

DECISION

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

*Blount**118647*

FILE: B-204187

DATE: June 9, 1982

MATTER OF: Employees' Compensation Fund Overpayments

DIGEST: Payments to an Air Force employee from the Department of Labor's Employees' Compensation Fund are repaid to the Fund by the Air Force pursuant to 5 U.S.C. § 8147 (1976). An overpayment by the Fund becomes an overpayment within the meaning of 5 U.S.C. § 5514 when the agency is billed for the payment by the Department of Labor. Therefore, an overpayment by the Fund to the employee may be collected by the Air Force under 5 U.S.C. § 5514, as if it had been made directly by the Air Force.

By a letter dated July 23, 1981, the Deputy Assistant Secretary of the Air Force (Accounting and Internal Audit) requested an advance decision regarding the propriety of withholding under the provisions of 5 U.S.C. § 5514 (1976) an Air Force employee's pay to collect overpayments made to that employee by the Department of Labor's Office of Workers' Compensation Programs. The payments in question are from the Employees' Compensation Fund which is administered by the Office of Workers' Compensation Programs. Pursuant to 5 U.S.C. § 8147, payments from the Fund to Air Force employees are repaid to the Fund by the Air Force on an annual basis.

Section 5514 of title 5, United States Code, permits collection from an employee's pay by his agency "(w)hen the head of an agency concerned or his designee determines that an employee * * * is indebted to the United States because of an erroneous payment made by the agency to or on behalf of the individual* * *." Since payments to Air Force employees from the Employees' Compensation Fund are not made directly by the Air Force, the Air Force inquires whether an overpayment from the Fund constitutes an overpayment under section 5514.

For the following reasons we find that overpayments to the Air Force employees from the Fund constitute payments within the meaning of 5 U.S.C. § 5514 once the Air Force is billed by the Fund for the overpayments.

The Federal Employees' Compensation Act, as amended, 5 U.S.C. § 8101 et seq., provides for the payment of

workers' compensation benefits to civil officers and employees of all branches of the Federal Government. The Act among other things provides for the payment of dollar benefits to enumerated classes of persons who are injured or disabled while in the performance of their duties in service to the United States. The Act is administered by the Secretary of Labor or his designee pursuant to 5 U.S.C. § 8145. Section 8129 contains specific provisions for the recovery of overpayments while an individual is receiving compensation. However, the Act contains no provisions regarding recovery of overpayments to individuals who have returned to the work force. The Secretary of Labor has issued regulations in this regard found at 20 C.F.R. 10.314(b)(1981) as follows:

"(b) Where there are no further payments due and an overpayment has been made to an individual by reason of an error of fact or law such individual, as soon as the mistake is discovered or his attention is called to the same, shall refund to the Office any amount so paid, or upon failure to make such refund the Office may proceed to recover the same."

This question arises because the Department of Labor has asked the Air Force to assist in collecting an overpayment from the Fund which was made to an Air Force employee.

We have long held that the Government cannot withhold the current salary of employees to satisfy general debts owed to the Government without the employee's consent. See 58 Comp. Gen. 501 (1979); 29 Comp. Gen. 99 (1949); 24 Comp. Gen. 334, 338 (1944). However, under 5 U.S.C. § 5514 a Government agency may use the setoff procedure against an employee's current salary to collect a debt which arises from an erroneous payment made "by the agency to or on behalf of" the employee. We have also held that withholdings under 5 U.S.C. § 5514 are not authorized where the pay to be withheld and the erroneous payment did not arise in the same department or agency. See 34 Comp. Gen. 170, 173 (1954).

In this case an employee of the Air Force received an overpayment paid out of the Employees' Compensation Fund administered by the Department of Labor. The payment was

made incident to his employment by the Air Force, and the Air Force was required by 5 U.S.C. § 8147 to reimburse the Fund for the payment. This situation does not clearly fall within any category of overpayments in the discussion above. We find no reasonable basis, however, for an interpretation which would take the individual concerned outside the scope of section 5514. The controlling factor as we see it is that the Air Force pursuant to 5 U.S.C. § 8147 is required to reimburse the Department of Labor for funds expended on behalf of its employees. That is, while the Department of Labor administers the program, ultimately the payments are financed by the employee's agency--in this case the Air Force.

We have held that the overpayment of travel advances to members of the Armed Forces detailed to a civilian agency and made by the borrowing agency could be collected under section 5514 by the Armed Forces as if the individual had not been on detail. See 51 Comp. Gen. 303 (1971). Since the individuals, while on detail, remained members of the Armed Forces, their pay and allowances were the obligation of the Armed Forces not the borrowing agency. Similarly in the circumstances here, we hold that the payments in question from the Employees' Compensation Fund which are ultimately paid by the employing agency are subject to recovery under 5 U.S.C. § 5514. Accordingly, the Air Force may recover the overpayment by deduction from the employee's current pay without the need for the employee's consent. Although the Air Force or other employing agency ultimately pays the money dispensed through the Employees' Compensation Fund, the Fund initially dispenses payments at the time the employee is injured and bills the agency on an annual basis for payments so made. Because of the indirect manner in which the payments are made by the employing agency and because the Department of Labor also has authority to collect overpayments, the employing agency should not initiate collection under section 5514 until the Department of Labor bills it for money dispensed by the Fund on behalf of the agency's employees.

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for Comptroller General
of the United States