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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20340

OFFICE OF GENERAL COUNSEL

March 29, 1979

B-193701

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The Honorable William A. Medina
Assistant Secretary for Administration
Department of Housing and Urban
Development

Dear Mr. Medina:

You have requested the relief of Gary L. Chase, Principal Cashier, Belfry, Kentucky, Local Disaster Field Office, Department of Housing and Urban Development (HUD), for the loss of \$4,400 from an imprest fund. For the reasons discussed below, we deny relief.

The loss occurred under the following conditions, according to the documents submitted and other information informally provided to us. HUD dispatched personnel to the vicinity of Belfry, Kentucky, to provide emergency relief in the wake of a major flood disaster. HUD was not able to issue travel advances to them before they were en route, and advised them that they would receive advances at the Field Office there.

The Administrative Officer, HUD, London, Kentucky, Headquarters Disaster Field Office, detailed Mr. Chase to the Belfry office, where he arrived on or about April 15, 1978. At about the same time, the London office determined that the HUD personnel who had arrived at Belfry before Mr. Chase were desperately in need of funds for food, fuel, and lodging, due in part to local refusals to honor Government credit cards. It advised the Atlanta office of the urgent need for funds at Belfry, that there was no safe at the Belfry office, and that Mr. Chase had made arrangements for overnight safekeeping of the funds at a local bank.

On April 15, the Atlanta office requested that the Birmingham Disbursing Center, Department of the Treasury, designate Mr. Chase as Principal Cashier (Class A) for an imprest fund to be established at Belfry, and issue a check in the amount of \$5,000 for that fund. The Birmingham Center approved Atlanta's request on April 18, and Mr. Chase received the \$5,000 check that day.

The next morning he cashed the check at a local bank and put the cash in a lockable bag which he had obtained for that purpose from the bank. At about noon on that day, he disbursed three travel advances

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aggregating \$600. (Later in the day he discovered that he had over-disbursed one of the advances by \$100; the Atlanta office believes that this over-disbursement has been recovered.) Mr. Chase then allocated funds to five more travel advances, and placed the allocated funds, the advance request forms, and the unallocated balance, aggregating \$4,400, in the lockable bag. At that point, Mr. Chase either placed the lockable bag in his briefcase, placed it in some other, similar, briefcase, or misplaced it elsewhere in the office.

About 6 p.m. the same evening, Mr. Chase discovered that the lockable bag was not in his briefcase. He searched the area thoroughly, assisted by two subordinates. He was unable to find the funds and orally reported the loss that evening to the London office, and in writing the next day.

HUD reported the loss to the Secret Service, the Federal Bureau of Investigation, the Birmingham Disbursing Center, the HUD Regional Inspector General, and State and local police. These authorities did not identify any person who could be charged with responsibility for a theft of the missing funds. The HUD Regional Inspector General for Investigation determined that no further investigation was warranted.

An accountable officer is an insurer of public funds in his custody and is excusable only for loss due to acts of God or the public enemy. United States v. Thomas, 15 Wall. 337, 21 L.Ed. 89 (1872), 48 Comp. Gen. 566, 569 (1969). Relief can, however, be granted under 31 U.S.C. § 82a-1 (1976) if:

- (a) it is determined by the head of the department or independent agency concerned--
 - (1) that the loss or deficiency occurred while the officer was acting in the discharge of his official duties or that it occurred by reason of the act or omission of the subordinate of the officer or agent; and
 - (2) that the loss or deficiency occurred without fault or negligence on the part of the officer or his subordinate; and
- (b) the General Accounting Office agrees with the determinations by the department head. B-191440 (July 19, 1978).

This Office has summarized the applicable standards in B-186922 (April 8, 1977) as follows:

"A Government employee charged with the handling of public moneys is expected to exercise the highest degree of care in the performance of his duty * * *."

The degree of care required exceeds the lesser standard of applying such reasonable care and diligence as a cautious, prudent, and diligent person would apply to his own affairs. B-178953 (August 8, 1973); see B-182386 (April 24, 1975); cf. 54 Comp. Gen. 112 (1974). Inadequate physical security implies a particularly high degree of care. B-186922 (April 8, 1977). This Office cannot grant relief if there is any evidence of negligence on the part of the accountable officer; we do not recognize the concept of relative negligence. B-190506 (November 28, 1977).

We concur with the determination of the HUD Assistant Secretary for Administration that this loss occurred while Mr. Chase was acting in the discharge of his official duties. The issue is therefore whether the loss occurred without fault or negligence on the part of Mr. Chase (or, if there were fault or negligence, whether they were the proximate cause of the loss). See B-190506 (November 28, 1977).

Mr. Chase, in his April 20, 1977, report to the London regional office, offered extenuating circumstances associated with the emergency conditions under which he had been working. He stated that he had been engaged in long hours of work and lengthy travel, that food and lodging were very inadequate, and that his office was understaffed, so that he was extremely fatigued by his actions in the line of duty. His supervisor confirmed that lodging was so inadequate that Mr. Chase had had to spend the night of April 18-19 sleeping in his automobile.

Mr. Chase, in effect, asserts the agency's negligence to exonerate himself from liability for his own actions. Apparently HUD deviated in several respects from proper procedures pertaining to imprest fund management. Mr. Chase points out, and HUD confirms, that HUD did not provide a safe at Belfry until after the loss or theft. Further, section 0401 of the Department of the Treasury's Manual of Procedures and Instructions for Cashiers (1976) (Cashiers' Manual) provides that "funds will not be advanced in any case unless adequate facilities for safeguarding the cash in the custody of cashiers are available for their use." Yet the HUD Atlanta Regional Accounting Office requested the issuance of a \$5,000 check for the Belfry imprest fund before the safe was delivered.

Moreover, Cashiers' Manual § 0402 forbids cashiers from placing official funds in depositaries or in safe deposit boxes in their own names unless specifically authorized by the Secretary of the Treasury or his

designee. However, the Atlanta office did not request permission from the Department of the Treasury to use safe deposit boxes in the London, Kentucky area until April 20, 1977, the day following the loss or theft. It was not until after the loss or theft that HUD (a) ordered in writing a safe for the Belfry Field Office; and (b) ordered in writing safes and requested permission to use safe deposit boxes and depositories for the three remaining imprest funds in the London, Kentucky area.

As we noted above, this Office does not recognize a relative standard of negligence. Therefore, under the rule regularly followed by this Office, negligence by the agency is not a basis for relief if the accountable officer's negligence was the proximate cause of the loss under the circumstances prevailing at the time of the loss.

Where the agency failed to provide a secure safe, or where it countenanced conditions which may have made the safe insecure, and there was evidence of theft, we have granted relief. B-106190 (May 11, 1976); B-104493 (October 8, 1975). However, even in such cases the employee cannot be granted relief unless he used the most secure means available to store the funds, since failure to do so would be negligence. See B-173751 (August 27, 1971).

HUD has confirmed and amplified Mr. Chase's description of difficult and stressful conditions. However, this Office has regularly held that those factors, without more, are not sufficient to rebut the presumption of negligence. B-188081 (February 9, 1977); B-186127 (September 1, 1976); 48 Comp. Gen. 566 (1969). Moreover, HUD's failure to provide a safe does not constitute a basis for relief unless the employee's actions to safeguard the funds were without negligence.

The issue thus turns on Mr. Chase's statement, in his April 20, 1977, memorandum to the HUD London, Kentucky office, that:

"* * * At this point, my actions are not clear, due to fatigue and exhaustion * * *. My intentions were to place the bank lock bag in an envelope and then place the package in my brief case. Due to fatigue factors, office interruptions, and the similarity of several brief cases within the office, I cannot be sure, where I placed the bank lock bag. I believe that I placed it in my own brief case and subsequently placed it on the floor beside a table I had been working at.

"At approximately 5:00 pm [on April 19, 1977] I discovered the funds to be not in my brief case. * * *"

We have no alternative but to construe this as an admission that Mr. Chase was negligent. It appears that if a theft did take place, it

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was facilitated by Mr. Chase's failure to retain physical possession of the funds. Even in the absence of a secure storage facility and allowing for the employee's fatigue, a higher degree of care is required. If Mr. Chase did not put the funds in his own briefcase, he was negligent. But even if, as he believes but "can not be sure," he did put the funds in his own briefcase and put the briefcase next to his table, the money could not have been removed from the briefcase without his knowledge unless he left the area unattended. Leaving the area unattended would also constitute negligence. Accordingly, we cannot concur in HUD's determination that the loss occurred without Mr. Chase's fault or negligence. Therefore, we are not authorized to grant relief.

Sincerely yours,



Milton J. Socolar
General Counsel