



Office of the General Counsel

B-239483

April 15, 1991

Lieutenant Colonel S.C. Shoemake, Jr.
Deputy Director, Settlement & Adjudication
Headquarters Air Force Accounting
and Finance Center
Denver, Colorado 80279

Dear Colonel Shoemake:

This responds to your April 23, 1990, request for guidance on how to settle a deficiency in the accounts of Captain (now Major) . Major was formerly the Accounting and Finance Officer at Incirlik Air Base, Turkey. The deficiency resulted when Major cashed personal checks for Mrs. which were uncollectible. For the reasons stated below, we conclude that Major y's liability has already been settled by operation of law because the applicable statute of limitations has expired.

BACKGROUND

In May and June of 1986, the Incirlik Accounting and Finance Center cashed five checks for Mrs. . The checks, totalling \$1,975, were returned unpaid by the drawee. The record indicates that Mrs. stole blank checks from Mr. of San Antonio, Texas, and forged Mr. 's signature on checks she made payable to herself.

As an accountable officer, Major was strictly liable for the deficiency in his account. According to the record, the Air Force concluded that Major caused the loss through his negligence, and that he should not be relieved of his strict liability for the deficiency. On January 31, 1987, after an inquiry conducted in accordance with Air Force regulations, the Commander of the 39th Combat Support Squadron "held" Major liable for \$1,575 of the deficiency.^{1/}

^{1/} One \$400 check was cashed by the Accounting and Finance Office after Major tenure as Accounting and Finance Officer had expired. Therefore Major was not liable for the loss from cashing that check. You have not indicated whether the Air Force has taken any action against the Accounting and Finance Officer who was responsible for the

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The Commander based his action upon the recommendation of the Squadron's Staff Judge Advocate, who reasoned that Major [redacted] had exceeded his authority in cashing the checks. Specifically, the Staff Judge Advocate concluded that Major [redacted] could only cash checks under limited circumstances that did not include cashing checks for Mrs. [redacted]. Major [redacted] has appealed the determination that he should be "held liable" for the \$1,575 deficiency.

According to your submission, the Air Force denied Major [redacted] the relief afforded under 31 U.S.C. § 3527(b) (1988). Section 3527(b) directs the Comptroller General to grant relief to a disbursing officer of the armed forces when the Secretary of Defense, or the Secretary of the appropriate military department, determines that the official is entitled to relief. The Secretary's determination is binding upon the Comptroller General. 31 U.S.C. § 3527(b)(2). If the disbursing officer requests relief and the appropriate Secretary decides that the officer should not be relieved, the officer's liability for the physical loss remains in place.

However, you note that we recently have treated deficiencies from cashing uncollectible checks as erroneous payments rather than physical losses. E.g. B-233757, Jan. 25, 1989 and B-226872, Oct. 16, 1987. Under 31 U.S.C. § 3527(c), only GAO is authorized to grant relief to a disbursing officer for a deficiency resulting from an erroneous payment. If GAO denies relief, the disbursing officer's liability for the erroneous payment remains in place. If GAO does not receive and act on a request for relief within 3 years of when the officer's accounts are substantially complete, the deficiency is settled by operation of law. 31 U.S.C. § 3526(c) and GAO Policy and Procedures Manual for Guidance of Federal Agencies, tit. 7, § 8.7 (TS. No. 3-17, Feb. 12, 1990).

You therefore ask whether the deficiency in Major [redacted] account is the result of an erroneous payment or a physical loss.^{2/} In the event that we conclude that the deficiency

1/(...continued)

\$400 loss. Nonetheless, our analysis of Major [redacted] liability would be equally applicable to his successor's liability for the \$400 loss.

2/ Your submission also presents questions on how to treat losses from cashing checks generally. You also ask several general questions about accountable officer cases. We need not address these questions to resolve the deficiency in Major [redacted] account, and therefore will address them separately in B-239483.2.

results from an erroneous payment, you also ask whether the 3 year statute of limitations--which would apply to Major [redacted] liability--was tolled by the Air Force's denial of relief under its physical loss procedures.

DISCUSSION

We conclude that the deficiency in Major [redacted] account was the result of an erroneous payment. Regardless of how losses from properly cashed but uncollectible checks should be treated, the record clearly shows that Major [redacted] improperly cashed Mrs. [redacted] checks. Major [redacted] was authorized to cash checks only for: official purposes; personnel of the government; certain veterans; contractors; contractor personnel; or personnel of an authorized agency not a part of the government that operates with an agency of the government. 31 U.S.C. § 3342(b). The Air Force has concluded, and we agree, that Major [redacted] exceeded his authority because cashing checks for Mrs. [redacted] was not done for an official purpose, and because Mrs. [redacted] is not a member of any of the classes of persons listed in section 3342(b).

The legislative history of section 3527(c) makes clear that an erroneous payment under that subsection "is one which the Comptroller General finds is not in strict technical conformity with the requirements of law." H.R. Rep. No. 996, 84th Cong., 1st Sess. 3 (1955); S. Rep. No. 1185, 84th Cong., 1st Sess. 2 (1955). Our decisions have treated disbursing officers' payments made outside the scope of their authority as erroneous payments. See 49 Comp. Gen. 38 (1969). Major [redacted] was not authorized to cash Mrs. [redacted] checks, and thus did not act in strict technical conformity with the requirements of 31 U.S.C. § 3342. We therefore conclude that Major [redacted] made erroneous payments when he cashed those checks.

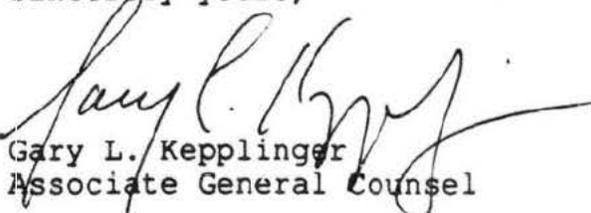
Under 31 U.S.C. § 3526(c), "[t]he Comptroller General shall settle an account of an accountable official within 3 years after the date the Comptroller General receives the account." Moreover, "[t]he settlement of an account is conclusive on the Comptroller General after 3 years after the account is received by the Comptroller General." *Id.* We consider the Comptroller General to have "received" the account at the time that the agency's accounts are substantially complete. 7 GAO PPM § 8.7. Accounts are substantially complete at the latter of: (1) when an accountable officer certifies a periodic statement of accountability; or (2) when an agency receives the information placing it on notice that a deficiency exists. *E.g.*, B-234959, *et. al.*, May 8, 1989 and 62 Comp. Gen. 91 (1983), modified by B-226393, April 29, 1988.

The record shows that Major [redacted] signed over his account to his successor on June 1, 1986. The unpaid checks were returned to the Incirlik Accounting and Finance Office at about that same time. In any case, it is clear that the 3 year limitation period of 31 U.S.C. § 3526(c) expired prior to April 23, 1990, the date of your submission. Thus, Major [redacted] accounts already were settled by operation of law, and he is no longer responsible for the deficiency.

Section 3526 also provides that the 3 year settlement period "does not prohibit the Comptroller General from suspending an item in an account to get additional evidence or explanations needed to settle an account." 31 U.S.C. § 3526(a). You ask whether the Air Force's attempt to deny Major [redacted] relief under its physical loss procedures, which occurred within the 3 year settlement period, would "suspend the item" in Major [redacted] account.

The text of section 3526 is clear. Only the Comptroller General has the statutory authority to suspend an item in order to settle an account outside of the 3 year limitations period. In the absence of a "suspension," the settlement of the accounts at the passage of the 3 years is conclusive upon the Comptroller General. 31 U.S.C. § 3526(c)(2). All settlements by the Comptroller General, including those "made" by the passage of the 3 year settlement period, are conclusive on the executive branch of the government. 31 U.S.C. § 3526(d). Thus, the Air Force cannot suspend the statute of limitations on the settlement of an accountable official's accounts.^{3/} The only recourse for the Air Force, and other agencies, is to submit questionable items to GAO within 2 years of the date accounts are available for audit. 7 GAO PPM § 8.4.c.

Sincerely yours,


Gary L. Kepplinger
Associate General Counsel

^{3/} For a general discussion on the independent nature of the Comptroller General's account settlement authority, see Lambert Lumber Co. v. Jones Engineering and Construction Co., 47 F.2d 74, 78-82 (8th Cir. 1931).