

Office of the General Counsel

B-238898

April 1, 1991

Mr. Anthony Dudley
Associate Comptroller
Financial Operations
United States Department of State
Washington, DC 20520

Dear Mr. Dudley:

This responds to your request that this Office grant relief, pursuant to 31 U.S.C. § 3527(a) (1988), to Ms. Anne van Schuppen, who incurred an unexplained loss in the amount of \$1,000 on December 7, 1988, while serving as Alternate Class B Cashier for the Embassy in The Hague. As explained below, we are unable to grant relief in this case.

Your submission indicates that this loss took place while Ms. van Schuppen was performing her official duties, and states that "there is no evidence of fault or negligence by [her] or by her supervisor." It is speculated in the submission that, during one or more of the transactions undertaken that day, Ms. van Schuppen either received \$1,000 less or paid \$1,000 more than she realized. Your submission places the responsibility for the loss upon management in the Embassy in The Hague, suggesting that the Embassy assigned duties to Ms. van Schuppen for which she was not properly qualified. You base this finding on the fact that Ms. van Schuppen, rated at the grade of "FSN-5" at the time of the loss,^{1/} was assigned to this task in contravention of State Department procedure A-176, which specifies on pages 63-64 that, in the absence of advance written permission (which was not obtained in this case), only employees rated "FSN-7" or higher may be assigned as Alternate Cashiers.

Under 31 U.S.C. § 3527(a), this Office is authorized to grant relief if it concurs in findings made by the employing agency, based upon competent, affirmative evidence, that the loss occurred while the accountable officer was acting in the discharge of official duties, and that it happened without fault or negligence on the part of the accountable officer. E.g., B-213427, Dec. 13, 1983. We cannot concur in your findings in this case.

^{1/} Your letter indicates that the term "FSN" refers to Foreign Service National employee.

The shortage suffered here is of the kind characterized as an "unexplained loss," because there is no certain explanation in the record of how the loss occurred. In B-189084, Jan. 3, 1979, we observed that:

"Government officials charged with the custody and handling of public money are expected to exercise the highest degree of care in the performance of their duty. It has long been recognized that when such funds disappear without explanation or apparent reason, there arises a presumption of negligence on the part of the responsible official. If we are to grant relief under [section 3527(a)], this presumption must be rebutted by specific, complete, and convincing evidence." (Citations omitted.)

The mere administrative determination that there is no evidence of fault or negligence will not adequately rebut the presumption of negligence. The accountable officer must come forward with affirmative evidence that she exercised the requisite degree of care. B-213427, supra. The submission here does not include such evidence on Ms. van Schuppen's behalf.

Moreover, previous decisions of this Office have found that relief may not be granted predicated upon inexperience or inadequate training or supervision. E.g., B-189084, supra. Apparently, the evidence upon which you rest your request for relief is that Ms. van Schuppen was serving in a position for which she was unqualified, according to agency procedures. While you argue that the fault is the agency's for having made such an assignment, this is really just another way of saying that Ms. van Schuppen's training and experience were inadequate to the task at hand. As we commented in B-191051, July 31, 1978:

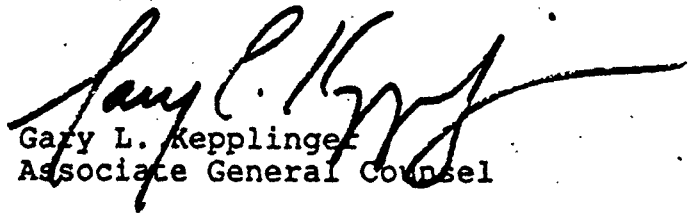
"An accountable officer of the Government is an insurer of the public funds in his [or her] custody and is excusable only for losses attributable to acts of God or the public enemy. Although . . . it is easy to understand how mistakes can occur in human terms, this Office is not authorized to grant relief except in circumstances which conform strictly to the provisions of the statute."
(Citation omitted.)

Accordingly, your request for relief of Ms. van Schuppen from liability for this loss is denied.

At the same time, however, we agree that Embassy management shares responsibility for the loss for having assigned Ms. van Schuppen to a position, in contravention of Department policy,

for which she, apparently, had insufficient experience and training. For this reason, we also find that Mr. Johan H. Sluiter, the Class B Cashier for whom Ms. van Schuppen is Alternate Cashier, is jointly and severally liable for this loss. As noted on page 64 of the State Department A-176 procedure which establishes the qualifications for Class B Alternate Cashiers, the Class B Cashier is responsible for, among other things, supervising the Alternate, and for "determining . . . whether the [alternate] cashier or sub-cashier has the qualifications to perform successfully." By advancing his imprest funds to a person not qualified to serve as his Alternate Cashier, Mr. Sluiter acted negligently and must share in liability for the loss. Cf., e.g., B-154627, July 16, 1965; B-144148-O.M., Nov. 1, 1960 at 5.

Sincerely yours,


 Gary L. Kepplinger
 Associate General Counsel