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Decision

Matter of: Captain Ernest T. Foster, USAF (Retired) -
Claim for Refund of Amounts Withheld from
Retired Pay as Child Support

File: B-257000

Date: June 14, 1994

DIGEST

The former spouse of a retired member served the Defense Finance and Accounting Service (DFAS) with legal process to enforce payment of court-ordered child support. Since the legal process was valid on its face, DFAS was required to honor it, and the claim of the member for refund of amounts withheld from his retired pay (and related expenses) is denied.

DECISION

We have been asked to review our Claims Group's denial of the claim of Captain Ernest T. Foster, USAF (Retired), for \$7,500. This amount includes \$4,500 that Captain Foster believes was incorrectly withheld from his retired pay for child support, plus \$3,000 for expenses he incurred in terminating the withholding. We affirm the Claims Group's settlement.

Until November 1990 Captain Foster had an allotment in effect to pay \$300 per month to his former spouse for child support. In that month Captain Foster terminated the allotment, and in January 1991 his former spouse served the Defense Finance and Accounting Service, Denver Center (DFAS), with a Notice to Employer requiring that child support ordered by the District Court of Arapahoe County, Colorado, be withheld from Captain Foster's retired pay and remitted to the Clerk of the Court. Ms. Foster initially delivered the Notice to DFAS herself, but was told that the Notice should be notarized and sent to DFAS by certified mail. She followed those instructions.

On January 17, 1991, DFAS advised Captain Foster of the Notice it had received. Child support was withheld from Captain Foster's retired pay and remitted to the Clerk of the Court from January 1991 until January 1992. After receiving notice in January 1992 that Captain Foster had filed a motion with the court to terminate the withholding, DFAS withheld child support from his pay for the months of

February through April 1992, but held it pending the court's ruling.

On April 2, 1992, the District Court of Arapahoe County terminated Captain Foster's obligation to pay child support effective November 5, 1991, and directed that any child support payments made to his former spouse after November 5, 1991, be returned to him. In May 1992 DFAS returned to Captain Foster the amounts withheld for February through April 1992. Amounts withheld before February 1992 had already been sent to the Clerk of the Court and presumably had been disbursed to Ms. Foster.

Captain Foster contends that DFAS should have investigated the Notice to Employer before honoring it. Captain Foster argues that because the Notice was initiated directly by his former spouse without court action, and because it was not, in his view, otherwise properly served, it did not constitute adequate legal process for purposes of garnishing his pay. Captain Foster therefore claims all monies withheld from his retired pay; he calculates that amount to be \$4,500, although DFAS states that \$3,900 was remitted to the Clerk of the Court and \$900 was returned to him. Captain Foster also claims reimbursement of \$3,000 in expenses he incurred in terminating the withholding. The Claims Group denied Captain Foster's claim.

Section 659 of title 42 of the United States Code provides for enforcement of legal obligations to pay child support. Under the statute, monies payable to an individual, including a member of the armed services, as remuneration for employment are subject to legal process for enforcement of child support obligations as if the United States were a private person. When legal process is served on a government agency in accordance with 42 U.S.C. § 659 and the regulations implementing it (5 C.F.R. pt. 581), the agency must garnish the wages of the obligor.

The term "legal process" is defined in 42 U.S.C. § 662(e) to include a writ in the nature of a garnishment issued by a court of competent jurisdiction or by an official pursuant to a court order or state law for the enforcement of a legal obligation to pay child support. Colorado law allows garnishment to be activated by the obligee to whom support is owed under court order. The obligee accomplishes this by serving a Notice to Employer on the obligor's employer. Colo. Rev. Stat. § 14-14-107(7). Receipt of the notice confers the jurisdiction of the court on the employer. Id.

If the Notice to Employer appears regular on its face, the employing agency is required to begin withholding money from the obligor's pay in accordance with the Notice. 5 C.F.R. § 581.305. The government cannot be held liable with

respect to any payment made pursuant to legal process that is regular on its face as long as payment is made in accordance with the relevant statute and regulations. 42 U.S.C. § 659(f).

We believe that DFAS reasonably determined that the Notice to Employer submitted by Captain Foster's former spouse was regular on its face and properly served. The Notice to Employer form used was the standard Colorado form for that purpose. The Notice included the case number assigned by the District Court of Arapahoe County, Colorado, in the matter of Captain Foster's divorce. (Moreover, when DFAS received the Notice, it notified Captain Foster promptly and told him that he would have to take action in court if he wished to contest the garnishment.) DFAS's obligation for purposes of making the payments in issue was to determine the Notice's facial validity and, if deemed valid, to proceed to garnish Captain Foster's pay in accordance with the law and implementing regulations. DFAS's actions here were in accord with 42 U.S.C. § 659 and 5 C.F.R. pt. 581, and the government therefore is relieved of liability with regard to the payments made under the wage assignment. See Technical Sergeant Harry E. Mathews, USAF, 61 Comp. Gen. 229 (1982).

We note that Captain Foster points out that Colo. Rev. Stat. § 14-14-107(2)(a) requires validation of the support obligation by the "delegate child support enforcement unit" before the withholding is initiated, which apparently was not done here. However, the validation requirement was added to the law by an amendment that did not become effective until August 1, 1992; withholding of Captain Foster's retired pay was terminated in April 1992. (It is not clear, in any event, that lack of validation would be apparent on the face of a Notice.)

In sum, by the time the court, on April 2, 1992, relieved Captain Foster of the obligation to pay child support effective November 5, 1991, amounts withheld by DFAS through January 1992 had properly been remitted to the Clerk of the Court; the court's order includes a direction to Captain Foster's former spouse to repay those to him. Also, amounts held by DFAS for February through April 1992 properly were returned to Captain Foster.

Finally, claims cannot be paid in the absence of statutory authority, and there is no statutory basis for reimbursing Captain Foster for his expenses in resolving this matter. See 61 Comp. Gen., supra.

The Claims Group's settlement is affirmed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel