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February 20, 2009

Robert T. Macdonald
Chair, Committee of Inquiry
into Fiscal Irregularities
RM/DCFO/FPRA SA-1 H-1500
United States Department of State
Washington, D.C. 20520

Subject: *Relief of Accountable Officer Aekyung Ripley—American Embassy,
Managua*

Dear Mr. Macdonald:

This responds to your letter of September 30, 2008,¹ requesting that we relieve Aekyung Ripley, the alternate certifying official at the American Embassy in Managua, of her liability for a \$4,549.37 overpayment made out of her accounts. The overpayment occurred as a result of a duplicate payment of separation retirement benefits made to an employee. For the reasons discussed below, we grant relief.

BACKGROUND

On September 20, 2007, the Embassy terminated the employment of a locally employed staff member who, in accordance with his local compensation plan, was eligible to receive a separation payment that included retirement benefits, Christmas bonus, frozen annual leave, and accrued annual leave. According to the information you submitted, there was a duplicate payment of retirement benefits erroneously paid to the employee as a result of confusion at the Embassy concerning the proper procedure for processing separation retirement payments of locally employed staff members. Macdonald Letter.

In order to process the payment to the separating employee, the Human Resources Assistant at the Embassy notified the Senior Financial Specialist of the employee's separation and provided her with a personnel action form that contained the calculations of the benefits owed to the employee. The Senior Financial Specialist

¹ Letter from Robert T. Macdonald, Chair, Committee of Inquiry into Fiscal Irregularities, Department of State, to Gary L. Kepplinger, General Counsel, GAO, Sept. 30, 2008 (Macdonald Letter).

signed the personnel action form and, on September 26, 2007, the Human Resources Assistant sent it to the Department of State Global Financial Service (GFS) in Charleston, South Carolina, where the Embassy's calculations and other information provided in the paperwork would be verified. The form included a request to process the separation retirement payment in the amount of \$4,549.37 and to charge the payment to an Embassy allotted funding line. *Id.*

Also on that day the Senior Financial Specialist sent a cable to the Department of State Bureau for Western Hemisphere Affairs (WHA) in Washington, D.C., requesting fiscal data for the retirement payment in local currency equivalent to the amount of \$4,549.37 so that the payment could be processed by the Embassy's Financial Management Center (FMC). The Senior Financial Specialist was unaware that the form sent to GFS by the Human Resources Assistant included a request to process the payment. *Id.*

On October 1, 2007, having received a cable from WHA providing a Washington fund citation in the amount of \$4,549.37, the Senior Financial Specialist requested the Voucher Examiner at the Embassy to prepare a voucher for payment of the separation retirement benefit to the employee, which was then forwarded to the alternate certifying officer, Ms. Ripley. Ms. Ripley had understood that the Department's payment processing policy had changed recently and that the Embassy no longer processed payments such as this. She, therefore, instructed the Voucher Examiner to cancel the voucher. *Id.*

On October 4, 2007, Ms. Ripley advised the Senior Financial Specialist and the Human Resources Specialist² that she would not certify the payment voucher because she believed that, under current procedure at the Embassy, payment should be made via a personnel action form processed by GFS. The Senior Financial Specialist and the Human Resources Specialist both advised Ms. Ripley that the Embassy had reverted to a prior procedure for directly processing these kinds of separation payments. According to the record, throughout a series of discussions on this issue, the Senior Financial Specialist and the Human Resources Specialist never told Ms. Ripley that a personnel action form had been processed and sent to GFS for this employee's separation retirement payment. *Id.*

Because she was still uncertain about the correct way to proceed, Ms. Ripley asked the Human Resources Specialist to obtain an authorization from the Embassy Management Counselor³ to process the separation retirement payment at the

² The Human Resources Assistant and the Human Resources Specialist are two different individuals who became involved in this matter. E-mail from Richard O. Wood, Committee of Inquiry into Fiscal Irregularities, Department of State, to Sheila K. Ratzenberger, Senior Attorney, GAO, Jan. 14, 2009.

³ The Embassy Management Counselor is an administrative officer and not part of the Embassy legal staff. E-mail from Richard O. Wood, Committee of Inquiry into Fiscal (...continued)

Embassy rather than through GFS. On October 16, 2007, the Human Resources Specialist sent Ms. Ripley an e-mail confirming that the Management Counselor directed that the Embassy's Financial Management Center would process payment of the separation retirement benefit using the Human Resources Office calculations. Based on this e-mail confirmation plus the October 1 cable from WHA providing the funding cite, Ms. Ripley certified a voucher (replacing the canceled voucher) for \$4,549.37 in local currency payable to the employee. On October 23, 2007, the employee picked up the check from the cashier at the Embassy and cashed it at the commercial bank located at the Embassy. *Id.*

In the meantime, GFS was reviewing the personnel action form sent by the Human Resources Office. After an internal audit of the amounts provided by the Embassy, GFS determined that the calculation of the dollar amount for the retirement payment should have been \$4,796.47, which was \$247.10 more than the Embassy calculation, due to a change in the pay scale at the time of processing. On November 5, 2007, GFS issued a check to the employee that included the retirement benefit in the amount of \$4,796.47. As a result, the employee was paid \$4,549.37 more than he was entitled to. The employee picked up this second check from the Embassy on November 9, 2007, and later cashed it at the bank at the Embassy. The Embassy's efforts to recover the duplicate payment from the employee have been unsuccessful.

DISCUSSION

Under 31 U.S.C. § 3528(a), a certifying officer is responsible for repaying any "illegal, improper, or incorrect" payment resulting from his or her certification. 31 U.S.C. § 3528(a)(4). The moment that an improper payment is made, the certifying officer becomes jointly and severally liable, along with the person or persons who benefited from the payment, to the United States for the amount of the loss incurred as a result of the illegal, improper, or incorrect payment. B-303177, Oct. 20, 2004; B-257893, June 1, 1995; 67 Comp. Gen. 457, 462 (1988). Here, the erroneous payment resulted when both the Embassy, on the certifying officer's certification but contrary to Department policy, and GFS issued payments to the separated employee. Although the Embassy attempted to recover the duplicate payment from the employee, the certifying officer, nonetheless, remains liable for the unauthorized payment. 67 Comp. Gen. at 462.

Our Office may relieve a certifying officer of liability for an improper payment of public money where we find that the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information. 31 U.S.C. § 3528(b)(1)(A). The standard of reasonable diligence and inquiry requires an examination of the "practical conditions

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Irregularities, Department of State, to Sheila K. Ratzenberger, Senior Attorney, GAO, Jan. 12, 2009.

prevailing at the time of certification, the sufficiency of the administrative procedures protecting the interest of the Government, and the apparency of the error.” 55 Comp. Gen. 297, 300 (1975). *See also* B-272615, May 19, 1997; B-254385, Mar. 22, 1994; B-235037, Sept. 18, 1989.

Based on the record before us, we conclude that Ms. Ripley exercised reasonable diligence since there is no indication of bad faith. Ms. Ripley, who properly questioned the propriety of certifying the retirement payment voucher understanding that the payment should issue from GFS, subsequently certified payment only after she was advised that use of the funds had been approved by WHA and that the Management Counselor had confirmed that the Embassy should process the payment. *See, e.g.*, B-288284.2, Mar. 7, 2003; 70 Comp. Gen. 298 (1991); B-221940, Oct. 7, 1987. However, in March 2007, the Embassy had established a process whereby the Embassy’s Human Resources Office would submit paperwork for payments like this to GFS in Charleston to process the payment. Macdonald Letter. Here, the improper payment occurred because, in certifying the voucher for payment, Ms. Ripley relied on the statements of the Senior Financial Specialist, the Human Resources Specialist, and, ultimately, the Management Counselor, that the payment was in fact supposed to issue from the Embassy in this manner. Also, she had no reason to question the calculations provided by Human Resources as to the correct amount of the retirement benefit, and, since she had the authorization from WHA, she had no reason to doubt that there were sufficient funds to cover the payment. *See, e.g.*, B-288284.2, Mar. 7, 2003 (embassy official who certified an erroneous payment exercised reasonable diligence in relying on the direction of an official at another embassy and in the belief that there were sufficient funds in the charged account); 67 Comp. Gen. 457, 466 (1988) (certifying official who accepted memorandum certification of supervisor and certified voucher schedule for payment is not liable for the loss resulting from the improper payment since she was entitled to rely upon her supervisor’s certification).

Moreover, according to the record, at no point was Ms. Ripley aware that a separate, duplicate payment was being prepared and issued from GFS. Neither the Senior Financial Specialist nor the Human Resources Specialist ever informed her that the employee’s personnel action form had been sent to GFS for processing. Macdonald Letter. In fact, the record indicates that, in the course of her discussions with Ms. Ripley, the Human Resources Specialist never checked the employee’s file, and thus failed to discover that a request for payment had been sent to GFS, discovery of which could have prevented the duplicate payment. *Id.* Also, the Senior Financial Specialist said she would never have asked for the Embassy voucher if she had known that the personnel action form sent to GFS contained a request for payment of the retirement benefits. *Id.*

To suggest, in hindsight, that Ms. Ripley should not have relied on the Management Counselor’s direction, the WHA cable, and the steadfast position of the Senior Financial Specialist and the Human Resources Specialist, but should have, instead, continued to refuse to certify the voucher, would create an unreasonably high standard for the proper certification of payments and put an undue burden on

certifying officers. As it was, Ms. Ripley persistently questioned payment as far as she could take it with the information she had; she should not be held responsible for information that was withheld from her. Therefore, we grant relief to Ms. Ripley.


Clearly, confusion reigned in the Embassy at this time. Although, as of March 2007, established procedure directed that the Embassy's Human Resources Office submit payments to GFS for processing (as the Human Resources Assistant had done for this payment on September 26), the Embassy, in late September 2007, asked the Senior Financial Specialist to assume this task. Macdonald Letter. The Senior Financial Specialist understood this change to mean that the Embassy would resume processing payments. *Id.* Not only was the change in procedure not clear, it was not communicated throughout the Embassy. *Id.* In light of these circumstances, the record indicates that the department has taken the following action:

“State Department policy has changed as of November 28, 2007 to require that all compensation for [locally employed staff] paid under a Local Compensation Plan is paid through the GFS payroll system, *to the greatest extent possible*. Any compensation payments or reimbursements made at post other than through the payroll system must be authorized by the Department and documented in the local compensation plan. This change ensures that there is an adequate system of internal management controls and that there are payroll records for all compensation provided to locally employed staff.”

Id. (emphasis added).

The emphasized language concerns us because it indicates there may still be circumstances where GFS will not provide payment. It is not clear from the record whether this new policy includes specific, objective guidance provided to accountable officers as well as others who process these types of separation payments at embassy posts. If it does not already exist, we recommend that the State Department develop and disseminate more detailed and definitive written policies or procedures for the payment of separation benefits due to locally employed staff, specifying which particular items will be processed through GFS and when it would be an acceptable exception for an item to be paid by the Embassy using WHA funding cables. This would further ensure that all staff are aware of the procedures and that duplicate payments are avoided in the future.

Sincerely yours,



Susan A. Poling
Managing Associate General Counsel