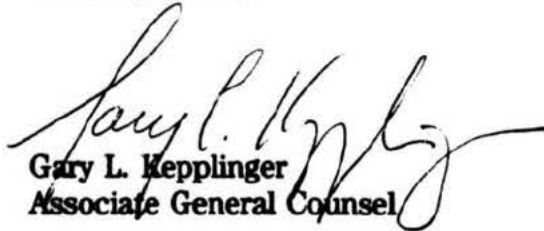
"Government officials charged with the custody and handling of public money are expected to exercise the highest degree of care in the performance of their duty. It has long been recognized that when such funds disappear without explanation or apparent reason, there arises a presumption of negligence on the part of the responsible official. If we are to grant relief under [section 3527(a)], this presumption must be rebutted by specific, complete, and convincing evidence." (Citations omitted.)

The mere administrative determination that there is no evidence of fault or negligence will not adequately rebut the presumption of negligence. It is the accountable officer who has the burden of presenting convincing evidence that the loss was not caused by negligence on his part. B-239387, April 24, 1991; B-235167, Jan. 8, 1990. The accountable officer must come forward with affirmative evidence that he exercised the requisite degree of care. B-213427, Dec. 13, 1983. In this regard, the record as submitted does not identify the cause of the loss or provide evidence to rebut the presumption of negligence. For example, the record before us leaves unaddressed such issues as what role did the overall controls, or lack thereof, contribute to the loss; what, if any, of the cash procedures used were established by manual or were simply routine for Mr. [redacted]; where were the cash receipts stored, and who had access to it, prior to depositing in the local bank; were

daily deposits required; what reports of deficiencies in security did Mr. supervisors receive from him and, if any, when did he report and what were the supervisors' responses; what reason was given for denial of a new NCR cash register; and what actions or omissions by the two tellers, if any, contributed to the shortage.

The record contains neither the determinations required by section 3527(a), nor evidence that would support such determinations if made. Accordingly, we do not have the requisite jurisdiction to grant relief.

Sincerely yours,



Gary L. Kepplinger
Associate General Counsel

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DIGEST

A person who by virtue of his responsibilities and custody of funds as Head Cashier is an accountable officer and liable for the loss or shortage of funds in the cashier operation. The presumption of the accountable officer's negligence is, however, rebuttable with sufficient evidence to the contrary. However, when employing agency does not make findings required by 31 U.S.C. § 3527(a), the matter of relief is not properly before GAO, regardless of the merits, and we have no authority to grant relief.