



Office of the General Counsel

B-232321

September 20, 1988

John C. Lawn, Administrator
Drug Enforcement Administration
U.S. Department of Justice

Dear Mr. Lawn:

This is in response to your letter of August 16, 1988, requesting relief under 31 U.S.C. § 3527(a) for Ms.

, Ms. , Ms. and Ms. , the four cashiers responsible for the Drug Enforcement Agency (DEA) New York Division Office (NYDO) imprest fund during the period from December 1986 until February 1988. As of February 1988, the NYDO imprest fund was determined to have an unexplained shortage of \$3,889.27. After consideration of the circumstances involved in this case, we have decided to grant relief.

According to your submission, a December 9, 1986, audit of the imprest fund identified a shortage of \$3,366.55. This was later reduced to \$2,366.55 by May 1987.^{1/} On September 10, 1987, another audit was conducted which revealed that the shortage had been reduced to \$1,320.74.^{2/} DEA Headquarters Inspection Staff conducted an audit on September 21, 1987. It revealed a shortage of \$1,793.24.^{3/} On January 12, 1988, an in-depth audit by DEA Headquarters

^{1/} The reduction in the shortage was caused by the discovery of two missing accountable documents.

^{2/} The amount of the shortage was changed because of various items that were discovered. For example, a reimbursement voucher had been improperly filed and a travel advance was replenished. In addition, reimbursements had been made for two subvouchers; however, these documents were being carried as subvouchers on hand. Finally, a \$154.40 unexplained overage was identified.

^{3/} The September 21, 1987, audit found that two cash advances that were being carried as open documents had been previously reimbursed.

Accounting Office was performed. Various accounting problems were identified that brought the shortage amount to \$1,889.27. In February, two further accounting problems were discovered increasing the shortage to \$3,889.27.

Your submission indicates that you have been unable to determine precisely when or how the shortage occurred. However, you have identified various factors that have contributed to the problem. Among the more serious difficulties are the size of the imprest fund, the volume of transactions handled by the cashiers, and the turnover in personnel. The authorized amount for the fund during the period of time in which the shortage occurred ranged from \$750,000 to \$830,000. During this time, four cashiers were responsible for the fund and it appears that there was multiple access to the fund without full accountability. Finally, you indicate that the previous Imprest Fund Audit Reports for October 1, July 28 and 29, 1986, were inaccurate making it impossible to fix an exact date when the shortage occurred. Therefore, you have been unable to determine who was responsible for the loss.

The General Accounting Office is authorized to grant relief from liability to an accountable officer upon its concurrence with determinations by the department or agency head that (1) the loss or deficiency occurred while the officer or agent was acting in the discharge of his official duties, or that it occurred by reason of an act or failure to act of a subordinate of the officer or agent, and (2) the loss or deficiency occurred without fault or negligence on the part of the officer or agent. 31 U.S.C. § 3527(a).

The shortage involved in this case is an unexplained loss. Generally, the disappearance of funds without an explanation gives rise to a presumption of negligence on the part of the accountable officer and the burden is on the officer to rebut the presumption with evidence to the contrary. In this regard, even the absence of implicating evidence does not rebut the presumption nor does a mere administrative determination that there is no fault or negligence if it is unsupported by evidence. B-217876, April 29, 1986. However, an accountable officer may be negligent and nevertheless be relieved from liability if the negligence is not the "proximate cause" of the loss or shortage. Id.

You have uncovered numerous serious deficiencies in the manner in which the imprest fund was internally controlled. Our Office has previously held that when an agency fails to provide proper security arrangements for the safekeeping of government funds, that failure may be viewed as the proximate cause of the ensuing loss and the accountable

officer may be relieved from liability. Id.; B-202597, May 6, 1983. Under the circumstances, it is reasonable to conclude that the complexity and lack of adequate accounting safeguards was the proximate cause of the loss. Accordingly, we grant relief to all four cashiers.

Finally, we note that you have formed a study group to resolve some of the problem areas that you have discovered in the imprest fund. Some of the issues you are exploring include handling flashrolls through other than an imprest fund, investigating checking accounts to pay investigative expenses, and government credit card programs.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Rolley Efros".

(Mrs.) Rollee H. Efros
Associate General Counsel