



Office of the General Counsel

B-272615

May 19, 1997

Mr. David J. Bechtol, Cdr, SC, USN
Director for Field Support
Defense Finance and Accounting Service
U.S. Department of the Defense
Cleveland Center
1240 E. 9th Street
Cleveland, OH 44199-2055

Dear Mr. Bechtol:

This responds to your letter of June 26, 1996, requesting relief from liability, pursuant to 31 U.S.C. § 3527(c), for Mr. G. J. Murphy, the civilian disbursing officer for the Personnel Support Activity, Naval Air Station, Jacksonville, Florida for the loss of \$8,673.72 arising from three advance payments made by unidentified cashiers working under Mr. Murphy's direction. These payments were received by Robert J. Lamb during April, May, and August, 1994, as part of a larger criminal scheme to fraudulently obtain transportation allowances (referred to as "Do-It-Yourself Moves," or DITY) while he was absent without leave from the Florida National Guard. As explained below, we grant relief to Mr. Murphy. However, with respect to the cashiers who made these payments, we have received no requests for relief and they remain liable.

BACKGROUND

The DITY program was designed to save the government money and provide a quick, informal way to facilitate inexpensive moves of military personnel on short notice. Under the DITY program, a member can present a voucher for advance payment of the anticipated costs of moving to another post pursuant to military travel orders. The member need not go to his or her own command or even his or her own branch of the military to obtain such payments. Instead, through a procedure known as "cross disbursing," any command may make DITY advance payments to members based solely on the presentation of appropriate paperwork

and military identification (ID). The member's service and/or command is then billed for reimbursement after the fact.

During 1994 while absent without leave from the Florida National Guard, Mr. Lamb used altered travel orders, fraudulent DITY move vouchers, and his valid military identification credentials to victimize numerous accountable officers of the Army, Air Force, Navy, and National Guard. Altogether, Lamb defrauded the government of more than \$70,000 in a series of relatively small transactions at numerous military installations across the southeastern United States. Eventually, he was caught after a clerk noticed that two DITY vouchers for Lamb had been presented for payment on the same day.

After he was captured, Mr. Lamb pled guilty and promised to repay the fraudulent DITY payments. He was on bail and awaiting sentencing when he was captured burglarizing a private residence. Lamb has since been given a dishonorable discharge from the National Guard and is now serving time for the burglary. His sentence hearing on the federal charges has been postponed until completion of the burglary sentence. Collection efforts to date have been unsuccessful because Lamb has no assets, is not owed any funds by the government, is no longer on any active rolls of the U.S. military, and is presently incarcerated.

DISCUSSION

This Office is authorized by 31 U.S.C. § 3527(c) to grant a disbursing officer relief from liability for an illegal, improper, or incorrect payment if we find that the payment was not the result of bad faith or lack of reasonable care by the officer. That law also states that relief may be denied if we find that the agency did not carry out diligent collection action to recover the payment. B-239802, Apr. 3, 1991. Relief of a supervisory disbursing officer requires a showing that the officer adequately supervised his subordinates by maintaining a system of controls and procedures designed to minimize losses, and took appropriate steps to ensure that the system was effective and being followed. B-260369, June 15, 1995. In the case of losses arising from fraudulent acts, we have 3 years from the date of the discovery of the loss in which to settle the officer's account. B-239802, supra.

Typically, we base our determination of whether to grant relief on evidence such as the standard operating procedures or regulations in effect at the time of the loss, and the statements of the supervisory and subordinate officials involved. B-235037, Sept. 18, 1989. The cashiers who actually made these payments have not been identified and the record contains no statements by them as to how these losses

occurred.¹ Nevertheless, based on other evidence including an investigative report prepared by the Army,² we are convinced that reasonable diligence on the part of Mr. Murphy and his cashiers could not have prevented the losses suffered as a result of Mr. Lamb's fraudulent activities.

Through his familiarity with the DITY program Mr. Lamb repeatedly defrauded many accountable officers, even though they followed applicable procedures before approving and making payment to him. Mr. Lamb's status as a member of the National Guard afforded him a valid current military ID which facilitated quick approvals of his vouchers. It was not until a technician noticed two vouchers being processed simultaneously from different installations that his fraudulent activities were discovered. Although the Army report states that Mr. Lamb had submitted a number of fraudulent vouchers to other military accountable officers months before visiting Mr. Murphy's staff, Mr. Murphy and his staff received no warning from DOD about Mr. Lamb's activities until months after the payments at issue here were made.

¹Requests to this Office for relief of supervisory accountable officers must contain sufficient evidence for us to independently determine whether the standards for relief have been met. Failure to submit such evidence can lead to the denial of relief. B-235037, Sept. 18, 1989.

The record submitted with the request to relieve Mr. Murphy omits the details of how the losses occurred, the exact dates and means by which the losses were discovered, the identity of the cashiers who actually made the payments in question and their accounts of the losses, and a copy of the formal investigative report concerning these losses required by Department of Defense Directive 7000-14-R, vol. 5, ch. 6, para. 060503. (With respect to the last item, Mr. Murphy informally advised us that no such report was commissioned in this case.)

²At our request, Mr. Murphy submitted additional material which included a description of the procedures currently used by his staff to handle DITY vouchers, and physical evidence to suggest that the vouchers in question here were handled consistent with those procedures. Because Mr. Lamb defrauded so many accountable officers at so many installations, we were able to further supplement the record before us with material from other related relief requests, including a formal Army Criminal Investigative Command report detailing Mr. Lamb's activities and methods of operation. See B-274354, B-276306, Apr. 23, 1997 (Relief of Lieutenant Colonel H. G. Thigpen); B-271017, Aug. 12, 1996 (Relief of Mr. Gordon Armstrong, Ms. Cathy Tilley, Ms. Maureen Corpus, and Ms. Nancy Harrell).

Mr. Murphy maintains that he established appropriate procedures and supervised his staff consistent with all applicable Navy procedures for the processing of DITY vouchers and of cross disbursements. There is no evidence to suggest that Mr. Murphy or his cashiers had actual knowledge at that time of the fraudulent nature of these payments or were negligent in handling these payments. For these reasons we grant relief to Mr. Murphy for these losses. (We presume, of course, that Mr. Murphy and the Navy will pursue all necessary and appropriate collection actions in this case, now that Mr. Lamb has been captured.)

At the same time, however, because we do not know their names, we cannot relieve Mr. Murphy's cashiers. Mr. Murphy has informally advised us that none of the cashiers who made these payments were charged with these losses, based on his belief that, as mere cashiers working under him, they bore no pecuniary liability to the United States. This is not correct. See I Treasury Financial Manual ch. 4-3000. See also B-231503, June 28, 1988 (disbursing officer and subordinate cashier are jointly and severally liable and must demonstrate eligibility for relief separate from each other). Unless a request is presented to this Office for their relief, the cashiers who made these payments will continue to be liable for these losses in the event that collection from Mr. Lamb proves ineffective.³

Finally, we note as did Mr. Murphy's superiors in their submission on his behalf that the military has recently suffered a great many losses under cross disbursement transactions like the DITY moves. In fact, Mr. Lamb was not the first to successfully obtain a series of fraudulent DITY payments. See B-270480, Jan. 18, 1996 (Relief of R. Longen, Disbursing Officer at the Navy Personnel Support Activity

³Accountable officers become strictly and automatically liable to the United States at the moment a physical loss occurs or an erroneous payment is made. 70 Comp. Gen. 12, 14 (1990); 54 Comp. Gen. 112, 114 (1974). To afford sufficient time for relief to be requested on the cashiers' behalf, the running of the statute of limitations is hereby tolled. 31 U.S.C. § 3526(g). We will consider the need to adjust Mr. Murphy's account to remove the deficiency pursuant to 31 U.S.C. § 3527(d) in the context of the request for relief of the responsible cashier(s).

Detachment in Pensacola, Florida). The Army investigative report discussed above contains a number of recommendations intended to reduce the vulnerability of the DITY and other cross disbursement programs to fraudulent manipulation without significantly impairing their utility to the Defense Department. We trust that these and other appropriate measures will be considered and implemented in order to reduce the possibility for similar losses in the future. If we may be of assistance to the Department in those considerations, or if you have any other questions about this matter, please call Mr. Chuck Roney or Mr. Neill Martin-Rolsky of my staff at 202-512-5644.

Sincerely,

Gary L. Kepplinger
Associate General Counsel

cc: Mr. G. J. Murphy