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United States Government Accountability Office
Washington, DC 20548

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April 12, 2007

Ms. Deborah L. Borovitzky
Director
Defense Automatic Addressing Systems Center
Defense Logistics Agency
5250 Pearson Road, Area C, Building 207
Wright-Patterson Air Force Base, Ohio 45433-5328

Subject: *Mr. Jeffrey Elmore—Request for Relief of Financial Liability*

Dear Ms. Borovitzky:

This responds to your letter of March 30, 2006, requesting that we relieve Mr. Jeffrey Elmore of pecuniary liability pursuant to 31 U.S.C. § 3528(b) for four improper government purchase card payments totaling \$402.81. Letter from Deborah L. Borovitzky, Director, Defense Automatic Addressing Systems Center, to the Comptroller General of the United States, *Request for Relief of Financial Liability*, Mar. 30, 2006. Because Mr. Elmore did not exercise good faith when certifying the four improper payments, we decline to grant relief.

The circumstances underlying your request require us to address two broader issues in addition to Mr. Elmore's liability. First, because Mr. Elmore was a certifying officer of the Defense Logistics Agency (DLA), an agency of the Department of Defense (DOD), we examine whether our authority to consider his relief request is circumscribed by 31 U.S.C. § 3527(b), which applies to all accountable officers of the "armed forces." We conclude that GAO has statutory authority to consider Mr. Elmore's relief request because he is a certifying officer of a defense agency, not a certifying officer of the armed forces.

Second, we consider the propriety of imposing liability on a certifying officer who certifies payment of a purchase card billing statement that includes improper purchase card transactions. We conclude that liability attaches to a certifying officer's certification of the billing statement for payment. Although the amount of the improper payments Mr. Elmore certified is not very large, the wider implications of your request are significant and go directly to the role of a certifying officer with respect to purchase card payments.

To establish a record when rendering decisions, our practice is to obtain the views of the relevant federal agency. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal.htm. In this regard, we supplemented your original submission through e-mail and telephone conversations to obtain a clear understanding of the facts underlying the four improper purchases Mr. Elmore certified.

BACKGROUND

At the time of the payments at issue here, Mr. Elmore was a certifying officer for government purchase card payments for the Defense Automatic Addressing Systems Center (DAASC) at Wright-Patterson Air Force Base in Ohio.¹ DAASC is a component of the Defense Supply Center Columbus (DSCC), which in turn is part of DLA. A DSCC audit of the DAASC purchase card program found four instances of improper payments made with government purchase cards using appropriated funds. DSCC Internal Audit Office, Audit Report No. 05-15, *DAASC Purchase Card Review*, Nov. 17, 2005 (Report No. 05-15). These payments were for two lunches for DAASC employees and defense contractors at a local restaurant, disposable coffee cups, and a late fee paid to Park University. *Id.* at 2. For all four improper payments, DSCC recommended that DAASC hold Mr. Elmore, as the certifying officer, responsible to reimburse the government. *Id.* at 4–6. DAASC, responding to the report, said that it would request relief for Mr. Elmore. *Id.*

DISCUSSION

GAO's authority to consider relief requests from accountable officials of the armed forces is limited by 31 U.S.C. § 3527(b). We have not considered before whether this limitation applies to requests from certifying officers of DOD components other than the armed forces. We also have not considered the appropriate role for a certifying officer who certifies payment to a credit card bank for uses of a purchase card. We address these questions and Mr. Elmore's relief request below.

GAO's Authority to Consider Relief Request

GAO is authorized to relieve certifying officers of pecuniary liability resulting from improper payments when we find that the obligation was incurred in good faith, that no law specifically prohibited the payment, and that the United States government received value for the payment.² 31 U.S.C. § 3528(b)(1)(B).

¹ Mr. Elmore ceased performing this function in June 2006. E-mail from Deborah Borovitchky, Director, DAASC, to Wesley Dunn, Staff Attorney, GAO, *Subject: Re: Letter from GAO*, Dec. 4, 2006.

² An additional standard of relief is available where the certification was based on official records, but that is not the case here. 31 U.S.C. § 3528(b)(1)(A).

With respect to DOD certifying officers, this authority is limited by 31 U.S.C. § 3527(b). Under section 3527(b), GAO “shall relieve” a certifying officer of the “armed forces” of liability for an improper payment if DOD finds that the criteria in section 3528(b)(1)(B), listed above, are satisfied.³ DOD’s findings in this regard are binding on GAO. 31 U.S.C. § 3527(b)(2). Thus, DOD need not forward to GAO relief requests from certifying officers of the armed forces. *Cf.* B-198451-O.M. (making the same determination regarding requests for relief of liability arising out of physical losses of funds from disbursing officers of the Army, Navy, Air Force, or Marine Corps).

The statutory limitation in section 3527(b) applies only to certifying officers of the “armed forces,” not to all DOD certifying officers. The term “armed forces” first appeared in the statute as part of the 1982 recodification of title 31 of the United States Code. Pub. L. No. 97-258, § 1, 96 Stat. 877, 965 (Sept. 13, 1982). Earlier versions of what is now section 3527(b) as enacted applied explicitly to the Navy, Army, Air Force, and Marine Corps. *See* Act of July 11, 1919, ch. 9, 41 Stat. 132 (Navy); Act of December 13, 1944, ch. 552, 58 Stat. 800 (Army); Pub. L. No. 84-365, ch. 803, 69 Stat. 687 (Aug. 11, 1955) (combining the previous statutes and expanding their scope to encompass the Army, Navy, Air Force, or Marine Corps). After 1955, the statute referred to “Army, Navy, Air Force or Marine Corps.” *E.g.*, 31 U.S.C. § 95a (1976). During recodification, the language “Army, Navy, Air Force, or Marine Corps” was changed to the current language, “armed forces.” The House report accompanying Public Law 97-258 explained that “the words ‘armed forces’ [were] substituted for ‘Army, Navy, Air Force, or Marine Corps’ for consistency with Title 10.” H.R. Rep. No. 97-651, at 123 (1982). As defined in title 10, the “armed forces” are the Army, Navy, Air Force, Marine Corps, and Coast Guard.⁴ 10 U.S.C. § 101(a)(4). The change in language effectuated no change in the scope of the statute’s coverage, because the recodification of title 31 involved no change to the substantive law. Pub. L. No. 97-258, § 4(a).

³ We have previously addressed our authority to consider requests from military *disbursing* officers for relief of pecuniary liability resulting from the physical loss of funds. B-198451-O.M., Feb. 5, 1981. Our discussion here does not pertain to disbursing officers or physical losses.

⁴ Although the Coast Guard was not named in previous statutes, its inclusion as a component of the “armed forces” as defined in title 10 does not alter our analysis. The Coast Guard may operate as either an entity of DOD or the Department of Homeland Security. While in DOD, the Coast Guard is a subsidiary component of the Navy. 10 U.S.C. § 5061; *see also* 14 U.S.C. § 1 (providing that except when operating as a service of the Navy, the Coast Guard is a service in the Department of Homeland Security).

Thus, because the term “armed forces” as used in section 3527(b) applies only to the Army, Navy, Air Force, or Marine Corps, GAO may entertain relief requests from certifying officers of other DOD components in the same manner as it does requests from certifying officers in other agencies. As DLA is not one of the armed forces, we may entertain the request that we relieve Mr. Elmore of pecuniary liability.

Mr. Elmore’s Responsibilities as Purchase Card Certifying Officer

Under 31 U.S.C. § 3528, a certifying officer is responsible for the existence and correctness of the facts in the payment voucher he signs and any accompanying documents, and is personally liable for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation. *E.g.*, B-303920, Mar. 21, 2006. The function of certification, as evidenced by the potential for personal pecuniary liability, is not perfunctory, but involves a high degree of responsibility. 55 Comp. Gen. 297 (1975). A critical tool that certifying officers have to carry out this responsibility is the power to question, and refuse certification of, payments that may be improper. *See, e.g.*, B-303177, Oct. 20, 2004. Although DSCC found Mr. Elmore liable for four improper purchase card payments by virtue of his position as the certifying officer for these payments, DLA regulations setting out the purchase card payment process do not expressly articulate an opportunity for the certifying officer to scrutinize and refuse to certify questionable payments.

DLA purchase card regulations are set out in DLA Directive 5025.30, as supplemented by DLA Instruction 4105.3, *Government Purchase Card Program* (Oct. 29, 2004). DLA purchase cardholders receive monthly statements of account for their cards from the bank servicing the card. Instruction 4105.3 at ¶ 4.6.3.2.2.1. The statement of account lists each transaction the cardholder made with the card during the previous 30-day billing cycle. *Id.* Within 5 days of receiving the statement of account, a cardholder must verify each charge on the statement of account, sign and date the statement, and forward the statement to the card’s billing official. *Id.* at ¶ 4.6.3.2.3.

Billing officials are the certifying officers for DLA purchase card transactions. *Id.* at 5.1. At the same time a cardholder receives the statement of account for the cardholder’s purchase card, a billing official receives a billing statement from the bank for the same card. *Id.* at ¶ 4.6.3.2.2.2. The billing statement is the official invoice for the card. *Id.* After reviewing the cardholder’s statement of account and the billing statement, the billing official certifies payment of the billing statement to the Defense Finance and Accounting Service (DFAS), which disburses the payment to the bank servicing the card. *Id.* at ¶ 4.6.3.2.4.

Billing officials must refuse to certify fraudulent transactions appearing on the billing statement. *Id.* However, billing officials “shall refrain from disputing improper, abusive or questionable transactions made by the cardholder if the Bank [servicing the purchase card] is entitled to payment.” *Id.*

DLA regulations neither define improper transactions nor describe the circumstances under which the bank servicing a purchase card would be “entitled to payment.” The General Services Administration (GSA) Master Contract for purchase cards, which DLA utilizes for its purchase card program,⁵ provides that if a purchase card “has been used by an authorized . . . cardholder to make an unauthorized purchase, the Government is liable for the charge.” GSA SmartPay Master Contract, clause 46.1 (Apr. 1, 2002) *available at* www.gsa.gov/gssmartpay (last visited Mar. 12, 2007). The Master Contract does not define what constitutes an unauthorized purchase. Yet, read literally, both the Master Contract and DLA regulations suggest that a cardholder can use the card to make a purchase that, while not fraudulent, would constitute an improper use of appropriated funds and the billing official for the card should not question the purchase before certifying the billing statement for payment.

DLA, however, obviously interprets its regulations and the GSA Master Contract as preserving the billing official’s duty to scrutinize and question apparently improper purchases appearing on billing statements. Indeed, DLA determined that Mr. Elmore was liable for improper purchase card transactions because as the certifying officer for the card, he did not dispute questionable transactions made by the cardholder prior to certifying the transactions for payment. *See* Report No. 05-15.

We agree with DLA’s interpretation. To interpret DLA regulations and the GSA Master Contract otherwise would be contrary to the statutory responsibilities imposed on certifying officers. Under 31 U.S.C. § 3528, a duly appointed certifying officer is responsible for the legality of the payments the certifying officer certifies. To execute this statutory responsibility properly, and to avoid possible pecuniary liability, a certifying officer must be able to question information appearing on the billing statements. We are unwilling to read DLA regulations or the GSA Master Contract as overriding this statutory responsibility.

Mr. Elmore’s Relief Request

According to DLA, Mr. Elmore was the certifying officer responsible for certifying the four improper purchase card payments identified in Report No. 05-15. DSCC found that, as such, he is pecuniarily liable for these payments. DSCC Memorandum for DAASC, *Review of Purchase Card Account Files for Gary M. Perdue*,⁶ Jan. 9, 2006. You request relief for these improper payments on behalf of Mr. Elmore.

⁵ All DOD entities except the Navy use the GSA Master Contract for purchase cards. *GSA SmartPay Contract Guides*, *available at* <http://apps.fss.gsa.gov/services/gsa-smartpay/fm/taskorders/purchase/dod.cfm> (last visited Mar. 26, 2007).

⁶ Mr. Perdue evidently was the cardholder for the purchase card account to which the improper payments were charged, and Mr. Elmore was the certifying officer for Mr. Perdue’s account.

Our Office may relieve a certifying official from liability for an improper payment of public money when we find that the obligation was incurred in good faith, that no law specifically prohibited the payment, and that the United States government received value for the payment. 31 U.S.C. § 3528(b)(1)(B).

A finding of good faith under the above standard requires that we find that the certifying officer did not have, nor should reasonably have had, doubt regarding propriety of payment; whether a certifying officer should have been in doubt requires weighing all the surrounding facts and circumstances and cannot be resolved by any hard and fast rule. B-303920. Because of the reasons discussed below, we believe Mr. Elmore was or should have been aware that the four payments for which he is liable were improper. Therefore, we are unable to grant relief.⁷

(1) Lunches at restaurant

Mr. Elmore certified two payments for lunch for 16 contractors and 7 DAASC employees at a local restaurant on August 23 and 24, 2004 (hereinafter 2004 meetings). Report No. 05-15 at ¶ 9. The total cost of these two meals was \$360. *Id.* DSCC found that appropriated funds were not available for such an expense. *Id.*

At the time Mr. Elmore certified payment for the lunches, DSCC purchase card guidance prohibited using the cards to purchase food. DSCC, *DSCC Government-Wide Commercial Purchase Card Program*, ¶ F(1)(e)(2), June 10, 2003, *superseded by* DSCC, *DSCC Purchase Card Program Local Guidance*, May 15, 2006. Mr. Elmore was thus on notice that payments for lunch at the 2004 meetings was improper.

DAASC maintains that Mr. Elmore obtained oral advice from counsel at DSCC that purchasing food for attendees at the 2004 meetings was proper. Report No. 05-15, Attachment 1, *Memorandum for Record*, May 6, 2004. DSCC counsel denied giving any such approval and stated that counsel had provided a legal opinion to DAASC in the past advising that appropriated funds were not available to purchase lunch under circumstances similar to the 2004 meetings. Report No. 05-15 at ¶ 9.

(2) Disposable coffee cups

Another payment, for disposable coffee cups, occurred on July 29, 2004, and was for \$22.81. Report No. 05-15 at ¶ 8. Coffee service was available to employees and visitors to DAASC facilities. *Id.* DAASC employees used their own coffee cups, while the disposable cups were for the use of DAASC visitors. *Id.* Those who wanted coffee paid a small fee for the coffee as they took it, based on an honor system. *Id.* DSCC determined that expenses for disposable coffee cups are properly paid out of this voluntary fund, rather than out of appropriated funds. *Id.*

⁷ Because we find that Mr. Elmore did not certify the payments in good faith, we need not address whether the payments were specifically prohibited by law or whether the government received value for the payments.

A 2002 audit of the DAASC purchase card program had found that Mr. Elmore had previously certified improper purchase card payments for coffee cups for DAASC visitors in fiscal years 2001 and 2002, in the amounts of \$17.00 and \$20.91, respectively. DSCC Internal Review Office, Audit Report No. 61-02, *Review of DAASC Purchase Cardholders and Approving Official*, Nov. 8, 2002 (Report No. 61-02). DSCC held Mr. Elmore pecuniarily liable for these payments. *Id.* On March 2, 2004, DFAS relieved Mr. Elmore of liability for the purchase of these coffee cups.⁸ Report No. 05-15 at 3.

Having been granted relief for the 2001 and 2002 purchases, Mr. Elmore knew or should have known that he was certifying an improper payment when he certified the 2004 payment for coffee cups. Mr. Elmore was aware of the results of the 2002 audit, which referenced a Comptroller General decision, 47 Comp. Gen. 657 (1968), that prohibits the use of appropriated funds to purchase disposable coffee cups. Report No. 61-02, Attachment 4. In addition, Mr. Elmore maintains that he sought oral approval from the DSCC program coordinator to purchase coffee cups in 2004. DSCC denies giving approval for the purchase, and DAASC cannot provide documentation of such a conversation. Report No. 05-15 at ¶ 8b.

Whatever the reasons for Mr. Elmore's having been granted relief for the 2001 and 2002 payments, Mr. Elmore was aware that such purchases remained an unauthorized use of appropriated funds when he certified the payment for disposable coffee cups at issue here. Thus, we cannot find that he exercised good faith when he certified the payment of \$22.81 for disposable coffee cups, and we do not grant relief.

(3) Late fee

DSCC also found Mr. Elmore liable for a \$20 late fee paid to Park University. Report No. 05-15 at ¶ 12. The purchase cardholder who incurred the late fee paid for a course at Park University using the purchase card. E-mail from Jeffrey Elmore, DAASC, to Heather E. Alexander, Park University Third Party Receivables, Sept. 28, 2005. Before the late fee appeared on the cardholder's statement, the cardholder retired, and the purchase card was assigned to another DAASC employee. E-mail from Deborah Borovitcky, Director, DAASC, to Wesley Dunn, Staff Attorney, GAO, *Subject: Re: Letter from GAO*, Dec. 5, 2006 (December E-mail). The retiring employee made a note to her successor cardholder that she suspected a late fee might appear on the card account at a later date. *Id.* A month later, the late fee appeared on the monthly statement of account. *Id.* The new cardholder, having read the note regarding the fee left by the original cardholder, signed off on the charge as it appeared on the statement of account and forwarded the statement of account to Mr. Elmore, who certified the late fee for payment. *Id.* The university subsequently

⁸ DAASC officials could not explain to us the reasons DFAS relieved Mr. Elmore of liability or the authority DFAS purported to exercise.

learned that it should not have assessed the retired cardholder a late fee, and “voided” it from the student’s account, but not before the government paid the fee based on Mr. Elmore’s certification. E-mail from Jeffrey Elmore, DAASC, to James Kreimer, DSCC, *Subject: Re: Final Draft of Audit 05-15, DAASC Purchase Card Review*, Oct. 3, 2005; E-mail from Heather Alexander, Park University Third Party Receivables, to Jeffrey Elmore, DASSC, *Subject: Re: \$20 Late Fee as Discussed by Park University*, Oct. 3, 2005. The university refused to reimburse DAASC because DAASC paid the charge in 2004 and the university claims it cannot revisit a “charge that goes back so far.” E-mail from Heather Alexander, Park University Third Party Receivables, to Jeffrey Elmore, DASSC, *Subject: Re: \$20 Late Fee as Discussed by Park University*, Jan. 9, 2006. DSCC found that late fees are a personal responsibility of the student and are not payable from appropriated funds. Report No. 05-15 at ¶ 12.

As discussed above, DLA has a detailed payment process for its purchase card program. Before forwarding the statement of account to the billing official, cardholders are to verify each charge listed on the statement and attach all supporting documentation such as invoices. Instruction 4105.3 at ¶ 4.6.3.2.3. If the cardholder does not have documentation for a transaction, he or she must attach to the statement of account a memorandum for the record describing the charge in detail and explaining why supporting documentation is not provided. *Id.* at ¶ 4.6.3.2.3.2. When the late fee appeared on the statement of account, the cardholder verified the charge based on the note left by the predecessor cardholder stating that a late fee was to be applied to the account. December E-mail. We have no evidence that the cardholder attempted to verify the charge further, or attached the requisite memorandum for the record to the statement of account before forwarding it to Mr. Elmore.

Mr. Elmore, as the billing official, was responsible for reviewing the cardholder’s statement of account prior to certifying the billing statement for payment. Instruction 4105.3 at ¶ 4.6.3.2.4. Upon receiving a statement of account showing a charge for a late fee with no supporting documentation to explain the reason for the fee, Mr. Elmore should have inquired further as to the nature of the fee before certifying it for payment. The existence of a late fee implies fault on the part of the cardholder; this alone should have put Mr. Elmore on notice that paying the fee might be improper. But it is the failure to properly exercise his duties as the billing official by questioning a payment having no supporting documentation which leads us to conclude that Mr. Elmore did not exercise good faith. We therefore decline to relieve Mr. Elmore of liability for this payment.

CONCLUSION

Because Mr. Elmore was a certifying officer of a defense agency and not one of the armed forces, GAO has statutory authority to consider his request for relief of liability resulting from his certification for payment of four improper purchase card transactions. Mr. Elmore had a responsibility to scrutinize and question potential improper payments before certifying a billing statement for payment to the bank

servicing the purchase card. He did not exercise good faith when certifying the four transactions for payment. Therefore, after consideration of the full record with regard to the four payments at issue here, we decline to grant relief.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger
General Counsel

cc: Jeffrey Elmore