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DECISION



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

FILE: B-217274

DATE: September 30, 1985

MATTER OF: Veterans Administration - Debt Collection by
Offset Against Retirement Fund, Final Salary
Check, and Lump-Sum Leave Payments

DIGEST:

1. Section 10 (administrative offset) of Debt Collection Act of 1982, rather than section 5 (salary offset) is applicable to offsets against payments from Civil Service Retirement and Disability Fund (Retirement Fund). The Office of Personnel Management regulations implementing section 5 (5 U.S.C. § 5514) and the regulations issued jointly by GAO and the Department of Justice implementing section 10 (31 U.S.C. § 3716) both provide for offsets against Retirement Fund payments to be governed by administrative offset provisions of 31 U.S.C. § 3716. This is a continuation of long-standing interpretation and there is no indication that Act was intended to change it. Therefore, administrative offset provisions of section 10 apply to payments from Retirement Fund.

2. Section 10 (administrative offset) of Debt Collection Act of 1982, rather than section 5 (salary offset) is applicable to offsets against former federal employee's final salary check and lump-sum leave payment, unless they represent the continuation of an offset against current salary initiated under section 5. In regulations (5 C.F.R. Part 550, Subpart K) issued by Office of Personnel Management implementing section 5 (5 U.S.C. § 5514), it is specifically stated that section 10 (31 U.S.C. § 3716) applies to offsets against employee's final salary check and lump-sum leave payment. Historically both of these payments have been treated differently than employee's

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current pay account and both have been available for involuntary offset for debt collection. This interpretation of statute by agency charged with its administration is not unreasonable. Therefore, offsets against employee's final salary check and lump-sum leave payment are governed generally by 31 U.S.C. § 3716. In any event, the 15 percent limitation of 5 U.S.C. § 5514 does not apply.

We have been asked by the Administrator of Veterans Affairs, Veterans Administration (VA), to issue a decision concerning the application of the Debt Collection Act of 1982, Pub. L. 97-365, October 25, 1982, 96 Stat. 1749 (Act or Debt Collection Act), to the collection of debts owed to the United States by offset against a former employee's final salary check, lump-sum leave payment, and Civil Service Retirement and Disability Fund (Retirement Fund) payments. Specifically, we have been asked whether section 5 of the Act, codified as 5 U.S.C. § 5514, or section 10 of the Act, codified as 31 U.S.C. § 3716, governs the procedures to be used in effecting offsets against the above funds.

For the reasons set forth below, we hold that, with one qualification, section 10 of the Act, 31 U.S.C. § 3716, governs in effecting offsets against an employee's final salary check, lump-sum leave payment, and Retirement Fund payments. The qualification is that any offset from the final salary check or lump-sum leave payment which represents a continuation of an offset against current salary initiated under 5 U.S.C. § 5514 remains subject to section 5514.

BACKGROUND

Section 5 of the Debt Collection Act of 1982 amended and expanded 5 U.S.C. § 5514, dealing with the collection of debts by offset from the salaries of federal employees, i.e., "salary offset." In addition to its considerably broader scope, the amended version of section 5514 imposes certain procedural requirements. Among other things, employees are granted an opportunity for a pre-offset hearing conducted by an individual who is not under the supervision or control of the agency head, to result in a final decision within 60 days. See 5 U.S.C. § 5514(a)(2).

Section 10 of the Act enacted a new provision of law, 31 U.S.C. § 3716, captioned "administrative offset," which affords federal agencies a general right to collect by offset debts owed to the United States by any person. While section 3716 also imposes certain procedural requirements, it does not include the specific requirements noted above governing pre-offset hearings under 5 U.S.C. § 5514. Thus, the statutory source for a particular offset affects the specific procedures required. In addition, separate regulations have been issued under each of these two statutory provisions. The Office of Personnel Management has published final regulations implementing 5 U.S.C. § 5514 at 49 Fed. Reg. 27470 (July 3, 1984), codified as 5 C.F.R. Part 550, Subpart K. The General Accounting Office and the Department of Justice have jointly published final regulations implementing 31 U.S.C. § 3716 at 49 Fed. Reg. 8889 (March 9, 1984), as amendments to the Federal Claims Collection Standards, codified at 4 C.F.R. Parts 101 through 105 (1985).

We have previously discussed the legislative history and intent of the Debt Collection Act in our decision 64 Comp. Gen. 143 (1984). There we described the intent of the Act as follows:

"According to its legislative history, the Debt Collection Act of 1982 (DCA) was intended to 'put some teeth into Federal [debt] collection efforts' by giving the Government 'the tools it needs to collect those debts, while safeguarding the legitimate rights of privacy and due process of debtors.' 128 Cong. Rec. S12328 (daily ed. Sept. 27, 1982) (remarks of Sen. Percy). * * *"

The questions presented here have arisen because 5 U.S.C. § 5514(a)(1) is not absolutely clear as to what payments are covered by its procedural requirements. That section provides, in part:

"(a)(1) When the head of an agency or his designee determines that an employee, member of the Armed Forces or Reserve of the

Armed Forces, is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination by the head of an agency or his designee, or is notified of such a debt by the head of another agency or his designee the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual. The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay. The amount deducted for any period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved. If the individual retires or resigns, or if his employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from subsequent payments of any nature due the individual from the agency concerned." (Emphasis added.)

The VA questions whether the phrase "retired pay" as used in section 5514 includes payments from the Civil Service Retirement and Disability Fund or if it simply retains its usual meaning of payments to retired military members. The VA also questions the meaning of the last sentence of section 5514(a), and whether offsets against a former employee's final salary check or lump-sum leave payment, both of which are made to employees after their separation, are governed by the procedures contained in section 5514 or by the procedures contained in 31 U.S.C. § 3716. We will consider the questions in the order presented.

OFFSETS AGAINST THE CIVIL SERVICE RETIREMENT FUND

Section 5514 refers to "retired pay" as one source against which a setoff may be made. As VA points out, "retired pay" is generally understood to mean benefits

received by members or former members of the uniformed services. For example, "retired pay" is defined by 5 U.S.C. § 8311(3) as follows:

"retired pay means retired pay, retirement pay, retainer pay, or equivalent pay, payable under a statute to a member or former member of a uniformed service, and an annuity payable to an eligible beneficiary of the member or former member under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), * * *"

In contrast, payments from the Retirement Fund are made to former civilian employees of the Federal Government and are distinct from retired pay.

While "retired pay" is not defined with specific reference to 5 U.S.C. § 5514, we find nothing to suggest that Congress intended to depart from the customary meaning of this term for purposes of salary offset. We note, in this regard, that offset under 5 U.S.C. § 5514 applies fundamentally to payments made directly by a particular agency to its employees or former employees. The various forms of "retired pay" as usually understood fit this description; however, payments from the Retirement Fund do not since they are made by OPM, rather than the former employee's agency.

Further, we note that treating offsets from Retirement Fund payments as subject to 31 U.S.C. § 3716 instead of 5 U.S.C. § 5514 is consistent with the administrative regulations issued under both of these statutory provisions. Under 4 C.F.R. §§ 102.3 and 102.4, offsets against the Retirement Fund are specifically stated to be governed by the procedures set out in 31 U.S.C. § 3716. Moreover, under 5 C.F.R. § 550.1104(m), an agency's regulations governing debt collection through offset must include within their provisions the following:

"(m) Recovery from other payments due a separated employee. Provide for offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate, if the

debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. (See 4 CFR 102.3)"

Finally, neither the former nor present versions of section 5514 specifically included payments from the Retirement Fund as a source for offset for debt collection purposes. We held, prior to the passage of the Debt Collection Act, that payments from the Retirement Fund were available for offset for the collection of debts due the government by virtue of the government's common law rights as a creditor. See 58 Comp. Gen. 501 (1979) and cases cited therein. We find nothing in the Debt Collection Act or its legislative history that indicates any intent to change this long-standing interpretation or to include payments from the Retirement Fund within the scope of salary offset under section 5514. Thus we believe that offsets against payments from the Retirement Fund are properly governed by 31 U.S.C. § 3716.

FINAL SALARY CHECK AND LUMP-SUM LEAVE PAYMENT

There are no provisions in the regulations implementing 31 U.S.C. § 3716 that specifically deal with offsets against final salary checks and lump-sum leave payments. However, the OPM regulations implementing 5 U.S.C. § 5514 require that an agency's offset regulations must include the following provision:

"(1) Liquidation from final check. Provide for offset under 31 U.S.C. 3716, if the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt." 5 C.F.R. § 550.1104(1).

The supplementary information that accompanied the publication in the Federal Register of the final regulations provides some amplification of this provision:

"(1) Paragraph 550.1104(1) requires paying agencies to provide for collecting an employee's debt from any final payments due from their agency. Paragraph 550.1104(m) requires agencies to provide for collecting an employee's debt from any subsequent payments due from other government agencies. Two commenters requested guidance on the application of § 5514 to collections from a former employee. We amended the language in both of the paragraphs to show such collections will come under 31 U.S.C. 3716. Collections under § 3716 are not subject to the 15 percent limitation." 49 Fed. Reg. 2747 (1984)

As we interpret it, the OPM regulation is consistent with the language of 5 U.S.C. § 5514. The last sentence of 5 U.S.C. § 5514(a)(1), quoted previously, provides that if an employee ceases active duty with an agency "before collection of the amount of the indebtedness is completed," deduction shall be made "from subsequent payments of any nature due the individual from the agency concerned." Clearly, this language means that where offset has been initiated under section 5514 against the current salary of an employee, that same offset may reach subsequent final salary and lump-sum leave payments if necessary to complete the collection action. In this limited circumstance, an employee's final salary and lump-sum leave payments may be regarded as subject to offset under section 5514.^{1/} On the other hand, where there has been no antecedent offset against current salary, nothing in the language of section 5514 requires that section to apply. Instead, an offset against final salary or lump-sum leave payments here may be

^{1/} The OPM regulation essentially tracks the language of section 5514 in this respect and thus is consistent with it. In any event, the source of offset makes no practical difference in this circumstance. No additional hearing would be required to extend the section 5514 offset to final salary or lump-sum leave payments. Moreover, we view the 15 percent limitation on periodic deductions from disposable pay as applicable only to offset against current salary; thus, this limitation would not apply to the final salary and leave payments.

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treated as an administrative offset under 31 U.S.C. § 3716, as provided by the OPM regulation.

The approach taken in the OPM regulation also conforms to the practice which preceded enactment of the Debt Collection Act. The final salary check has historically been distinguished from current pay. Prior to the enactment of the Debt Collection Act, general debts could not be offset against a federal employee's current pay account. 29 Comp. Gen. 99 (1949). However, a different rule was applied to the final salary check and lump-sum leave payment, that is, general debts could be setoff against both types of payments. 26 Comp. Gen. 907, 909 (1947) (final salary check); 24 Comp. Gen. 522, 525 (1945) (lump-sum leave payment).

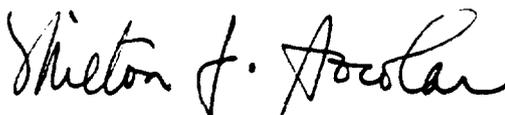
As stated above, the purpose of the Debt Collection Act was to put teeth into federal debt collection efforts and to provide the tools needed for that effort, while safeguarding the due process rights of debtors. Based upon all of the above, we believe that the OPM regulation placing setoffs against final salary checks and lump-sum leave payments under the authority of 31 U.S.C. § 3716 is proper. It is a well-established rule that regulations implementing a statute that are issued by the agency charged with administering that statute are presumptively valid, unless they are unreasonable or plainly inconsistent with the intent of the statute. Rockville Reminder, Inc. v. United States Postal Service, 480 F.2d 4, 7 (2nd Cir. 1973). Agency regulations will be sustained where the statutory language is reasonably susceptible to more than one interpretation. Udall v. Tallman, 380 U.S. 1 (1965), rehearing denied 380 U.S. 989 (1965).

We believe that OPM's interpretation of the statute, restricting the scope of 5 U.S.C. § 5514 to deductions from current pay and other deductions which are necessary to complete a section 5514 offset, is consistent with the statutory scheme of the Debt Collection Act which evidences an intent to treat separately offsets against current pay accounts, and thus provides dual offset procedures under section 5514 and 3716.

To summarize, offsets from Retirement Fund payments, and offsets first initiated against final salary payments and lump-sum leave payments fall under the authority of 31 U.S.C. § 3716, and the applicable procedures are those of the Federal Claims Collection Standards. Accordingly,

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agencies must provide the individuals, prior to offset, with the opportunity to obtain review within the agency. 4 C.F.R. § 102.3(b)(2). In some cases an oral hearing will be required; in others a "paper hearing" will be sufficient. See 4 C.F.R. § 102.3(c). However, these hearings need not be conducted by an administrative law judge or individual not under the supervision or control of the head of the agency.

for 
Comptroller General
of the United States