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United States Government Accountability Office
Washington, DC 20548

B-303920

March 21, 2006

Mr. Leonidas Ralph Mecham, Director
Administrative Office of the United States Courts
Washington, D.C. 20544

Subject: *Clarence Maddox – Relief of Liability for Improper Payments for Bottled Water*

Dear Mr. Mecham:

This responds to your request that we relieve Mr. Clarence Maddox, Clerk of Court for the United States District Court, Southern District of Florida (the court), from liability for improper payments for bottled water in the amount of \$1,433.22.¹ For the reasons stated below, Mr. Maddox is relieved of liability by operation of law for 27 payments made prior to March 2003, totalling \$947.62. With regard to the remaining 11 payments, totalling \$485.60, we are unable to grant relief.

Background

At the time of the payments at issue, Mr. Maddox acted as both disbursing and certifying officer² for the court. September letter at 1. The bottled water in question was purchased for employees at the Fort Pierce Division courthouse. *Id.* at 2. The

¹ By letter of September 15, 2004, you requested relief for \$1,216.49. Letter from Leonidas Ralph Mecham, Director, Administrative Office of the United States Courts (AOUSC), to David M. Walker, Comptroller General, GAO, September 15, 2004 (September letter). In response to our request for further information, Letter from Thomas H. Armstrong, Assistant General Counsel, GAO to Leonidas Ralph Mecham, Director, AOUSC, Mar. 24, 2005, you adjusted the amount to \$1,433.22, Letter from Leonidas Ralph Mecham to Thomas H. Armstrong, Assistant General Counsel, GAO, April 25, 2005 (April letter).

² According to the record, Mr. Maddox is a disbursing officer, and his two assistants are assistant disbursing officers. At the time of these payments, they also performed the certifying function for the court. Letter from Clarence Maddox, Court Administrator/Clerk of Court to Leonidas Ralph Mecham, Director, AOUSC, June 15, 2004 (Maddox request) at 3, fn.1.

first authorization of payment for bottled water for the Fort Pierce staff was made by Mr. Maddox's predecessor clerk of court in 1997, two years prior to Mr. Maddox's appointment in 1999. *Id.*; an undated memo to file labeled "Attachment 2." Apparently, these payments were made periodically thereafter, continuing after Mr. Maddox's appointment, until February 2004. At that time, Mr. Maddox was informed of the results of an external audit covering the period January 1, 2001, through September 30, 2003, which indicated that \$1,216.49 in payments for staff bottled water at Fort Pierce were improper. Maddox request at 1-2; February 2004 external audit of the court covering the period Jan. 1, 2001, through Sept. 30, 2003, at 3, 16. At that point, Mr. Maddox stopped the payments. September letter at 2.

Statute of Limitations

Pursuant to 31 U.S.C. § 3526(c) (2000), our Office is authorized to settle accounts of accountable officers and to grant or deny relief "within 3 years after the date the Comptroller General receives the account." B-287043, May 29, 2001; B-251994, Sept. 24, 1993. However, since accounts are now maintained and audited by the agencies themselves, the focal point for beginning the 3-year period has changed to when the agencies themselves are able to identify discrepancies in their accounts, *i.e.*, the date a "substantially complete" account is available to the agency for audit. B-251994, Sept. 24, 1993. Here, in his role as disbursing officer, Mr. Maddox was required to submit a monthly statement of accountability, including all supporting documents. AOUSC's *Guide to Judiciary Policies and Procedures*, Vol. 1, Chapter 7, Part E – Reporting, paragraphs 1.2, 2.1, 2.2. It is with the receipt of the monthly statements of accountability that Mr. Maddox's account was substantially complete for purposes of AOUSC audit.³ As a result, Mr. Maddox is relieved by operation of law with respect to 27 of the improper payments at issue, those made prior to March 2003, which have a total value of \$947.62. Hence, Mr. Maddox remains liable only for the remaining improper payments for which relief was requested, 11 payments with a total value of \$485.60. This decision addresses his relief of liability for those 11 payments only.

Discussion

Since bottled drinking water for employees is ordinarily considered a personal expense, appropriated funds may be used to purchase bottled drinking water for

³ Although certifying officers are not custodians of public funds and do not have accounts and statements of accountability in the same way disbursing officers do, for purposes of audit and settlement, we consider the certifying officer's account to be the certified vouchers and supporting papers relating to payments made by a disbursing officer over a particular accounting period. B-251994, Sept. 24, 1993. Hence, the 3-year period is the same for the disbursing officer and for the certifying officers on whose certifications the disbursing officer relied. *Id.*

employees only upon a showing of necessity. B-247871, Apr. 10, 1992. We have found necessity to be established, for example, where the available drinking water has been analyzed by appropriate authorities and found to pose a health risk. *Id. See also* B-301152, May 28, 2003 (“Without question, an agency may use appropriated funds to satisfy basic fundamental needs such as potable water, clean air, and sufficient light”). Here, despite Mr. Maddox’s reference to “ongoing concerns about environmental issues in the Courthouse, which has had ongoing sewer and plumbing problems,” Maddox request at 1, apparently no such analysis of the drinking water was ever performed. April letter at 1. In any case, since neither AOUSC nor Mr. Maddox disputes that the payments for bottled water for employees⁴ were unauthorized,⁵ the only issue before us is whether relief can be granted to Mr. Maddox under the circumstances here.

⁴ Bottled water for employees is distinguished here from bottled waters for jurors, which is an allowable purchase, April letter at 2,(5), Enclosure D—“Fund Code Descriptions” (excerpted from AOUSC’s “Guide to Judiciary Policies and Procedures,” issued October 1986), as will be discussed further in our decision.

⁵ The prohibition on purchases of bottled water for employees during the relevant audit period was made clear by AOUSC internal directives. On January 1, 2001, AOUSC had in effect its directive, *Guide to Judiciary Policies and Procedures*. Under chapter VIII of that directive, entitled “Procurement, Contracting, and Property Management” and Part K: “Consumable Supplies and Small Miscellaneous Services Program,” is an Exhibit K-2 entitled “Illustration of Items Not Authorized Under These Guidelines.” The instructions on the exhibit state the following:

“The following items shall not be purchased using funds allotted for consumable supplies and small miscellaneous services. Special authority may be requested by letter to the Chief, Procurement and Property Branch.”

Among the items on the list is “Water, bottled.” In addition, in November 2001, AOUSC published another internal directive, Acquisition Bulletin 2002-01, which states: “The purpose of this Acquisition Bulletin is to provide guidance relating to the restrictions on purchases with appropriated/decentralized funds.” Under the heading “Purchase of the following items with appropriated funds is generally prohibited, with limited exceptions:” is listed:

“Bottled water, except: 1) in cases where there is no available drinking water in the building or the available water is not potable (as determined from a chemical analysis of the water, arranged by GSA); or, 2) as authorized by the refreshment policy. (Bottled water is permissible for jurors but must be charged to ‘Fees of Jurors . . .’ account.)”

(continued...)

Regarding the standard for relief to be used in this case, discussion of the exact nature of Mr. Maddox's role as an accountable officer, and the relevant legislation, is important. Congress enacted the Federal Courts Improvement Act of 2000, Public Law 106-518, title III, § 304(a), 114 Stat. 2417 (Nov. 13, 2000), codified at 28 U.S.C. § 613, which gave the judicial branch specific authority to establish certifying officer positions, set out the responsibilities and liabilities of certifying and disbursing officers, and gave both the right to seek relief from liability from our Office. 28 U.S.C. § 613.

The court did not implement the certifying officers legislation until November 2003, after the improper payments identified in the February 2004 audit had occurred. Although Mr. Maddox's title at the time of those payments was disbursing officer, AOUSC explains that prior to signing the checks, he, in effect, certified the legal availability of appropriations for this purpose. Maddox request at 3, fn.1. We think the appropriate standard for relief, therefore, is that provided at 31 U.S.C. § 3528 for certifying officers. To do so is consistent with previous cases where we found that, when the accountable officer is not technically a certifying officer but is performing a certifying function with respect to the action at issue, then application of the section 3528 standard is appropriate. *See* B-214782, Nov. 26, 1984; B-215380, *et al.*, July 23, 1984. Regarding the post-audit period payments, the record is not clear as to whether or when Mr. Maddox's title changed to certifying officer. To the extent that Mr. Maddox was a certifying officer at the time of any of the improper payments, the Judiciary's certifying officer legislation passed in 2000 provides that a certifying officer "is entitled to relief from liability arising under this section in accordance with title 31." 28 U.S.C. § 613(c). For that reason also, then, application of the section 3528 standard for relief would be the correct standard to apply with respect to the post-audit period payments.

Under 31 U.S.C. § 3528, the certifying official who signs the voucher is responsible for the existence and correctness of the facts cited in the certificate, voucher, or supporting papers and the legality of the proposed payment, and is liable for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation. 67 Comp. Gen. 457, 466 (1988). Our Office may relieve a certifying officer from liability for an improper payment of public money when we find that the obligation was incurred in good faith; no law specifically prohibited the payment; and the United States government

(...continued)

September letter, Attachment 4 at 1, 3. Throughout the relevant audit period, at least one of these directives was in effect and was available to Mr. Maddox and other court employees.

received value for payment. 31 U.S.C. § 3528(b)(1)(B).⁶ A finding of good faith under the above standard requires that we find that the certifying officer did not have, nor should reasonably have had, doubt regarding propriety of payment; whether a certifying officer should have been in doubt requires weighing all the surrounding facts and circumstances and cannot be resolved by any hard and fast rule. B-262110, Mar. 19, 1997; B-247563.3, Apr. 5, 1996; B-257893, June 1, 1995.

At issue here is whether Mr. Maddox's actions demonstrated good faith within the meaning of the statute, *i.e.*, does the record indicate that he doubted the propriety of the payments for employee bottled water, or were the circumstances surrounding the improper payments such that he reasonably should have had doubt about the propriety of those payments. You state that Mr. Maddox was not aware that the bottled water was being purchased for employees. However, we think that the facts and circumstances here should have alerted Mr. Maddox to the fact that he and his assistants were improperly certifying payments to purchase bottled water for employees.

In your request letter, you assert that the purchase of bottled water would not seem unusual to Mr. Maddox and his assistants as they examine vouchers, because bottled water for jurors is "an authorized expenditure often seen in courts." September letter at 2. Furthermore, Mr. Maddox asserts that there was nothing on the face of the vouchers that should have caused him to doubt the propriety of the claim. Maddox request at 4. We disagree. According to the record, the juror bottled water and the Fort Pierce staff bottled water were paid for out of separate appropriations accounts, juror bottled water out of fund No. 092500 for "Jurors and Commissioners" and Fort Pierce staff bottled water out of fund No. 092000 for "Salaries and Expenses of the United States Courts," April letter at 2,(5). Three of the vouchers for improper bottled water payments which you provided to us state the applicable account number in each case as "092000," which is identified above for "Salaries and Expenses of the United States Courts," and is distinguishable from the account for juror bottled water. *Id.* We therefore think that reasonable examination of the vouchers should have revealed that it was not juror bottled water that was being purchased.

You maintain that the decision to purchase bottled water for the Fort Pierce staff was made by Mr. Maddox's predecessor clerk of court, and that the processing of the improper payments was "well ingrained" at the time Mr. Maddox was appointed in 1999. September letter at 2. You also maintain that, because of the work volume in Mr. Maddox's office (approximately 19,000 vouchers annually) and the distance between Mr. Maddox's office and the Fort Pierce courthouse (130 miles), he and his

⁶ An additional standard for relief exists where the certification was based on official records, but that is not the case here. 31 U.S.C. § 3528(b)(1)(A).

assistants had to rely on the control procedures in place, and that “[i]t would not be reasonable to expect Mr. Maddox to be personally aware of every expenditure in the Fort Pierce Division.” *Id.* at 2-3. However, a certifying officer may not escape liability for losses resulting from improper certification simply by stating either that he was not in a position to determine that each item on a voucher was correctly stated, or that he must depend on the accuracy of his subordinates. 55 Comp. Gen. 297, 299 (1975). Moreover, heavy workload is not a consideration for relieving a certifying officer from liability for an improper payment. B-303177, Oct. 20, 2004. A certifying officer has a high degree of responsibility, and such authority is not perfunctory. 55 Comp. Gen. at 299. As the statutory standards for waiver reflect, the responsibility of certification must be respected; otherwise it would afford little protection of the United States against improper payments. *Id.*

Mr. Maddox defends his performance by pointing to an audit that was performed in March 2001, which assigned no fault to similar employee bottled water payments. Also, he maintains, a “Clerk’s transition audit” was conducted by the AOUSC administrative office in 2000, and it failed to note any discrepancy regarding the payments at issue. Maddox request at 2. While it is unfortunate that the staff bottled water payments were not identified as improper in those audits, that fact did not act to waive any right of the government to assign liability for future improper payments of the same nature. Despite Mr. Maddox’s assertions that he was unaware of the staff bottled water payments, he was responsible for reviewing and signing the vouchers to purchase bottled water for the staff at Fort Pierce. To reiterate, a certifying official who signs a voucher is responsible for the existence and correctness of the facts cited in the certificate, voucher, or supporting papers and the legality of the proposed payment. 31 U.S.C. § 3528(a); B-239592, Aug. 23, 1991.

In Mr. Maddox’s June 15 request, he maintains that the facts here are analogous to those in our decision, B-247563.3, Apr. 5, 1996, in which we granted relief to a certifying officer for improper payments for various expenditures. While the facts in that case were similar to those here in some ways, a critical distinction can be found in the fact that the Austin, Texas-based certifying officers had to use an automated payment system (APS) for authorizing expenditures at the Veterans Affairs Oklahoma City Medical Center. The use of that system required the certifying officers to rely on the integrity of the APS without physically examining hard copy documentation in all cases. In cases involving automated systems, we have held that the reasonableness of a certifying officer’s reliance on the system to continually produce legal and accurate payments is a factor to be considered when addressing relief of the officer’s liability for illegal or improper payments, and we have set forth criteria to judge the reasonableness of that reliance. 69 Comp. Gen. 85 (1989). In the cited case, the record did not reveal any facts which should have caused the certifying officers to question the reliability of the system as a whole, and we therefore had no basis to conclude that they should have doubted the propriety of the expenditures certified. That is not the case here.

After consideration of the full record, we decline to grant relief for the 11 payments (totalling \$485.60) that Mr. Maddox certified after February 2003, because we conclude that Mr. Maddox did not meet the good faith standard under 31 U.S.C. § 3528(b)(1). Mr. Maddox should have been aware that he was certifying payments for employee bottled water based on the information detailed on the vouchers themselves, which could have been discovered through careful examination of the vouchers. Mr. Maddox remains liable for the 11 improper payments which have not been settled by operation of law, in the amount of \$485.60.

Sincerely yours,

/signed/

Susan A. Poling
Managing Associate General Counsel

cc: Clarence Maddox

DIGEST

We deny relief for a disbursing/certifying officer of the United States District Court for the Southern District of Florida who certified improper payments to purchase bottled water for court employees in the absence of any documentation that the available drinking water posed a health risk. While the disbursing/certifying officer claims that he was unaware that the bottled water being purchased was for employees (bottled water for jurors is an allowable expense), and that he certified the payments in good faith, we do not agree. To find “good faith” as used in the relief statute requires that there be no doubt regarding, nor reason to doubt, the propriety of the payments. Since the record states that the payments for employee bottled water came from a different account than that for juror bottled water, and vouchers for the improper purchases indicate that each purchase was funded by that different, non-juror, account, we find that reasonable examination of the vouchers should have identified the water being purchased as other than for jurors. We therefore cannot conclude that he had no reason to doubt the propriety of the payments.