

GAO

United States General Accounting Office
Washington, DC 20548

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Office of
General Counsel

In Reply
Refer to: B-199034

February 9, 1981

[Request For Relief From Liability]

The Honorable James B. King
Chairman, National Transportation
Safety Board

Dear Mr. King:

Mr. B. Michael Levins, Director, Bureau of Administration, has requested that Principal Cashier Karen V. Peacock be relieved from liability for a \$684.77 imprest fund loss. For the reasons that follow, relief is granted.

According to the record, the loss apparently occurred sometime between the close of business on November 19, 1979, and 10:30 a.m. on the following day. The funds were stored in a combination safe with separate drawers, each with its own individual combination lock. (The record is confusing on this point. Some Board documents refer to drawers while others refer to combination locks on the "cash boxes." In view of our decision below, it is unnecessary to resolve this discrepancy.)

At 4:45 p.m. on November 19, Ms. Peacock locked the drawer (and/or cash box) containing the funds and also locked the outer safe door. At 5:00 p.m., Accounting Officer Lillie B. Isler checked to assure that the safe was locked and locked the office door. At approximately 10:30 a.m. on November 20, Ms. Peacock opened the safe to make a payment and discovered the money missing except for some coins. An investigation by the Federal Bureau of Investigation produced no evidence to explain the loss.

The General Accounting Office is authorized by 31 U.S.C. § 82a-1 to relieve an accountable officer from liability for a physical loss or deficiency if GAO concurs with administrative determinations that the loss occurred while the accountable officer was acting in the discharge of official duties and that the loss occurred without fault or negligence on the part of the accountable officer. The record does contain the "no fault or negligence" determination and, while it does not contain the "discharge of official duties" determination, the various documents submitted clearly indicate that this was the Board's conclusion. See B-195435, September 12, 1979.



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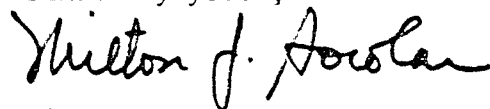
Reviewing the facts here, there is on the one hand no evidence of any negligence on the part of Ms. Peacock. There is no question that she locked the safe before leaving work on November 19. Also, she had memorized the combination and did not keep a written copy. On the other hand, however, there was no evidence of forcible entry or any other evidence to account for the loss. Thus, we have an "unexplained loss." When public funds disappear without apparent explanation, a presumption of negligence arises on the part of the accountable officer, and this presumption will generally preclude the granting of relief unless it can be rebutted. E.g., 48 Comp. Gen. 566 (1969).

While there is, as noted, no evidence to explain the loss, one factor is nevertheless present which is sufficient to rebut the presumption of negligence and to permit the granting of relief. The Board's request for relief in this case included two losses occurring under very similar circumstances -- Ms. Peacock's loss and a loss occurring on or about July 18, 1979, for which Class "B" Cashier Elaine Jefferson was accountable. In B-199128, November 7, 1980, we granted relief to Ms. Jefferson for the July 18 loss. In that decision, we pointed out that three persons in addition to Ms. Jefferson had the combinations to the safe and to the cash box/drawer. This is a breach of security attributable to the agency and beyond the control of the accountable officer.

The Treasury Department's "Manual of Procedures and Instructions for Cashiers" provides that cash should be in a suitable safe or vault "under the exclusive control of the cashier" (id., § 0402, emphasis in original). This is one of the fundamental principles of sound cash control. Where several persons have the combination or ready access to it, the container is not secure and the definitive placement of responsibility for a loss such as the one in question is impossible. We have frequently granted relief in such cases where there is no evidence of contributing fault or negligence on the part of the accountable officer. B-199128, supra; B-199020, August 18, 1980; B-197799, June 19, 1980; B-191942, September 12, 1979; B-183284, June 17, 1975.

The same three persons had the safe combination in this case as in the Jefferson case, B-199128, and the rationale of that decision is equally applicable here. Accordingly, since there is no indication of any contributing fault or negligence on the part of Ms. Peacock, relief is granted. The loss may be charged to current appropriations in accordance with the last sentence of 31 U.S.C. § 82a-1.

Sincerely yours,



Milton J. Socolar
General Counsel