



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

Office of the General Counsel

B-220689

September 24, 1986

Mr. Clyde E. Jeffcoat
Principal Deputy Commander
U.S. Army Finance & Accounting Center
Indianapolis, Indiana 46249

Dear Mr. Jeffcoat:

This responds to your request of September 30, 1985, for relief under section 3528(b)(1) of title 31 of the United States Code for Army Finance and Accounting Officer D.G. Ingalsbe for a \$375 loss resulting from an improper payment. For the reasons given below, the account in question must now be regarded as settled and there is no longer a need for us to grant relief.

The record reflects a somewhat complicated factual background. It shows that on May 2, 1980, Lieutenant [redacted] used his own money to pay MDO Productions \$375 for the appearance of the music band "De Geronomo People" at an Italian music and dance presentation at Presidio of Monterey, California. Lieutenant [redacted] did not notify the pertinent Army Finance and Accounting Office--the Fort Ord, California Office--of his action. On May 19, 1980, a United States Treasury check in the same amount was drawn on the accounts of Mr. Ingalsbe and issued to the same band for the same performance.

On June 5, 1980, MDO Productions informed the Fort Ord Army Finance and Accounting Office that Lieutenant [redacted] had paid it. By letter dated June 11, 1980, from MDO Productions to the Finance Office, MDO indicated it had not received a check from the Finance Office, but again stated that Lieutenant [redacted] had paid it \$375 for the band, and requested the Finance Office to reimburse him for the payment. On either June 5 or June 17, 1980, the Finance and Accounting Office's disbursing officer forwarded a stop payment request to the Treasury for the May 19 check.

On July 17, 1980, Treasury issued a replacement check for \$375 to De Geronomo People c/o the Finance and Accounting Office, Fort Ord, California, presumably on the basis of the

stop payment request. Several weeks later the replacement check was endorsed by _____, an employee of MDO Productions, and was cashed by _____ who had power of attorney to collect for Lieutenant _____. The May 19 check, however, was cashed by MDO Productions in April 1981, resulting in a \$375 duplicate payment. The loss was reflected on the Statement of Accountability submitted for May 1983 by Mr. R.E. Yrjanson, Mr. Ingalsbe's successor.

In May 1983 and May 1984 Mr. Yrjanson wrote to MDO Productions to attempt collection of the \$375. In both instances MDO avoided acknowledging liability. In September 1985 the Army referred the matter to its collection representative to pursue collection in accordance with the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. §§ 3701; 3711.

Section 3528(b)(1) of title 31 allows the Comptroller General to grant relief from liability to a certifying official when he decides that a certification was based on official records and the official did not know and by reasonable diligence and inquiry could not have discovered the correct information. The Army has concluded that Mr. Ingalsbe's conduct satisfied these requirements.

The time period that has elapsed raises the issue of the applicability of the 3-year period of limitations in section 3526(c) of title 31, which governs this Office's disposition of accountable officer relief cases. In 62 Comp. Gen. 92, 97-98 (1982), we decided that in duplicate check cases the 3-year period of limitation begins to run when the Army Finance and Accounting Center receives the Treasury's debit voucher which first notifies the agency of the loss. We also concluded that the 3-year period is not tolled by the agency's timely request for relief. The statute, in essence, provides that after 3 years, the questioned accounts are presumed settled. Therefore, there is no longer a need for us to grant relief.

In this instance, the loss of funds first was reflected in the Treasury's debit voucher, dated May 5, 1983. Although the Army submitted a timely request for relief in October 1985, by now more than 3 years have elapsed since May 1983. Accordingly, consistent with our decision in 62 Comp. Gen. 92, 97-98 (1982), there no longer is a need for us to grant relief.

Having decided this, we still need to address one further issue. In the ordinary duplicate check case, the loss results when the second check is presented and paid. This

happens because Treasury honors the second check even though the first check already has been paid. 62 Comp. Gen. 92, 94 (1982). 1

In this instance, while the first check was properly issued to MDO Productions, the record does not support a finding that the second check, issued for the purpose of reimbursing Lieutenant , was proper. It has been well-established that one who uses personal funds to pay what he perceives to be an obligation of the Government does not thereby create a valid claim in his favor. 62 Comp. Gen. 419, 420 (1983). This rule is called the voluntary creditor rule. Over the years there have developed exceptions to this rule, and, in the cited case, we reviewed the rule's history and set forth revised general standards that would govern when voluntary creditor problems arose.

In situations where an individual makes a payment from personal funds for goods or services, the underlying expenditure is proper, and the goods or service is intended to benefit the Government, an absolute prohibition on reimbursement is neither mandated by precedent or necessary to protect the Government's interests. Nevertheless, before reimbursement is allowed, the test of public necessity must be met; that is, it must be shown that the program or activity involved would have been disrupted had the voluntary creditor not taken prompt action by paying with his own funds. The purpose of this test is to limit reimbursement to cases where there is a real need to act without delay to protect a legitimate Government interest. Reimbursement should not be allowed where an individual purchases something mainly because he considers it desirable and is able to induce his agency into ratifying the transaction. 62 Comp. Gen. at 424. Furthermore, to the extent a voluntary creditor is directed by a supervisor to make the expenditure, a somewhat lesser standard of public necessity may be applied. Id.

In this case, the record provides no information about how the Italian music and dance presentation would have been affected had Lieutenant not paid MDO Productions for the band, nor is there any information about whether the Lieutenant acted entirely on his own in paying the band or was induced or directed to do so by a supervisor. Absent such information we cannot say the public necessity test was met and must find that Mr. 's use of his own funds to pay the band was improper. Accordingly, the proceeds of the second check should not have been paid to him.

Although collection action against MDO Productions could continue if necessary, we recommend starting collection from Lieutenant . If he still is serving in the armed forces, collection could be made by offset from his salary, and, if not, from any pension he might have. The Lieutenant, in turn, could then pursue reimbursement from MDO since it was paid twice.

Sincerely yours,

A handwritten signature in cursive script that reads "Rollee H. Efros". The signature is written in dark ink and is positioned above the typed name.

(Mrs.) Rollee H. Efros
Associate General Counsel