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United States General Accounting Office
Washington, DC 20548

B-288284.2

March 7, 2003

John P. Markey, Jr.
Acting Chairperson
Committee of Inquiry into Fiscal Irregularities
United States Department of State
1800 N. Kent Street, 5th Floor
Arlington, VA 22209-2163

Subject: Relief of Accountable Officer Sally V. Slocum - American Embassy,
Brazzaville, Republic of the Congo

Dear Mr. Markey:

This responds to your letter of December 13, 2002, which provides additional information in support of the State Department's June 20, 2001 request that we relieve Ms. Sally V. Slocum, formerly of the American Embassy in Brazzaville, Republic of the Congo, from liability in the amount of \$5,701.43 resulting from her certification of an improper payment. Upon careful consideration of the matter in light of the information set forth in your recent letter, we grant the requested relief.

BACKGROUND

In the fall of 1991, due to widespread violence resulting from a military mutiny, most staff of the American Embassy in Kinshasa, Republic of the Congo, were evacuated to the Embassy in Brazzaville. At this time, Ms. Slocum, the Administrative Officer for the Brazzaville Embassy, was approached by or on behalf of Kinshasa Embassy personnel concerning the possibility of evacuating their household pets to safer locations. According to Ms. Slocum's account, she replied that the evacuation of pets was a personal expense and that government resources could not be used. Nevertheless, at some point the pets were evacuated to various locations by Agence Air Afrique ("Air Afrique"), although the record does not reveal who ultimately authorized or arranged for the pet evacuation or how the pet evacuation was intended to be funded. Ms. Slocum stated that she learned nothing further about the pet evacuation until seeing subsequent cable communications indicating that various Embassy employees were being billed for the air evacuation of their pets.

In June 1993, violence again erupted in the Republic of the Congo, this time requiring the evacuation of Brazzaville Embassy personnel. During this crisis, Air Afrique apparently threatened to cut off its transportation services to the evacuating Brazzaville Embassy personnel unless a payment was made in the amount of \$27,634.07 for its services provided in the 1991 Kinshasa Embassy pet evacuation. Ms. Slocum sought advice from the Kinshasa Embassy staff as to how to proceed. On June 9, 1993, Ms. Slocum certified payment of this amount to Air Afrique, relying on the fiscal data provided over the telephone by Kinshasa staff and that Embassy's instructions to proceed with the payment and charge it to Kinshasa's Suspense Deposit Abroad (SDA) account. According to State's June 20 letter, the SDA account is a fund maintained at overseas posts from which payments for personal expenses can be made on behalf of and as directed by the depositors, which include Embassy employees and other authorized individuals and entities. Embassy employees typically deposit money into the fund in order to make payments for telephone, gasoline, or utility bills. However, at the time Ms. Slocum certified the \$27,634.07 payment to Air Afrique out of the SDA account, no monies had been deposited into the SDA account for that purpose.¹ Letter from Michael Rafalko, Acting Chairperson, Committee of Inquiry into Fiscal Irregularities, Department of State, to Gary Kepplinger, Managing Associate General Counsel, GAO, June 20, 2001.

In our prior letter to you concerning this matter, we explained that we were unable to either grant or deny relief from liability, as the record submitted with State's initial letter of June 20 was insufficient to support any determination. Letter from Susan A. Poling, Managing Associate General Counsel, GAO, to Ronald L. Miller, Chairperson, Committee of Inquiry into Fiscal Irregularities, Department of State, B-288284, May 29, 2002. The record was unclear as to the nature of the government's responsibility for the SDA funds and what funds were actually used to pay the Air Afrique bill. We could not make a determination regarding Ms. Slocum's diligence given the lack of information addressing the SDA account's control procedures or any other State Department or Embassy policies that would have guided her actions. Furthermore, the record did not identify the Kinshasa Embassy official who provided the guidance upon which Ms. Slocum relied or the disbursing official who actually made the improper payment. It was possible from the record that these individuals may have shared any liability for the improper payment with Ms. Slocum, the certifying officer.

¹ It appears that no money was actually collected from (or deposited into the Kinshasa SDA account by) individuals whose pets were evacuated until shortly after the improper payment was discovered in August 1994. According to the record, all but \$5,701.43 has been collected and of this amount, \$2,326.07 is considered non-recoverable as there is insufficient information to identify the persons owing these payments.

Your December 13 letter states that the SDA account is a deposit account established by the Department of Treasury for the Department of State over 25 years ago. The U.S. government is responsible to each depositor for ensuring that amounts received are appropriately deposited in the account and later disbursed or returned to the depositor as directed. Letter from John P. Markey, Jr., Acting Chairperson, Committee of Inquiry into Fiscal Irregularities, Department of State, to Susan A. Poling, Managing Associate General Counsel, GAO, December 13, 2002. You provided a copy of the State Department's Service Post User Manual, Appendix A, Section 9, "Suspense Deposit and Trust Fund Account Disbursements," Nov. 11, 1994, which provides general guidance on the use of the SDA account and how to make and record a payment from the account. Given this relationship, the government would be required to reimburse a deficiency in the SDA account using appropriated funds and Ms. Slocum, as a certifying officer, could be held liable for any improper payments made out of the SDA account unless relief from liability is granted.²

Concerning Ms. Slocum's reliance on the Kinshasa embassy official's instruction to pay the voucher using Kinshasa fiscal data for its SDA account, your December 13 letter confirms that embassies often transmit fiscal data via the telephone when circumstances make it necessary and that this method of operation had been successful even though there were no formal guidelines or procedures for operating in this manner. Extensive interviews with officials present in 1991 have been inconclusive as to who in Kinshasa actually authorized the shipment of pets before the money was deposited in the SDA account or who authorized Ms. Slocum to certify payment of the Air Afrique voucher using the fiscal data for the SDA account. However, your letter states that several employees who were present in Kinshasa and Brazzaville at the time have corroborated Ms. Slocum's statement that she was so authorized and led to believe that the Kinshasa SDA account was properly funded. Your letter also reports that since the Kinshasa embassy was ransacked during the civil war there is no paperwork available that could shed further light upon this matter, including the specific source of the funds used and whether the payment to Air Afrique was made as a check or in cash in Brazzaville. Your letter reiterates the State Department view that in certifying the Air Afrique bill for payment Ms. Slocum was carrying out her official duties with full diligence during a time of civil war and an urgent evacuation, and she should be relieved of the liability for the improper payment.

² We have held that in situations like this, where the Government has custody of the funds, they are considered "public money for purposes of 31 U.S.C. § 3527(a)." See, e.g., B-238955, April 3, 1991 (State Department's Overseas Consular Service trust fund was considered public money for purposes of 31 U.S.C. § 3527(a)); B-215477, November 5, 1984 (loss of patient funds by Veterans Administration hospital constitutes a liability of the Government for which an accountable officer may be liable).

DISCUSSION

Our Office may relieve a certifying officer of liability for an improper payment of public money where we find that the 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. 31 U.S.C. § 3528(b)(1)(A). Typically, we base our determination of whether to grant relief on evidence such as the standard operating procedures in effect at the time of the erroneous payment and the statements of knowledgeable agency officials. B-272615, May 19, 1997; B-254385, Mar. 22, 1994; B-235037, Sept. 18, 1989.

Based on the record now before us, we conclude that Ms. Slocum exercised reasonable diligence since there is no indication of bad faith and Ms. Slocum, who initially questioned the propriety of paying for the evacuation of pets with federal funds, subsequently certified payment of Air Afrique's voucher in the belief that there were sufficient funds in the Kinshasa SDA account as directed by the Kinshasa embassy official. See 70 Comp. Gen. 298 (1991); B-221940, Oct. 7, 1987. Here, the improper payment occurred because, in certifying the Air Afrique voucher for payment, Ms. Slocum relied on the fiscal data sent by the Kinshasa official who approved the payment. She had no reason to doubt that there were sufficient funds to cover the payment. Given the circumstances in the Congo at that time and the urgency of the need to evacuate government employees and their families from a dangerous situation, it would be an undue burden to require that she should have sought further documentation or personally examined supporting materials behind the Kinshasa official's authorization and transmission of fiscal data. This is particularly true since, under the common practice in effect for embassy certifying officers as reported in your December 13 letter, she was expected to rely on the Kinshasa embassy official's assurances and permitted to certify payments based on such instructions. See, e.g., 67 Comp. Gen. 457, 466 (1988) (certifying official who accepted memorandum certification of supervisor and certified voucher schedule for payment is not liable for the loss resulting from the improper payment since she was entitled to rely upon her supervisor's certification). Therefore, we grant relief to Ms. Slocum.

As your December 13 letter indicates, the State Department investigation of the circumstances surrounding the payment to Air Afrique failed to identify and document the role of the Kinshasa official who authorized the payment of the Air Afrique voucher or the disbursing officer who actually made the payment. The lack of a paper trail makes assignment of responsibility for the improper payment impossible. In situations like this, where there is no basis for attributing a loss or improper payment to one particular individual, we have determined that no one can be held liable. See B-235368, Apr. 19, 1991, and cases cited.

In light of these circumstances, we are concerned with what we view as inadequate controls over the SDA account and a lack of specific, objective guidelines provided to accountable officers at embassy posts. We recommend that the State Department take steps to eliminate the possibility of incurring this same sort of error in the future. This would include developing more detailed written policies or procedures for validating amounts in the embassy SDA accounts, including requiring certifying officers to request verification of the amount in the account before payments from the SDA accounts are made or giving the certifying officers access to account databases which would allow them to independently verify the amounts available.

Sincerely yours,

/signed/

Susan A. Poling
Managing Associate General Counsel

Digest

Under 31 U.S.C. § 3528(b)(1)(A), an embassy certifying officer who certified an erroneous payment to an air carrier is relieved of financial liability because the officer did not know, and by reasonable diligence and inquiry could not have discovered, the correct information. The officer was following the standard practices at the time and certified the payment pursuant to the direction of an official at another embassy and in the belief that there were sufficient funds available in the charged account.