GAO

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

Office of the General Counsel

B-271312

January 17, 1997

Mr. John S. Nabil
Director
Defense Finance and Accounting Service
Denver Center
6760 E. Irvington Place
Denver, CO 80279

Dear Mr. Nabil:

This responds to your request of January 29, 1996 for relief of Captain Harvey B. Rice, Defense Accounting Officer (DAO), McGuire Air Force Base, New Jersey, under 31 U.S.C. § 3527(c), for an improper payment of $15,117.81 payable to Spensieri Enterprises, Ltd. For the reasons below, we grant relief.

The loss resulted when the payee, Spensieri, negotiated both the original and a replacement, or recertified check. On January 31, 1994, the McGuire Air Force Base Defense Accounting Office issued a check to Spensieri for $15,117.81 as finial payment under a construction contract. Almost six week later, on March 10, Spensieri notified the accounting office that it had not received the check, and submitted Air Force Form 326, "Statement of Claimant Requesting Stoppage of Payment and Request for Substitute of U.S. Treasury Check". On that same day, Captain Rice, using Standard Form 1184, "Unavailable Check Cancellation," notified Treasury to cancel the check. After receiving confirmation from Treasury, dated March 29, that the check had been cancelled and that his account had been credited for the amount of the check, Captain Rice on May 2 issued a replacement check to Spensieri, which Spensieri cashed.

Over seven months later, on December 19, Treasury advised Captain Rice that Spensieri had cashed the original check on August 9. Treasury also informed Captain Rice that it had reversed its March 29 action crediting his account with the amount of the original check. Consequently, Captain Rice's account has been charged for 2 checks, each in the amount of $15,117.81, and now carries a deficiency of $15,117.81.

The Department of Defense's (DOD) Financial Management Regulation authorizes disbursing officers to issue replacement checks, or recertified checks, when a payee alleges that it has not received an original check. DOD Financial Management Regulation, vol 5, DOD 7000.14-R, sec. 080405 (Dec. 1993).[1] The regulation notes that "the authority to issue recertified checks rests solely with the DO [disbursing officer]" and that "as is the case with all other checks and disbursements, the DO will be held personally and pecuniarily liable for all illegal, incorrect, or improper disbursements of public funds by recertified check." DOD 7000.14-R, sec. 080404. In a situation such as this, where a payee negotiates both the original and a replacement check, as improper payment results where the second of the two checks is cashed. 66 Comp. Gen. 192, 194 (1987). This Office may relieve a disbursing officer for a deficiency in his account resulting from an illegal, improper or incorrect payment, and credit the account for the deficiency, upon finding that the payment was not the result of bad faith or lack or reasonable care by the disbursing officer, and that the agency acted diligently in trying to collect the overpayment. 31 U.S.C. § 3527(c). See 66 Comp. Gen. at 194.

It appears from your submission that Captain Rice acted with reasonable care in this matter, and there is no evidence to suggest bad faith on his part. The record establishes that Captain Rice complied with DOD's regulation governing the insurance of replacement checks, chapter 08 of volume 5 of DOD's Financial Management Regulation. Captain Rice obtained from Spensieri a written affidavit, in the form of Air Force Form 326, asserting nonreceipt of the original check. Captain Rice, using Treasury's SF 1184, notified Treasury of the assertion and asked Treasury to cancel the check. Captain Rice did not issue the replacement check until Treasury confirmed that the original remained outstanding and acknowledged its cancellation. Further, the report of an investigation of the deficiency by the Defense Finance and Accounting Service concluded that there were no internal breakdowns in McGuires' Defense Accounting Office with respect to this matter, and that Captain Rice had in place an adequate system of procedures and controls.

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[1]The Secretary of the Treasury, acting under 31 U.S.C. § 3331(f), has delegated to DOD his section 3331 authority to issue replacement DOD checks. DOD 7000.14-R, sec. 080405(A).

The record also establishes that the Air Force has aggressively pursued collection of the overpayment from Spensieri in compliance with the Federal Claims Collection Standards, 4 C.F.R. §§ 101-105. The Air Force attempted to contact Spensieri three times demanding payment of the amount overpaid, but has learned that Spensieri has declared bankruptcy and is no longer in business.

Accordingly, we grant relief.

Sincerely yours,

Gary Kepplinger
Associate General Counsel

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DIGEST

Relief from liability is granted Air Force disbursing official pursuant to 31 U.S.C. § 3527(c) for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and collection actions were initiated in a timely and adequate manner.