

Jacobson



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-247708

November 3, 1992

Mr. Melvin L. Hines
Chairman
Committee of Inquiry Into
Fiscal Irregularities
United States Department of State

Dear Mr. Hines:

This responds to your request of February 10, 1992, for our opinion on whether Ms. Dora J. Hanna was an accountable officer with respect to an unexplained loss of \$527.60 at the American Embassy, DAR es Salaam, Tanzania, and whether there is a basis for relieving her from liability for that loss. For the reasons discussed below, we conclude that Ms. Hanna was an accountable officer during part, but probably not for all, of the period when the loss occurred. Further, because you have not been able to determine the exact cause or timing of the loss, there may not be a basis for holding her liable, either jointly or solely, for all, if any, of the loss. Also, questions of liability still remain for other persons who were accountable officers at the Embassy during part of the period when the loss occurred.

BACKGROUND

Based on your submission, which includes a report by Ms. Hanna on the cashier shortage relating to the loss, the facts of this case are as follows. Ms. Hanna was the Budget and Fiscal Officer at the American Embassy, DAR es Salaam, Tanzania, and therefore responsible for its cashier operation.¹ In anticipation of the main cashier, Ms. Sita George, going on vacation in December 1989, Ms. Hanna decided it would not be in the Embassy's best interest for the previous alternate cashier to again serve as cashier and, instead, arranged for Ms. Joyce Mwombela to receive training and act as cashier during Ms. George's vacation.

¹Ms. Hanna also is described as a Financial Management Officer (FMO) in some of the materials provided us. An FMO has various cash management responsibilities. E.g.,
4 Foreign Affairs Manual 391.4.i.

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Ms. Hanna's report reflects her and Ms. George's concern during Ms. Mwombela's training over her ability to handle the cashier job alone. Ms. Hanna reports that Ms. Mwombela was nervous on her first day (December 11) as cashier. Nevertheless, Ms. Mwombela stated she had balanced at the end of the day, although there is no evidence that Ms. Hanna verified Ms. Mwombela's statement. Ms. Mwombela also told Ms. Hanna early on December 12 that she was scared of making mistakes.

During the afternoon of December 12, Ms. Mwombela reported to Ms. Hanna that her cash was out of balance. A cash count that Ms. Hanna characterizes as a reconciliation to the daily cash log, but not a verification that the log is correct, revealed a shortage of about 39,000 Tanzanian shillings. They ended the day without verifying the amount of the shortage or the reason for it. After doing a "complete reconciliation" on December 13 that did not include breaking down bundles of bills or counting coins in bags, the amount of the shortage increased to over 59,000 Tanzanian shillings. Later that day, Ms. Hanna, Ms. Mwombela, and Mr. Tom Warren (an American officer appointed to assist in the cash count.) began a cash count that included breaking down the bundles of bills.

Because Thursday, December 14, was payday, Ms. Hanna decided to continue cashier operations even though they had not completed the cash count and reconciliation. Ms. Hanna allowed Ms. Mwombela to continue as cashier but to conduct transactions only in Ms. Hanna's presence. To assist in paying the payroll, Ms. Hanna allowed an employee who was not a certified cashier to pack pay envelopes. Ms. Hanna admits that some mistakes were made and there is no assurance that payees were not overpaid.

Another employee served as temporary cashier on Thursday afternoon and Friday. In addition, another American officer, Cathy Starnes, was asked to work with Ms. Hanna on a new reconciliation. This count was done manually and revealed errors in the previous machine counted bundles. This reconciliation was not completed until Monday, December 18, almost one week after the first discrepancy was discovered. Further, while the reconciliation revealed the money on hand, neither Ms. Hanna nor her colleagues could determine the proper amount from the available records in the absence of Ms. George who still was on vacation.

Between December 18, 1989, and January 16, 1990, when Ms. George returned from vacation, first Ms. Hanna and then another employee authorized by the State Department performed the cashier functions. Upon her return, Ms. George worked with Ms. Hanna on a reconciliation that revealed a shortage of 95,733.32 Tanzanian shillings or

\$499. The Embassy subsequently discovered an additional amount of \$28.60, bringing the total loss to \$527.60.

Ms. Hanna concedes in her report that she and others have been unable to definitively ascribe the loss to particular transactions or cashiers (or other persons). Ms. Hanna has stated her belief that the loss occurred on Ms. Mwombela's first day as alternate cashier during a transaction between her and a sub-cashier. The Committee initially determined that Ms. Hanna was an accountable officer and should be held responsible for the loss. The Committee now asks for our opinion on these two determinations.

DISCUSSION

Accountable Officers

We have held that any government officer or employee, civilian or military, who by reason of his or her employment is responsible for or has custody of government funds is an accountable officer. 61 Comp. Gen. 313, 314 (1982); 59 Comp. Gen. 113, 114 (1979). The submission made to us clearly shows that Ms. Hanna was an accountable officer during the period beginning on the afternoon of December 12 when she first shared physical custody of the funds with Ms. Mwombela. Ms. Hanna acted as cashier during part of the period in question and had physical custody of funds at other times, for example when conducting the cash counts. However, we are unable to conclude that she was an accountable officer between the beginning of cashier operations on December 11, and the afternoon of December 12 when Ms. Hanna learned of a cash shortage and began a cash count.

As the Budget and Fiscal Officer for the Embassy, Ms. Hanna was responsible for ensuring that financial records were accurately and promptly rendered and that proper controls of cash were maintained. 4 Foreign Affairs Manual 024.1c. As a Financial Management Officer, Ms. Hanna's cash management responsibilities included providing guidance and oversight to individual cashiers on operational requirements of imprest funds and in resolving unusual payment problems. 4 FAM 391.4i.

The record is replete with examples of Ms. Hanna's extensive involvement in all the activities surrounding the unexplained loss. However, Ms. Hanna is not an accountable officer solely by virtue of her supervising cashiers and having general management responsibility for cashier operations. We have not considered an employee whose job description did not require assuming actual custody of government funds to be an accountable officer under

31 U.S.C. §3527 simply because the employee supervised accountable officers. B-214286, July 20, 1984; B-194782, Aug. 13, 1979.

Further, there is no general authority to assess pecuniary liability against a government employee (not an accountable officer) for losses due to error or negligence in the absence of administrative regulations specifically providing for such liability. 52 Comp. Gen. 964 (1973). See 25 Comp. Gen. 299 (1945). An agency may provide by regulation for some accountability for administrative officers whose lack of supervision or errors in judgment cause losses in funds by accountable officers. B-194782, Aug. 13, 1979. If the agency has regulations of this type, they are considered part of the employee's employment contract and serve to put the employee on notice of potential liability. B-223726, June 26, 1987.

Our review of State Department regulations generally, and documents specifically applicable to Ms. Hanna in her position as the Budget and Fiscal Officer at the American Embassy, DAR es Salaam, Tanzania, does not clearly show that the State Department considered and Ms. Hanna understood the responsibilities of the position to include being accountable for unexplained losses by cashiers and others.² For example, provisions of the Foreign Affairs Manual previously cited contain essentially general descriptions of the responsibilities of Budget and Fiscal Officers. In comparison, Ms. Hanna's evaluation report for the period in question explicitly describes her responsibilities as including acting as the post's accountable officer in matters dealing with security of funds. Whether the State Department has made Budget and Fiscal Officers at the American Embassy, DAR es Salaam, Tanzania, accountable officers for cashier operations is in the first instance a question for the State Department to decide based on its interpretation of its regulations and other agency documents.

An interesting aspect of this case not addressed in your questions is the number of accountable officers involved here. There may be more than one accountable officer in a given case and may include, in addition to the person in whose name an account is held, any other government employee who by reason of employment physically handles or otherwise takes custody of the funds. 60 Comp. Gen. 674, 676 (1981); B-193830, Oct. 1, 1979. A number of persons identified in

²Of course, as a certifying officer at the Embassy, Ms. Hanna was an accountable officer responsible for losses arising from improper voucher certifications.

the background section above and in the materials provided to this Office were at one time or another accountable officers with respect to funds at the Embassy. The role of these accountable officers, and the circumstances surrounding the loss, must be considered when determining whether and to what extent Ms. Hanna and others share liability for the loss of funds, and whether relief is available to them.³

Relief From Liability

This Office is authorized to grant relief from liability upon its concurrence with a determination by the head of the agency that (1) the loss or deficiency occurred while the accountable officers or agents were acting in the discharge of their official duties, or that it occurred by reason of the acts or omissions of subordinates, and (2) that the loss or deficiency occurred without fault or negligence on the part of the accountable officers. 31 U.S.C. § 3527(a). The agency head's findings trigger this Office's jurisdiction and we are authorized to grant relief under section 3527(a) only after the agency head has made the two determinations required by the statute. See B-241478, April 5, 1991 and cases cited therein.

The record submitted does not contain the agency determination that the loss of funds in this case occurred without fault or negligence of Ms. Hanna. Instead, your submission asks ". . . if she was an accountable officer, whether there is a basis for relieving her from liability, perhaps on the grounds that her actions were not the proximate cause of the shortage." While much of your submission contains conclusions to the contrary, a determination that Ms. Hanna's acts and omissions were not the proximate cause of the loss is in the first instance a matter for the agency to decide. Since the record does not contain the determination required by section 3527(a), we do not have the requisite jurisdiction to grant relief. Nevertheless, the facts of this case and the nature of your request prompts us to comment further.

³Nothing in the record before us indicates that any part of the loss is attributable to cashier operations after December 14, 1989, or occurred during the cash counts, and is attributable to the actions of any persons who are accountable officers by virtue of having custody of the funds during these activities. However, these are questions of fact for the State Department in the first instance to decide.

An accountable officer is held to a high standard of care with respect to funds with which the officer is charged and is automatically liable at the moment a physical loss occurs. 54 Comp. Gen. 112 (1974); B-240671, Oct. 5, 1990. The disappearance of funds without explanation gives rise to a rebuttable presumption of negligence on the part of the officers accountable for them and the burden is on them to rebut this presumption with evidence to the contrary. 48 Comp. Gen. 566 (1969). In the past, we have held that accountable officers may be negligent and nevertheless be relieved from liability, if their negligence is not the proximate cause of the loss or shortage. Cf., 63 Comp. Gen. 489, 492 (1984); B-232744, Dec. 9, 1988; B-227714, Oct. 20, 1987.

In this regard, we have held that when more than one person has access to funds, it may be impossible to place responsibility for a loss on any one individual. 63 Comp. Gen. 489 (1984); B-229778, Sept. 2, 1988; B-227714, Oct. 20, 1987. The number of people handling the funds and other factors may make it impossible to determine who had custody of the funds at the time of the loss. B-214286, July 20, 1986. These principles appear to be particularly important in this case since several cash counts and continuing cashier operations were performed by various persons between the initial identification of a discrepancy and the final confirmation of the shortage.

The record before us suggests that the State Department has not determined the exact cause and timing of the loss of \$527.60 and therefore which of the accountable officers or their actions caused the entire loss. Nor is it clear from the record whether the State Department considered attributing the shortage of 59,000 Tanzanian shillings revealed by the December 13 cash count to Ms. Mwombela's cashier activities (during which Ms. Hanna probably was not an accountable officer) or attributing the difference between this amount and the final shortage to subsequent events, such as the December 14 payday when Ms. Hanna and other cashiers were accountable.

GAO has delegated authority to agency heads to administratively resolve certain irregularities in the accounts of accountable officers. This authorization applies to physical losses and certain overpayments in amounts not to exceed \$3,000 for a single incident. The authority to resolve deficiencies in the accounts of accountable officers in such cases is to be exercised consistent with decisions of this Office. See B-243749, Oct. 22, 1991. See also, Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, sec. 8.9C (TS-42, Feb. 12, 1990) (7 GAO-PPM). Since the amount involved in

this case is \$527.60, the State Department has authority to act on the liability of the accountable officers involved in this case upon making the appropriate determinations in accordance with the standards in our decisions.

We trust this responds to your request and that you will find the above discussion useful in this and future cases.

Sincerely yours,



Gary L. Kepplinger
Associate General Counsel

November 3, 1992

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DIGESTS

1. When employing agency does not make required findings under 31 U.S.C. § 3527(a), matter of relief for accountable officer for an unexplained loss of \$527.60 is not properly before GAO and, regardless of merits, we have no authority to grant or deny relief.

2. Person who is not formally designated as an accountable officer becomes an accountable officer when the person takes custody of funds.

3. Person who serves as Budget and Fiscal Officer, or Financial Management Officer, and supervises cashiers and other custodians of funds, is not an accountable officer solely by virtue of her responsibility as supervisor.