

Reprint

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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply Refer to: B-198457

February 26, 1981

[Request for Relief From Liability]

Peter B. Bensinger
Administrator, Drug Enforcement
Administration
United States Department of Justice
Washington, D.C. 20537

Dear Mr. Bensinger:

This responds to your request that the estate of Special Agent/Pilot James T. Lunn be relieved of liability for repayment of the unvouchered balance of funds advanced to him, and that the Drug Enforcement Administration (DEA) be authorized to charge its appropriation accordingly.

You report that Agent Lunn died in the crash of a Government aircraft on May 14, 1976, while serving as a pilot on special assignment for DEA in Mexico. The record shows that Agent Lunn had funds advanced to him in the amount of \$13,300 for the assignment, to provide cash for fuel and maintenance of the aircraft. Your report further indicates that Agent Lunn was seen placing a substantial amount of cash in his flight bag, which he carried aboard the aircraft on the morning of the crash. After the fatal crash, the aircraft and all its contents were burned beyond recognition, reportedly making it impossible to identify or recover the funds.

Vouchers have been processed to account for all but \$5,715.13 of the original \$13,300 advance. You have concluded that Agent Lunn evidently had the unvouchered \$5,715.13 balance with him at the time of the crash, and request that his estate be relieved of liability for repayment of said amount.

This Office is authorized to grant relief from liability to accountable officers for the loss of funds entrusted to them. Section 82a-1 of Title 31, United States Code (1976), basically allows an accountable officer to be relieved from liability for a loss if our Office concurs in findings by the head of the department or establishment that the accountable officer was acting in his official capacity when the loss occurred, and that the proximate cause of the loss was not his negligence. You have made the required findings. An examination of your findings in light of the statutory requirements indicates that the requested relief is appropriate in this case.



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While the loss of travel advances is not normally considered a proper subject of relief under section 82a-1 (because such advances are not Government funds when accepted by the employee but loans to him), the funds advanced to Agent Lunn were not in the nature of a standard travel advance. You have described the money as being necessary for emergency expenditures for the maintenance and fuel of the airplane. Furthermore, a discussion with a DEA official familiar with the case discloses that the plane was for reconnaissance and provision of assistance to local authorities. Thus the advance was not a loan for the expenses of an individual's travel from one place to another but rather was, as you characterize it, an "operational" advance, necessary for the successful completion of the assignment, and thus issued for the Government's benefit. The loss of such funds is an appropriate subject of relief under section 82a-1.

Furthermore because Agent Lunn was entrusted as a custodian of the Government funds, he meets the criterion established for an "accountable officer", as that term is used in section 82a-1. B-188894, September 29, 1979.

While this Office has typically granted relief under 31 U.S.C. § 82a-1 in cases of loss resulting from the theft or unexplained disappearance of funds, we have held that the non-negligent physical destruction of funds is an equally appropriate subject for relief. 56 Comp. Gen. 791 (1977); B-197092, February 13, 1980. In the instant case, uncontradicted circumstantial evidence supports your finding that the unvouchered balance was irretrievably burned in the plane crash, constituting a physical loss of the funds. The reported cause of the crash was hazardous weather conditions.

We do not question your determination that Agent Lunn was acting in the discharge of his official duties at the time of the loss. The loss occurred while he was in an official duty status, carrying out a mission for DEA.

This Office must agree with your findings as to the absence of negligence on the part of Agent Lunn before granting relief. In the typical case of unexplained loss there is a rebuttable presumption of negligence which must be overcome by the evidence. B-186922, April 8, 1977. In this case, however, the loss is not unexplained. You have determined:

"All available evidence indicates that at the time of his death, the balance of this operational advance in the amount of \$5,715.13, was among his personal possessions in the aircraft cockpit. The aircraft and all its contents were burned beyond recognition* * *".

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As to the possibility that carrying such a large amount of funds in cash amounted to negligent handling, the DEA official reports that the nature of the assignment in Mexico precluded the use of checks or identifiable drafts. Thus the use of cash was an unavoidable risk of the assignment.

The estate of Agent Lunn is hereby relieved of any claim arising from the loss of the unvouchered balance. Furthermore, DEA is authorized to charge its current appropriation available for the expense of the function being performed by Agent Lunn in the amount of \$5,715.13 to restore the loss.

Sincerely yours,

Harry D. Van Cleave
FOR Milton J. Socolar
General Counsel