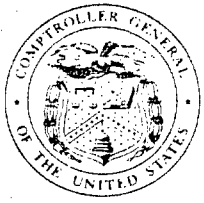


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DECISION

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

FILE: B-195006

DATE: September 22, 1980

MATTER OF: Wesley T. Smith, RM1, USN

DIGEST Member of the Navy filed a voluntary petition in bankruptcy in which he listed the Government as a creditor. Prior to the date the petition was filed the United States was indebted to the member for accrued leave rations. Before the petition was filed the Government deducted the amount owed for leave rations from an outstanding debt the member owed the Government. The filing of the petition did not affect the Government's action to set off and that action effectively constituted payment of the amount due the member and reduction of his debt prior to the date the petition in bankruptcy was filed.

The issue in this case is whether the United States is indebted to a Navy member for leave rations which accrued prior to the date the member filed a voluntary petition in bankruptcy. Prior to the date the member filed his petition, the Navy deducted the amount owed him for leave rations from an outstanding debt the member owed the Navy. Since the Government retained the right to set off the amount owed him for leave rations against the member's debt until the date the bankruptcy petition was filed the setoff was proper and the Government is not indebted to the member for the leave rations.

The question was presented for an advance decision by J.T. Gill, Disbursing Officer, USS Merrill (DD-976), and was assigned submission number DO-N-1326 by the Department of Defense Military Pay and Allowance Committee.

On March 1, 1979, Radioman 1st Class Wesley T. Smith, USN, filed a voluntary petition in bankruptcy in the United States District Court, Southern District of California. In the petition the member scheduled the United States Navy as a creditor in the amount of \$1,129. The indebtedness stemmed from an overpayment

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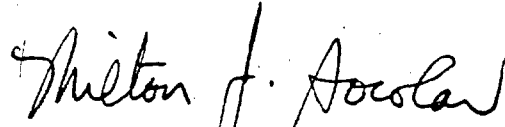
B-195006

of basic allowance for quarters and uncollected advance pay. He was subsequently adjudged a bankrupt.

Mr. Smith is claiming \$60 in unpaid leave rations which accrued to him prior to March 1, 1979, when he filed the bankruptcy petition. However, we have been informed by the Navy Comptroller's Office that prior to the filing of the petition in bankruptcy the Navy had set off the \$60, apparently as well as other amounts, claimed by Petty Officer Smith from the amount the member owed the United States. These deductions reduced his debt to the United States to \$817.18, at the time the bankruptcy petition was filed.

The filing of a voluntary petition in bankruptcy did not affect the Government's setoff of the amount due Mr. Smith for leave rations since the accrual of the entitlement to the leave rations, the debt they were set off against, and the setoff action all took place before the petition was filed. The setoff effectively constituted payment of the amount due the member by reducing his debt.

Accordingly, payment may not be made on Mr. Smith's claim.



For the Comptroller General
of the United States