



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

Office of the General Counsel

E-240671

October 5, 1990

Mr. William L. Kendig
Director of Financial Management
United States Department of Interior
Washington, D.C. 20240

Dear Mr. Kendig:

This responds to your request of August 1, 1990 that we relieve Ms. [redacted] (imprest fund sub-cashier, Bureau of Reclamation) for the loss of \$1,458.27 in imprest funds. For the reasons stated below, relief is denied.

Background

Based on your submission, and supplemental information provided in response to our inquiries, the facts are as follows. In October 1987, Ms. [redacted] was the imprest fund sub-cashier and Ms. [redacted] was the alternate sub-cashier at the Bureau of Reclamation's Division of Procurement and Contracts, Mid-Pacific Region. The two cashiers worked out of separate cash boxes with different combinations known only to the appropriate cashier. The two cash boxes were stored in the bottom drawer of a two drawer safe located beside Ms. [redacted]'s desk. Both drawers were secured by a combination lock located on the top drawer. The bottom drawer was also secured by a hasp and keyed padlock. Thus, even after the combination was executed, the bottom drawer could not be opened without unlocking the padlock. The two cashiers were the only officials with access to the safe.

At approximately 4:15 p.m. on October 6, 1987, Ms. [redacted] placed her cash box in the bottom drawer of the safe behind that of Ms. [redacted]. Shortly thereafter, Ms. [redacted] spun the combination on the top drawer, placed the padlock on the bottom drawer of the safe, and left the office for the evening. According to officials familiar with the case, Ms. [redacted] was the last person to use the safe on that day. When executing the safe combination on the morning of October 7, 1987, Ms. [redacted] noticed that the position of the combination dial was unusual and that the lever on the front of the dial had been twisted. However, both the top and bottom drawers were locked and the padlock on the bottom drawer did not appear unusual. Ms. [redacted] opened the bottom drawer, removed her cash box, and closed and locked the drawer. She did not recall seeing Ms. [redacted]'s cash box in the drawer. Between 1:00 and 2:00 p.m. on October 7,

Ms. [redacted] opened the bottom safe drawer and discovered that her cash box was missing.

The Federal Bureau of Investigation (FBI) and the Federal Protective Service (FPS) jointly investigated this matter. According to the FBI report dated March 24, 1988, the investigation did not reveal sufficient information to identify a subject or to seek a prosecutive opinion. The FPS terminated its investigation as a result of the FBI report. You have determined that the loss was not the result of negligence by Ms. [redacted].

Discussion

We concur in Interior's characterization of the loss as a theft. Ms. [redacted]'s entire cash box was removed from the safe. Although there is no evidence of forced entry, there is evidence that the combination on the safe was executed during non-business hours between October 6 and October 7, 1987. The fact that Ms. [redacted] discovered the unusual condition of the combination on the morning of October 7, 1987 suggests that a theft occurred during non-business hours between October 6 and October 7, 1987, rather than on October 7, 1987, between 10:00 a.m. when Ms. [redacted] retrieved her cash box, and 1:00 p.m. when Ms. [redacted] discovered her cash box missing. In addition, according to agency officials familiar with the case, Ms. [redacted] closed and locked the safe after removing her cash box from the bottom drawer, and we understand that Ms. [redacted] and Ms. [redacted] generally placed the padlock on the bottom drawer of the safe during the day when cash boxes were inside, even though the combination had been activated. The fact that the bottom drawer, if not the entire safe, was locked between 10:00 a.m. and 1:00 p.m. on October 7, 1987, further suggests when the theft occurred.

An accountable officer is held to a high standard of care with respect to funds with which the officer is charged and is automatically liable at the moment a physical loss occurs. 54 Comp. Gen. 112 (1974); B-217945, July 23, 1985. Under 31 U.S.C. § 3527(a) (1988), this Office is authorized to relieve accountable officers of liability for a physical loss of government funds if we concur in the determination of the head of the agency that: (a) the loss occurred while the officer was carrying out his official duties and (b) that the loss was not the result of fault or negligence on the part of the officer. When a loss of funds occurs, the accountable officer is presumed negligent and, to obtain relief, must rebut this presumption with convincing evidence that the loss was not caused by the accountable officer's negligence or lack of reasonable care. *Id.* Accordingly, we ordinarily will deny relief under section 3527(a) when the record contains only conclusory statements but no actual evidence that the

accountable officer acted with reasonable care. Stated differently, a mere administrative determination, unsupported by evidence, that there was no fault or negligence is not sufficient to rebut the presumption of an accountable officer's negligence. B-209569, April 13, 1983.

Nevertheless, in losses involving theft, we generally grant relief if the evidence presented shows that the theft cannot be attributed to fault or negligence on the part of the accountable officer on the ground that such evidence rebuts the presumption of negligence. See B-217945 at 2; B-212605, April 19, 1984. However, the supplemental information provided in response to our inquiries clearly shows that Ms. [redacted] failed to comply with applicable regulations and was negligent in protecting the combination and key that would allow unauthorized persons to gain access to the safe's contents. Thus, based on the record before us, we are unable to conclude that the theft cannot be attributed to Ms. [redacted]'s negligence. See 31 U.S.C. § 3527(a)(1)(B), (3).

Where regulations govern the activities of an accountable officer, the exercise of reasonable care entails following those regulations and the failure to follow the regulations constitutes negligence. 54 Comp. Gen. at 116. The Manual of Procedures and Instructions for Cashiers issued by the Department of Treasury in July 1985 prescribes various types of containers for the storage of cash and provides that the combination and a duplicate key to the cash box should be placed in a sealed envelope, which should be signed and dated. The envelope should be placed in a safe controlled by an appropriate official, such as the administrative or security officer.

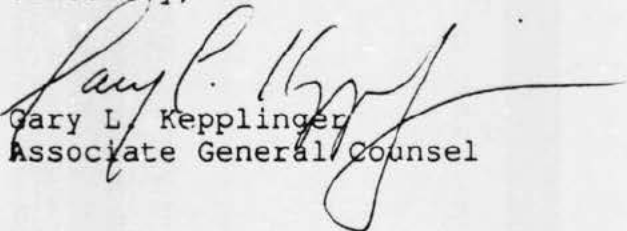
Your submission of August 1, 1990, did not address the degree of care that Ms. [redacted] exercised over her key to the padlock and the combination to the safe. However, the record before us reveals that Ms. [redacted] did not follow the applicable regulations pertaining to the storage of combinations and keys and was, therefore, negligent. Ms. [redacted] kept a copy of the combination to the imprest safe from which her cash box was stolen taped to the underside of the pull-out panel on her desk. Further, Ms. [redacted] and Ms. [redacted] both placed their keys to the padlock in or on their desks each evening. Ms. [redacted] stored her key on the top of her desk under some envelopes and Ms. [redacted] stored her key in the back of her top center desk drawer which did not lock. See also B-193416, Oct. 25, 1979; B-185666, July 27, 1976; B-182480, Feb. 3, 1975 (holding that an accountable officer's failure to store keys or combinations in a secure manner in accordance with applicable guidance constitutes negligence).

In light of Ms. [redacted]'s failure to properly safeguard the combination and key to the safe, we cannot relieve Ms. [redacted] absent exculpatory evidence that the theft was not attributable to Ms. [redacted]'s negligence. See B-185666 (granting relief to an accountable officer who had improperly stored combinations and the keys to cash boxes in a sealed envelope in an unlocked desk drawer on the ground that, as the seal on the envelope was intact subsequent to the discovery of the loss, the thief had not used the improperly stored combinations and keys to obtain the missing funds). The record indicates no evidence of forcible entry, and thus raises the possibility that the thief gained access to Ms. [redacted]'s cash box with the improperly stored combination and key. Absent exculpatory evidence to that effect, we are unable to conclude that the theft was not attributable to Ms. [redacted]'s negligence or that Ms. [redacted] has been proven faultless with respect to the loss. See 54 Comp. Gen. at 115 (quoting Boggs v. United States, 44 Ct. Cl. 367 (1909)); B-182480 (denying relief where a thief apparently unlocked a file cabinet with the key that was improperly stored in the accountable officer's unlocked desk).

We have granted relief where more than one person had access to the safe in which cash boxes were kept on the ground that definite placement of responsibility for the loss in such cases is precluded. See, e.g., B-217945 at 3. However, we do not believe that such cases provide a basis for relief in this case. While both Ms. [redacted] and Ms. [redacted] improperly safeguarded the keys to the safe, Ms. [redacted] unlike Ms. [redacted] stored the safe's combination where it was accessible to unauthorized persons.

Based on the present record, we find that Ms. [redacted] was negligent. Further, the evidence before us does not support a determination that her negligence did not contribute to the physical loss of \$1,458.27. Accordingly, relief is denied.

Sincerely,


Gary L. Kepplinger
Associate General Counsel