

DOCUMENT RESUME

02275 - [A1332295]

[Liability of Agency for Failure to Garnishee Employee's Salary]. B-18865\*. May 6, 1977. 6 pp. + enclosure (1 pp.).

Decision re: Robert A. Bailey; by Paul G. Dembling, Acting Comptroller General.

Issue Area: Personnel Management and Compensation (300).  
Contact: Office of the General Counsel: Civilian Personnel.  
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Environmental Protection Agency: Fiscal Policies and Procedures Branch.

Authority: (P.L. 93-647, sec. 459; 88 Stat. 2337; 88 Stat. 2357 ; 42 U.S.C. 659 (Supp. IV)). 31 U.S.C. 724a. 28 U.S.C. 2414. 42 U.S.C. 1301(a)(1) (Supp. V). District of Columbia Code 16-556(b). District of Columbia Code 16-575. Superior Court of the District of Columbia Civil Rule 69-1(e). 55 Comp. Gen. 517. 34 Comp. Gen. 221.

A decision was requested by Marcus W. Pugh, Environmental Protection Agency Certifying Officer, concerning the agency's authority to pay from appropriations an amount not garnished from an employee's salary because of error. The agency was liable, but payment should not be made from appropriations for regular operations. If a judgment is entered, it should be paid from the "Judgment Appropriation." (HTW)

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Douglas Faulkner  
Civ. Pers.

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-188654**

**DATE: May 6, 1977**

**MATTER OF: Robert A. Bailey - Wage Garnishment**

- DIGEST:**
1. EPA negligently failed to withhold specified amounts from employee's salary under a writ of garnishment. Governing state law permits entry of judgment against employer-garnishee under those circumstances. Since 42 U. S. C. § 659 mandates that the United States and its agencies will be treated as if they were private persons with regard to garnishment for child support and alimony, employing agency may be found to be liable because, under the same circumstances, private employer would be liable.
  2. If judgment is entered against United States or one of its agencies as employer-garnishee under applicable state law, that judgment may be paid from the Judgment Appropriation created by 31 U. S. C. § 724a, if Attorney General certifies that it is in interest of United States to pay the judgment.

This matter arises from a request for an advance decision dated March 16, 1977, submitted by an authorized certifying officer, Mr. Marcus W. Pugh, Chief, Fiscal Policies and Procedures Branch of the Environmental Protection Agency (EPA), concerning the agency's authority to pay from its appropriations an amount that was not withheld from an employee's salary under a garnishment order.

On or about October 7, 1976, a "Writ of Attachment on a Judgment, Child Support/Alimony," was served upon the EPA Office of General Counsel requiring that 50 percent of the gross wages of Mr. Robert A. Bailey be withheld and paid over to the Clerk of the Superior Court of the District of Columbia to satisfy a judgment for child support in the total amount of \$15,047. The writ of attachment was reviewed by the EPA Office of General Counsel, and forwarded to the Payroll Office on or about October 12, 1976, with instructions to begin withholding the specified amounts from Mr. Bailey's salary. Notice of the withholding was given to Mr. Bailey in a letter dated October 13, 1976.

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A pay period had ended October 10, 1976, so the withholding under the writ could not be put into effect for that pay period. The Payroll Office then attempted to make the appropriate entries into the payroll system for the following pay periods, but for unknown reasons the automated payroll system did not accept the entries. Therefore, no deductions were ever made from Mr. Bailey's salary under the writ. The error was not discovered until after Mr. Bailey had resigned from EPA effective November 10, 1976.

By letter of December 28, 1976, to the EPA Payroll Office, Mr. William J. Earl, Assistant Corporation Counsel of the Government of the District of Columbia, noted that no payments had been made in accordance with the writ, and requested that EPA immediately remit to the Clerk's Office of the Superior Court 50 percent of the gross wages paid to Mr. Bailey between October 8, 1976, and the date he left EPA. An attempt was made to recover that amount from Mr. Bailey's retirement account, but it had been returned to Mr. Bailey before the request to withhold reached the Civil Service Commission. The certifying officer now asks if he may pay the amount that should have been withheld from Mr. Bailey's salary from appropriation 68X0108, "Abatement and Control, Environmental Protection Agency." This appropriation is the one from which Mr. Bailey's salary had been paid.

On March 22, 1977, a "Motion for Judgment of Recovery Against Garnishee," was filed by the District of Columbia Corporation Counsel, and was served on EPA. In that motion a judgment in the amount of \$900 is sought against EPA because of its failure to withhold money from Mr. Bailey's salary in accordance with the writ of attachment. The motion is based on District of Columbia Code §§ 16-556(b) and 16-575 (1973 Ed.). Section 16-575 provides that:

"If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this subchapter of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which the failure occurs."

Thus, under the District of Columbia Code, if a private employer fails to withhold the amounts required by a writ of garnishment, it is liable to the judgment creditor for those amounts. Costin v. Hollywood Credit Clothing Co., 140 A.2d 696 (D. C. Ct. App. 1958).

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Prior to January 1, 1975, the salaries of employees of the Federal Government could not be garnished for any purpose. Under section 459 of Public Law 93-647, January 4, 1975, 88 Stat. 2337, 2357, salaries of Federal employees can now be garnished to satisfy child support and alimony obligations. That section, which is codified as 42 U. S. C. § 659 (Supp. IV, 1974), provides that:

"Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States (including any agency or instrumentality thereof and any wholly owned Federal corporation) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments."

This section does not create a new Federal garnishment law. It merely removes the bar of sovereign immunity that previously prevented garnishment. See Matter of the State of Washington, 55 Comp. Gen. 517 (1975); Bolling v. Howland, 398 F. Supp. 1313 (M. D. Tenn. 1975); and Wilhelm v. United States Department of the Air Force, 418 F. Supp. 187 (S. D. Tex. 1976).

In essence, 42 U. S. C. § 659 mandates that the United States, when acting as an employer, be treated the same as any private employer would be when an employee's wages are garnished for child support or alimony payments. Under the District of Columbia Code, if a private employer fails to withhold money from an employee's salary, in accordance with a garnishment order, it is liable to the judgment creditor. Accordingly, the Federal Government is liable under the same circumstances. While it could be argued that the United States has no liability for the erroneous acts of its agents under the theory of Federal Crop. Ins. Corp. v. Merrill, 332 U. S. 380 (1947), we believe that the statutory mandate that the United States be treated as if it were a private person serves to remove such a defense. Additionally, we note that if errors or omissions by Federal employees insulated agencies from liability in garnishment cases, the purpose of 42 U. S. C. § 659 could be

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easily frustrated. Thus, we conclude that a Federal agency may be found liable under state law if it fails to comply with a proper writ of garnishment.

The specific question presented by the EPA certifying officer is whether he may use a particular agency appropriation to pay the monies that should have been deducted from the employee's salary. According to the record before us, a judgment under D. C. Code § 16-575 has not yet been entered against EPA. Therefore, there is no obligation at this time on EPA to pay any monies under the writ served on October 7, 1976, and the agency's appropriation may not be used to satisfy the demand for payment made by the Assistant Corporation Counsel, District of Columbia. Moreover, if a judgment should be entered as a result of the motion filed by the Corporation Counsel, it may not be paid from the appropriation 68X0108, "Abatement and Control, Environmental Protection Agency." Appropriations provided for regular operations of the Government, are not available for the payment of judgments unless the appropriation specifically so provides. 34 Comp. Gen. 221 (1954). Therefore, if a judgment is entered against EPA for the amounts not withheld from Mr. Bailey's salary, appropriation 68X0108 may not be used to satisfy that judgment.

As a general matter, however, judgments against the United States may be paid from the permanent, indefinite appropriation created by 31 U. S. C. § 724a (1970). Since we are here concerned with a District of Columbia court, it is necessary to examine 28 U. S. C. § 2414 (1970) which provides, in pertinent part, that:

"\* \* \* Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same."

The local courts of the District of Columbia have been found to be analogous to state courts. *Palmore v. United States*, 411 U. S. 388 (1973), and *Pernell v. Southall Realty*, 416 U. S. 363 (1974). Additionally, for the purposes of the Social Security Act, of which 42 U. S. C. § 659 is a part, the District of Columbia is included

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within the definition of the term "state" by 42 U. S. C. § 1301(a)(1) (Supp. V, 1975). In our opinion, therefore, a judgment rendered by the Superior Court of the District of Columbia would be a judgment of a state court and payable from the Judgment Appropriation created by 31 U. S. C. § 724a, provided that the Attorney General certifies that it is in the interest of the United States to pay it.

Accordingly, EPA should not simply consent to the entry of a judgment, but should avail itself of the assistance of the Department of Justice to represent it and to raise whatever defenses may be available. In this connection, we note that Rule 69-J(e) of the Superior Court of the District of Columbia-Civil Rules provides, in pertinent part, that:

"JUDGMENT AGAINST GARNISHEE. No judgment against a garnishee under D. C. Code §§16-558 or 16-575 (1973 ed.) shall be entered except by order of court. Applications for a judgment shall be filed \* \* \* (3) as to such 'wages', within fifteen weeks of the date on which a garnishee fails to make a payment due under the writ, or (4) within such later time as may be authorized by the court upon a motion made within the applicable period. If no judgment of condemnation or of recovery has been applied for or entered within the time provided by this rule, the garnishment and attachment shall stand dismissed. Upon oral or written request therefor, the clerk shall enter such dismissal of the garnishment and attachment and shall furnish a certificate of such dismissal to the garnishee, the defendant, or any other person."

While it is not clear exactly what date should be used in determining whether the conditions of subsection (3) above are met, it appears that the motion for judgment may not have been timely filed. If any other defenses are available they should also be raised.

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Accordingly, EPA appropriation 68X0108 may not be used to pay the amounts that were not deducted from Mr. Bailey's salary, but the appropriation created by 31 U. S. C. § 724a may be used if the conditions set out above are satisfied.

*Paul G. Lovell*  
Acting Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

Douglas Faulkner  
Civ. Pers.

B-188654

May 6, 1977

The Honorable  
The Attorney General

Dear Mr. Attorney General:

Enclosed is a copy of our decision of today, B-188654, regarding payment of judgments when liability is imposed on Federal employers who have failed to make payroll deductions in accordance with garnishment orders. We are providing this decision for your information since these judgments will generally be judgments of state courts, and, under 28 U. S. C. § 2414 (1970), such judgments must be certified by you before they may be paid from the judgment appropriation created by 31 U. S. C. § 724a (1970).

Sincerely yours,

*Paul G. Leubling*  
Acting Comptroller General  
of the United States

Enclosure