



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

Office of the General Counsel

B-251015

October 21, 1993

Mr. Gregory P. Bitz
Director
Defense Finance and Accounting Service
Kansas City Center
Kansas City, Missouri 64197-0001

Dear Mr. Bitz:

This responds to your office's request that we relieve Captain _____, U.S. Marine Corps, Disbursing Officer, Marine Corps Base, Camp Smedley D. Butler, Okinawa, from liability for \$31,600 in fraudulent payments that his office made to _____. For reasons set forth below, we grant relief. We also relieve Captain _____ of liability for the \$23,600 in fraudulent payments made to _____, co-conspirator.

Between June 5, 1990 and April 22, 1991, the Base Disbursing Office paid eleven fraudulent vouchers submitted by _____ authorizing emergency advance payments for personal and household effects damage claims totaling \$55,200. _____ submitted the vouchers on behalf of himself, identified as Staff Sergeant _____; a co-conspirator, _____, identified as Corporal _____; and his son (who apparently was not involved in this scheme), _____, identified as Sergeant _____. Of the \$55,200 paid, _____ received \$31,600, and _____ received \$23,600. Your office asked that we relieve Captain _____ of liability for the \$31,600 in fraudulent payments _____ personally received. Your office apparently submitted a separate request for relief with respect to the \$23,600 balance, which _____ received, but this request was lost in transit to our Office. Since we understand the facts and circumstances of the fraudulent payments on behalf, to be identical to the facts presented by the payments to _____, we are treating this request as a request to relieve Captain _____ from liability for \$55,200, the total amount of fraudulent payments that the Disbursing Office paid.

At the time of the fraud, _____, a civilian, was employed as a Claims Investigating Officer (CIO) in the Base Traffic Management Office. He investigated claims submitted by Marines whose personal and household effects were damaged,

destroyed, or missing in transit to Okinawa, Japan, and assisted in obtaining payments on claims. As CIO, was responsible for ensuring that claims were in the proper form and sufficiently substantiated prior to submission for adjudication to the Personnel Claims Section (MHP-40) at Headquarters, U.S. Marine Corps, Arlington, Virginia.

Pending the adjudication of claims by MHP-40, the claimants, under the provisions of the Navy Judge Advocate General's Manual (NAVJAGMAN), could request an emergency advance payment of a portion of their claims. As CIO, would telephone requests for emergency advance payments to MHP-40, confirm that the claimant was a proper claimant under the NAVJAGMAN provisions, and provide an opinion on the reasonableness of the amount claimed relative to the hardship of the claimant or his family. would estimate the amount of loss on the basis of his personal inspection of the damages and/or the evidence on file. If MHP-40 approved payment, it would electronically transmit to the Base Traffic Management Office a message authorizing the Base Disbursing Office to issue a check to the claimant. As part of his duties, would submit vouchers for emergency advance payments with authorizing messages to the Disbursing Office and collect payment checks from the Disbursing Office for distribution to claimants.

Four of the eleven fraudulent vouchers submitted by , totaling \$21,200, were authorized by messages which were issued by MHP-40 on the basis of false information provided by . The Disbursing Office paid the seven other fraudulent vouchers, totaling \$34,000, without obtaining authorizing messages from MHP-40. An investigation conducted by the Naval Investigative Service (NIS) after discovery of the fraudulent payments in July 1991 indicated that when went to the Base Disbursing Office seeking payment of some of the vouchers for the fraudulent claims, the Deputy Disbursing Officer, , took to the agent cashier, , and asked the cashier to issue the emergency advance payment checks on an expedited basis. During the 10-month period in question, obtained and cashed seven of the fraudulently claimed checks, including those made out to his son. resigned his position on May 6, 1991, and left Okinawa.

With the permission of the NIS and the Base Commander, Captain initiated collection action on September 9, 1991. After sending two letters demanding payment, Captain obtained, in January 1992, an agreement in which admitted liability for the \$31,600 and agreed to repay the debt at a rate of \$525 per month. We understand that also entered into such an agreement and is repaying the government for the \$23,600 that he fraudulently received.

On February 10, 1992, [redacted] filed for bankruptcy under Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 701 et seq., seeking discharge of his debts, including the \$31,600 debt owed under the January 1992 agreement. At the government's request, the Bankruptcy Court declined to discharge the \$31,600 debt, but rather issued on July 20, 1992, judgment in favor of the United States for the recovery of \$31,000 from [redacted].

Simultaneously with the civil proceeding in the bankruptcy court, the government initiated criminal prosecution of [redacted]. On June 27, 1992, [redacted] agreed to plead guilty to entering into a conspiracy to defraud the government with respect to these claims. On May 28, 1993, [redacted] was sentenced to three years probation, including 120 days in jail. As a condition of his parole, [redacted] was required to make restitution to the United States in the amount of \$31,600. Currently, [redacted] is repaying the government at a rate of \$100 per month.

This Office has authority under 31 U.S.C. § 3527(c) to relieve a disbursing officer from liability for a deficiency resulting from an improper payment if we determine that the payment was not the result of bad faith or lack of reasonable care by the official, and that diligent collection efforts have been made. B-239802, April 3, 1991. In cases such as this, where subordinates of the disbursing officer actually disbursed the funds, we have granted relief upon a showing that the disbursing officer properly supervised his subordinates by maintaining an adequate system of procedures and controls to safeguard the funds and took steps to ensure the system's implementation and effectiveness. 62 Comp. Gen. 476, 480 (1983).

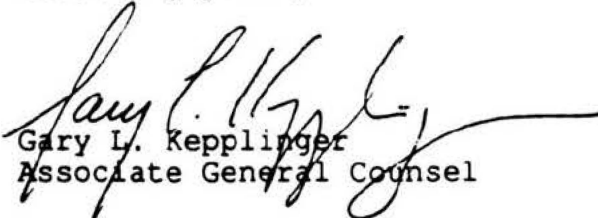
We conclude that Captain [redacted] maintained and implemented a system of procedures and controls consistent with his authorities. This conclusion is supported by a February 12, 1991 Report of Annual Review of Disbursing Functions which stated that the operation of the Base Disbursing Office was exceptional. The review was conducted during the period in which the fraudulent payments were made. The report indicated that proper procedures were in place and were being followed by office personnel. The Disbursing Office's one percent error rate was determined to be significantly lower than the established four percent standard which, the report stated, indicated an especially effective and knowledgeable staff that was actively involved in the administration of pay and allowances.

Additionally, a March 12, 1992 report of a Disbursing On-Site Examination Team, which conducted a review, after the discovery of the fraud, of the Base Disbursing Office procedures, attributed the fraud to weaknesses, not in

Captain operations, but in Marine Corps operations, i.e., where the perpetrator of the fraud was authorized to approve claims, the Navy Comptroller's Manual and relevant Judge Advocate General Instructions did not specify disbursing procedures to control emergency advance payments, and the procedures that were in place could be circumvented at various levels, from the cognizant Marine Corps office in Washington, D.C., to the Traffic Management Office and Disbursing Office in Okinawa.

Since there is no indication that bad faith or lack of due care on Captain part was the proximate cause of the loss, we grant Captain relief from liability for the fraudulent payments totaling \$55,200.

Sincerely yours,


Gary L. Kepplinger
Associate General Counsel

DIGEST

Where a disbursing officer maintains an adequate system of procedures and controls to avoid errors and the procedures that were in place could not have prevented the type of fraud that was perpetrated, and where there is no indication that bad faith or lack of due care on the part of the disbursing officer was the proximate cause of the loss, relief from liability for the fraudulent payments may be granted.