

**DECISION**

19950  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-204404**DATE:** November 3, 1981**MATTER OF:** Major Peter J. Mullen, USAF, Retired

**DIGEST:** An Air Force officer who received readjustment pay upon discharge subsequently enlisted and completed 20 years of active duty for retirement. Upon retirement, the member's retired pay was withheld until an amount equal to 75 percent of his readjustment pay was recouped as is required under 10 U.S.C. § 687(f). Although the member received a discharge in bankruptcy effective shortly after he retired, this did not entitle him to receive the retired pay withheld under section 687. Deduction from retired pay in the amount of 75 percent of readjustment pay is not a debt and, therefore, it is not discharged by an adjudication of personal bankruptcy.

This case concerns the effect of a discharge in bankruptcy granted a service member on the retired rolls who is not receiving retired pay because of the statutory requirement that his retired pay be withheld in the amount of 75 percent of any readjustment pay he received. The specific question is whether the amount to be withheld constitutes a debt which is dischargeable in bankruptcy. We find that it is not a debt and hence is not dischargeable in bankruptcy.

The question was submitted for an advance decision by the Accounting and Finance Officer, Air Force Accounting and Finance Center, Denver, Colorado. The Department of Defense Military Pay and Allowance Committee approved the submission and assigned it Control Number DO-AF-1370.

On July 31, 1975, Major Peter J. Mullen was involuntarily released from active duty. Since he met the requirements for readjustment pay under 10 U.S.C. § 687, he was paid \$15,000 at the time of his release.

On the day following his involuntary release, he enlisted in the Air Force in the rank of sergeant. With this additional service as an enlisted member, he subsequently completed 20 years of active service and became entitled to retired pay under 10 U.S.C. § 8911. The Air Force correctly determined

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that retired pay could not be paid to him until an amount equal to 75 percent of the readjustment pay he received had been deducted immediately from his retired pay. Such action was required by the explicit language of 10 U.S.C. § 687(f).

Major Mullen retired on February 29, 1980, and received no retired pay until November 30, 1980, when the retired pay withheld equaled \$11,250, 75 percent of his readjustment pay. Generally, no question would be raised by such action since the action is mandated by 10 U.S.C. § 687(f); however, Major Mullen filed a petition in bankruptcy on April 24, 1980. Therefore, the Air Force asks whether Major Mullen is entitled to be repaid any amount of the retired pay withheld after April 24, 1980. The specific question is whether the requirement to withhold retired pay in the amount of 75 percent of readjustment pay is to be considered a debt which could be discharged in bankruptcy or simply a reduction in retired pay entitlement.

The applicable statute, 10 U.S.C. § 687(f), provides in part:

"If a member who received a readjustment payment \* \* \* qualifies for retired pay \* \* \* upon completion of twenty years of active service, an amount equal to 75 percent of that payment, without interest, shall be deducted immediately from his retired pay."

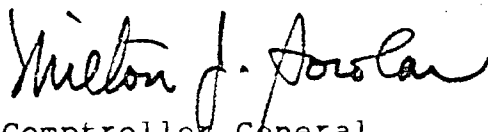
We have indicated that the withholding of retired pay pursuant to section 687(f) is not the collection of a claim; that is, it is not a debt due the United States and the amount to be deducted, 75 percent of readjustment pay, cannot be deducted from other than retired pay. B-199155, July 24, 1980. In essence, once the member retires his readjustment pay is viewed as a substitute for retired pay until 75 percent of the amount he received for readjustment pay is withheld. Thus, readjustment pay is considered to be in lieu of retired pay. In other words, his entitlement to receive retired pay does not begin until the time period expires in which the amount of retired pay he would have received equals 75 percent of his readjustment pay. Since the withholding of retired pay required under 10 U.S.C. § 687(f) creates no debt due the United States, it cannot be discharged in bankruptcy. B-197624, October 3, 1980. In reaching this conclusion, we have not relied exclusively

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on the general rule discussed above, but also have considered the bankruptcy laws as they relate to the question at hand.

A debt under the bankruptcy law is liability on a claim. 11 U.S.C. § 101(11) (Supp. III, 1979). A claim is basically a right to payment. 11 U.S.C. § 101(4) (Supp. III, 1979). And a creditor is one who has a claim against the individual filing the bankruptcy petition which arose before the filing of the petition. 11 U.S.C. § 101(9) (Supp. III, 1979). A discharge in bankruptcy does not extinguish a debt but rather frees the debtor from personal liability and provides him with a personal defense to debt collection actions by a creditor. United States v. Midwest Livestock Producers, Cooperative, 493 F. Supp. 1001, 1002 (E. D. Wis. 1980); see 11 U.S.C. § 524 (Supp. III, 1979). As concerns this readjustment pay Major Mullen received, he has no personal liability to repay it. Instead of having a debt for readjustment pay, under the statutory provisions he has a reduced retired pay entitlement. If for example, the member were to die, then the United States would be unable to recover any further amounts.

Accordingly, the withholding of Major Mullen's retired pay in the amount of 75 percent of the readjustment pay he was paid is required, and none of the amount so withheld may be repaid to him.

for   
Comptroller General  
of the United States