



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

Office of the General Counsel

B-234815

October 3, 1989

Colonel D.W. Mikkelson  
Chief of Staff  
U.S. Army Finance and Accounting Center  
Indianapolis, Indiana 46249-001

Dear Col. Mikkelson,

This responds to your March 9, 1989 request that we relieve Lieutenant Colonel (LTC) (DSSN 5072), Finance and Accounting Officer, U.S. Army Airborne Corps, Fort Bragg, North Carolina, of his personal liability for a \$100.00 improper payment made out of his accounts. Your request is based on our authority to relieve disbursing officers under 31 U.S.C. § 3527(c) (1982). For the reasons explained below, LTC efforts do not satisfy the collection standards we have prescribed under section 3527(c). Accordingly, relief is denied.

The improper payment occurred on September 10, 1987, when Specialist Four (SP4), cashier for LTC, erroneously overpaid former soldier, \$100 upon his separation from the Army. You determined that this overpayment was due to the fault or negligence of SP4 and have deemed him pecuniarily liable for the loss of funds if collections efforts are unsuccessful against the payee, Mr. . As the supervisory finance officer, LTC also is responsible for a loss of funds from his account.

Under 31 U.S.C. § 3527(c), this office has authority to relieve accountable officers from liability when the record indicates that the officer acted with due care and there is no indication of bad faith on the part of the accountable officer. However, section 3527(c) also provides that we may deny relief if we find that diligent collection efforts have not been made.

In cases similar to this one where a subordinate disbursed the funds, a supervisory accountable officer demonstrates due care upon a showing that he or she maintained an adequate system of procedures and controls to avoid errors and that appropriate steps were taken to ensure the system was effective. 62 Comp. Gen. 476 (1983). Your letter and

supporting documents show that LTC exercised due care. Your submission provides the Standard Operating Procedure (SOP) in effect at the time and shows that SP4 complied with the SOP in all respects except that he miscounted the payment to Mr. . We have recognized this as the kind of clerical error that will occur in even a well-supervised office. B-231551, Sept. 12, 1988. The record does not indicate bad faith on the part of LTC . However, we conclude that diligent collection efforts have not been made.

An agency may show diligent collection efforts under 31 U.S.C. § 3527(c) if the request for relief demonstrates compliance with the Federal Claims Collection Standards. 62 Comp. Gen. at 478. The Federal Claims Collection Standards require, among other things, that a total of three progressively stronger written demand letters be sent to the potential debtor at intervals of no more than thirty days. 4 C.F.R. 102.2. The file submitted with your request only shows that LTC sent Mr. an initial demand letter dated September 24, 1987, but not any follow up letters. Also, the initial demand letter failed to specify a date for payment and did not inform the potential debtor of the applicable standards for assessing interest, penalties, and administrative costs as required by the Federal Claims Collection Standards. Id.

A Finance and Accounting Officer also may demonstrate diligent collection action by referring a loss to a collection division within three months after the loss occurs. B-221471, January 7, 1986 (involving, as in the case before us, an overpayment made by the Army on a final separation voucher). Here the loss occurred on September 10, 1987. LTC treated the loss as a "physical loss" because overpayment was made in travelers check, and because it was under \$750.00, submitted a request for relief of a small loss on October 15, 1987, to the U.S. Army Finance and Accounting Center (USAFAC), FINCL-L, Indianapolis, Indiana (herein referred to as the Legal Office). On November 20, 1987, the Legal Office contacted LTC 's office by phone to advise them that the loss could not be processed as a small loss, but rather was an improper payment that must be referred to the Collections Division. A letter dated November 27, 1987, to LTC from L, Supervisory Attorney-Adviser, General Law Division, Legal Office, confirmed the information given to LTC 's office over the phone and reiterated the need to refer the loss to the Collections Division. The November 27, 1987, correspondence from Mr. directed LTC to Disbursing Message 12-86 requiring that losses from improper payments be forwarded to

the Collections Division 85 days from when the loss occurred.

LTC continued to question the Legal Office's determination that losses attributable to traveler's checks were improper payments and not physical losses. In a memorandum to the USAFAC Legal Office dated December 16, 1987, he formally requested clarification on how to treat losses attributable to traveler's checks from USAFAC. In the meantime, a second letter dated December 21, 1987, from Mr. at the USAFAC Legal Office also stated that losses identifiable to traveler's checks are improper payments and must be referred to the Collections Division within 90 days from when the loss occurs. The letter also cited Disbursing Message 12-86 once more, and advised that LTC could be denied relief under 31 U.S.C. § 3527(c) if diligent collection action was not taken. Still, LTC did not take any action.

On February 10, 1988, the Legal Office responded to LTC's December 16, 1987, request for clarification on losses resulting from traveler's checks. This response again informed LTC that losses attributable to traveler's checks are improper payments that have to be referred to the Collections Division within 90 days from the time of the loss. The February response stated that the Legal Office felt it had provided LTC with the proper guidance in the correspondence dated December 21, 1987. Finally, the Legal Office, with agreement by LTC's office, referred the loss to the Collections Division on March 14, 1988--over six months after the loss occurred and thus after the three month period we have deemed sufficient for referring losses to a collection division.

LTC argues in the record submitted with your request that the delay in referring the loss to a collection division was caused by insufficient guidance from the Finance Office at USAFAC. We disagree.<sup>1/</sup> The Legal Office repeatedly advised LTC to forward this loss to the Collections Division, and cited LTC to relevant authority on several occasions. LTC also was told that time for referral of a loss begins to run on the day

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<sup>1/</sup> Even if we were to toll the running of the three month period from October 15, 1987 when LTC referred the overpayment to the Legal Office as a small loss to November 27, 1987 when he was instructed to treat the overpayment as an improper payment to be referred to the Collections Division, the referral was still made five months after the loss occurred.

the loss occurs and that relief could be denied if he failed to pursue diligent collection efforts. The Legal Office concluded that it had provided LTC with adequate guidance on December 21, 1987--almost three months before the loss was finally referred to the Collection Division. Even if the Legal Office's November 27 response may not have satisfactorily explained to LTC the rationale for why losses attributable to traveler's checks are improper payments and not small losses, the instructions from the Legal Office on the need to refer the matter to the Collections Division were clear and direct. Given these facts and circumstances, the six month delay in referring matters to the Collections Division cannot be justified.

LTC's apparent dispute with the guidance provided him did not relieve him of responsibility to pursue diligent collection efforts. LTC should have continued diligent collection efforts, such as sending the required demand letters and making a timely referral to the Collections Division, while he pursued his questions on how to characterize the loss were being resolved. Since the record shows that diligent collection efforts were not made, relief is denied.

Sincerely,



Gary L. Kepplinger  
Associate General Counsel