

**GAO**

United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel  
B-252868

May 13, 1993

Stuart E. Schiffer  
Acting Assistant Attorney General  
Civil Division  
Department of Justice

Attention: John P. Sholar, Esq.  
Commercial Litigation Branch

Dear Mr. Schiffer:

Subject: Sydney Goldsmith v. United States  
Court of Fed. Claims No. 93-144C  
SMG:DMC:JPSholar:tbb 154-93-144

Your letter of March 26, 1993, requests our report on the enclosed petition filed on March 11, 1992, in the above-cited case wherein the plaintiff, a former employee of the Department of State, seeks judgment against the United States for cancellation or nullification of the claimed amount of \$16,340.30 representing a separate maintenance allowance (SMA) paid to the plaintiff from 1985 to 1989 for his dependent children. Plaintiff also seeks payment of the total amount of \$15,000 withheld from his lump-sum retirement settlement, with interest, since September 30, 1989, along with payment of appropriate costs of pursuing his claim.

Mr. Goldsmith filed a claim with our Claims Group for separate maintenance allowance for the period from April 1985 through September 1989. Pursuant to its claim settlement authority under 31 U.S.C. § 3702 (1988), and 4 C.F.R. Part 31, by settlement action dated June 8, 1992-2867688, the Claims Group agreed with the determination of the Department of State that no payment of SMA was warranted and that the full amount paid should be recovered. A copy of the settlement certificate is enclosed.

We note that the main thrust of the plaintiff's petition is that the State Department apparently investigated his eligibility for the SMA in 1985 and in 1987. Plaintiff states that in August 1987, representatives of the Office of the Inspector General, Department of State, orally informed him that he was not eligible for the allowance because o

circumstances pertaining to his divorce. Plaintiff states that at that time, he alleged, orally, that he was eligible to receive the SMA and requested a review and redetermination of his eligibility. Plaintiff alleges that since there was no follow-up correspondence to the August 1987 meeting, and the SMA was paid until his children reached the age of twenty one, continued payment of the allowance led him to believe that the views of the Office of the Inspector General were not shared by agency officials responsible for determining eligibility for allowances.

In expanding on the settlement action by the Claims Group, this Office has held that the Standardized Regulations (Government Civilians, Foreign Areas) are sufficiently broad to include children whose custody, incident to a divorce decree, has been placed jointly in the employee and his former spouse.<sup>1</sup> Here, although the Texas divorce decree dated June 14, 1979, awarded joint custody of the two minor children to the plaintiff and his former spouse, the subsequent Virginia Domestic Relations Order dated December 30, 1983, awarded sole custody of the children to the plaintiff's former spouse. Under these circumstances, the payment of SMA to plaintiff commencing in April 1985 and thereafter was improper.<sup>2</sup>

With respect to plaintiff's argument that the continued payment of SMA led him to believe he was entitled to it, it is a fundamental and long-established rule of law that a person receiving money erroneously paid by a government agency or official acquires no right to that money and is liable to make restitution. Restitution results in no loss to the recipient, since he merely received something which he was never entitled to have in the first place and the erroneous acts of the government's agents or employees do not estop the government from recovering erroneous payments.<sup>3</sup>

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, 59 Comp. Gen. 450 (1980); 52 Comp. Gen. 878 (1973).

<sup>2</sup>Sec. 262.31b, Standardized Regulations, Apr. 1, 1984.

<sup>3</sup>Office of Personnel Management v. Richmond, 496 U.S. 414 (1990), reh'q denied, 497 U.S. 1046 (1990); , B-198770, Nov. 13, 1980. Also, while our Office has authority under 5 U.S.C. § 5584 (1988) and 4 C.F.R. Parts 91-92 (1993), to waive certain debts arising out of erroneous payments of pay or allowances to employees, Mr. Goldsmith did not seek waiver from our Office. In any event, under the facts available to us, it appears unlikely that he would qualify under our standards for waiver. See , B-185458, Oct. 5, 1976; and in this regard

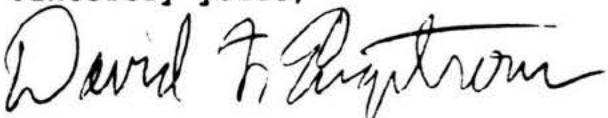
We are enclosing copies of the documents in our Claims group's file relating to this matter and copies of the decisions cited herein.

We have no record of any claim or other demand which might furnish the basis of a setoff or counterclaim against the plaintiff.

However, you should be aware that GAO's data base of debt cases has become quite limited. When GAO and the Justice Department amended the Federal Claims Collection Standards in 1974, the requirement that agencies routinely refer uncollected debts to the GAO was deleted (4 C.F.R. § 105.1). Since that time, our data base has been decreasing as the older cases are disposed of. Therefore, to obtain a more reliable indication of outstanding indebtedness, you may wish to consult other sources. Depending on the identity of the plaintiff(s), these might include the Army Holdup List (government contractors), Department of Education (student loans), Veterans Administration, or Small Business Administration.

If you have any questions concerning the petition or if we can be of further assistance, please contact  
of my staff, on .

Sincerely yours,



David F. Engstrom  
Assistant General Counsel

Enclosures

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4 C.F.R. § 91.5(b).