



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

Office of the General Counsel

B-234962

September 28, 1989

The Honorable H. Lawrence Garrett, III
Secretary of the Navy
Department of the Navy
Washington, D.C. 20350-1000

Dear Mr. Secretary:

This responds to your March 17, 1989, request that we relieve Captain (CPT) [redacted] (the Disbursing Officer at the Marine Corps Logistics Base, Barstow, California) and three of CPT [redacted] subordinates of their personal responsibility for five improper payments made out of CPT [redacted] accounts. The five payments, totalling \$10,692, were made to a deserter from a Navy ship who requested travel expense advances based on forged travel orders. Your request is based on our authority to relieve disbursing officials under 31 U.S.C. § 3527(c) (1982). As explained below, we grant relief to CPT [redacted] and his subordinates.

The improper payments in this case resulted from a fraudulent scheme carried out by Data Systems Technician Third Class (DS3) [redacted] USN. DS3 [redacted] deserted from his assignment on the USS Carl Vinson on July 31, 1986. On five occasions from September 3, 1986, through March 17, 1987, DS3 [redacted] requested and received travel advances from the Military Pay/Travel Pay Section under CPT [redacted] responsibility. These requests for travel advances were made on the basis of three sets of forged travel orders. The three sets of orders (which stated that they were prepared on July 1, 1986, October 21, 1986, and February 27, 1987) directed DS3 [redacted] to report to a Honeywell facility in Phoenix, Arizona for a total of 330 days of factory computer repair training, from August 2, 1986 to June 28, 1987.

The pertinent dates, amounts of advances received and Military Pay/Travel Pay Section personnel associated with each payment are as follows:

<u>Date</u>	<u>Amount</u>	<u>Travel Clerk/Voucher Examiner</u>
Sept. 3, 1986	\$1,692	Private
Dec. 3, 1986	\$2,250	Ms.
Jan. 8, 1987	\$2,250	Ms.
Feb. 2, 1987	\$2,250	Private
Mar. 17, 1987	\$2,250	Lance Corporal

The statements of Ms. , Pvt. , and Corp. indicate that they each questioned the orders presented by because the orders were not stamped with the notation "ORIGINAL ORDERS." The statements of Pvt. and Corp. show that they raised the matter with Ms. , and the statements of all three show that they did not pay travel advances until CPT approved the orders. Since your submission in this case did not contain a copy of an applicable standing operating procedure, we contacted Ms. to ask her about the procedures in effect at the time of the loss. Ms. stated that orders which were not stamped as originals would be submitted to the Disbursing Officer before a travel advance would be paid. The Disbursing Officer would authorize payment if the signature on the orders appeared to be genuine. This procedure appears to have been followed in this case.

Ms. also informed us that she questioned about his orders. In response to her questioning, stated that his family lived north of Barstow, and that the long-term nature of his training "assignment" would cause him to travel frequently between his home and his training site in Phoenix.

CPT discovered that these payments were made on fraudulent orders in May of 1987, after the Navy office which was being charged for the advances questioned the expenditures. CPT then notified the Marine Corps Finance Center and the Naval Investigative Service (NIS) of the fraud, and on May 28, 1987, the Commanding General of the Marine Corps Logistics Base in Barstow, California ordered an investigation.

The statute which authorizes this Office to relieve CPT and his subordinates states:

"[T]he Comptroller General may relieve a present or former disbursing official of the agency responsible for a deficiency in an account because of an illegal, improper, or incorrect payment, and credit the account for the deficiency, when the Comptroller General

decides that the payment was not the result of bad faith or lack of reasonable care by the official. However, the Comptroller General may deny relief when the Comptroller General decides the head of the agency did not carry out diligently collection action under procedures prescribed by the Comptroller General."

31 U.S.C. § 3527(c) (1982). Your request that we relieve CPT states that the payments were not made by him directly, but rather by his subordinates.

"The basic rule is that a disbursing agent, officially responsible for an account, is personally liable for the wrongful payments made by his subordinates. In such cases, we grant relief to the supervisor upon a showing that the disbursing officer properly supervised his employees. Proper supervision is demonstrated by evidence that the supervisor maintained an adequate system of procedures and controls to avoid errors and that appropriate steps were taken to ensure the system's implementation and effectiveness."

62 Comp. Gen. 476, 480 (1983) (citations omitted).

Typically, we have based our conclusions about proper supervision upon evidence such as the applicable standard operation procedures, and statements of the subordinates and the supervisor explaining the procedures and how they were implemented. B-222392, November 12, 1986. In this case, although there was no written standing operating procedure, we conclude that CPT properly supervised his subordinates. All three subordinates questioned the orders presented to them and, in accordance with the informal policy, obtained CPT authorization to pay the requested travel advances. The policy described by Ms. , and the statements of all three subordinates, show that CPT maintained and enforced procedures and controls designed to prevent this type of loss. The fact that skillful perpetration of the fraud succeeded in obtaining the improper advances does not mean that the office was improperly supervised. See B-229275, January 15, 1988.

We also conclude that the improper payments made by Ms. , Pvt. and Corp. were not the result of their bad faith or lack of reasonable care. As discussed

above, each of these three officials questioned orders and obtained approval before paying the requested advances. In addition, Ms. [redacted] questioned [redacted], and received a plausible answer, as to why he was requesting an advance at a location which was some 400 miles from his assigned training site. Based on this questioning of the orders, and based on the approval obtained by each of them, we conclude that these three subordinates of CPT [redacted] did not act in bad faith or with a lack of reasonable care. See B-221940, October 7, 1987.

Since we conclude that the improper payments were not the result of bad faith or the lack of reasonable care, our decision to grant relief depends upon whether the Navy undertook the diligent collection action specified by 31 U.S.C. § 3527(c). Our decisions have specifically outlined the collection actions we require.

"[W]e will exercise our discretion under section 3527(c) and grant relief only where there is evidence that a diligent collection effort has been made. In order to show that such effort has been made a relief request must demonstrate compliance with the Federal Claims Collection Standards issued jointly by the General Accounting Office (GAO) and the Department of Justice."


62 Com. Gen. at 478. The Federal Claims Collection Standards require that "any claim as to which there is an indication of fraud" should be promptly referred to the Department of Justice. 4 C.F.R. § 101.3. The Department of Justice may then, in its discretion, return the matter to the agency for handling in accordance with the standards. Id.

The record in this case does not show whether the evidence of [redacted] fraud against the United States was referred to the Department of Justice. However, the record does show that CPT [redacted] notified the NIS of the fraud soon after he discovered it. Further, we note that a Memorandum of Understanding between the Department of Defense and the Department of Justice requires the NIS to confer with the Department of Justice when the NIS identifies a fraud against the Department of Defense which would warrant federal prosecution. Enclosure 1 to Department of Defense Directive 5525.7, January 22, 1985. Since the NIS was required to confer with the Department of Justice when it was informed of the fraud perpetrated by [redacted], we view CPT [redacted] referral of the fraud to the NIS as compliance with the Federal Claims Collection Standards, at least so

far as this request for relief is concerned. Accordingly, we grant relief to CPT [redacted] and his subordinates.

However, the record in this case suggests that the efforts to recover the amounts fraudulently obtained by [redacted] were not adequately coordinated. The record shows that, within 13 months after his fraud was discovered, [redacted] was arrested by civilian authorities, turned over to the Navy, court-martialled, sentenced, imprisoned, released. Due to a lack of communication, the Navy Accounting and Finance Center did not learn of [redacted] apprehension until he disappeared following his release. The record also does not reflect any determination by the Department of Justice that the debt should be compromised or terminated. Fraud investigation and prosecution activities between the Navy and the Department of Justice need to be better coordinated to take into account the debt collection responsibilities set out in the Federal Claims Collection Standards.

Sincerely,



Gary L. Kepplinger
Associate General Counsel