



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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IN REPLY
REFER TO: B-197616

OFFICE OF GENERAL COUNSEL

March 24, 1980

The Honorable Alan Cranston
United States Senate

[REQUEST for Relief
of Liability]

Dear Senator Cranston:

This responds to your request that we review the case of Mr. George Brokaw, a District Director of the United States Customs Service, who is being held personally responsible for a net loss of \$804.76 in Government funds which occurred on October 14, 1976. Mr. Brokaw has also written to us directly, requesting that we relieve him of his liability under the provisions of 31 U.S.C. § 82a-1. This serves to answer Mr. Brokaw's request also. For the reasons stated below, we are unable to consider Mr. Brokaw's request for relief.

Mr. Brokaw enclosed a copy of the Customs Service file in this case along with his request. The file indicates that the funds were lost while a messenger who worked in the Inspection and Control Division, Mr. Sidney Brown, was attempting to take the funds from the Customs Inspection office to the Customhouse in San Francisco. Customs Service officials have apparently decided not to attempt to recover the unrecovered balance from Mr. Brown who resigned in January, 1978.

A memorandum dated October 31, 1979, from the Regional Commissioner indicates that the Service intends to hold Mr. Brokaw, as District Director, personally responsible for the loss. The Regional Commissioner of Customs, after reviewing the report of Customs' Office of Internal Affairs and the actions taken by Mr. Brokaw and his office, determined in a letter to Mr. Brokaw that "safeguards were lax and that the directives issued were not followed. Because of the many discrepancies involved, we hold your office responsible for the \$804.76, the uncollected balance." As District Director, a position which makes him accountable for all funds under his office's control, Mr. Brokaw was directed to pay the difference from his own funds.

Our authority to grant relief in cases such as this one is governed by the provisions of 31 U.S.C. 82a-1. Under that statute we are authorized to relieve an accountable officer or agent charged with responsibility for the physical loss of Government funds only if the head of the officer's department or his delegee makes two determinations -- that the loss occurred while the officer was acting in the discharge of his official

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duties, and that his actions were not the proximate cause or otherwise contributed to the loss through fault or negligence on his part. If we agree with these determinations, this Office is authorized to grant relief. On the other hand, if the employing agency does not see fit to make these determinations, we do not become involved at all in the merits of the case.

In the case of the Customs Service, the Assistant Secretary of the Treasury (Administration) is the official to whom the authority to make such determinations has been delegated and he has not done so in Mr. Brokaw's case. We are not aware of the factors which led the Regional Commissioner to conclude that Mr. Brokaw should be held personally accountable, rather than requesting relief for him through appropriate channels. If you desire more information on this matter, you may wish to contact the Treasury Department or the Customs Service.

In any event, since the requisite determinations have not been made by the official required by the statute to make such determinations, we are not authorized to grant relief.

We regret that we cannot provide a response more favorable to your constituent.

Sincerely yours,

Harry R. Van Cleave
for Milton J. Socolar
General Counsel