

DECISION

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

Barber
119662

FILE: B-203100

DATE: October 12, 1982

MATTER OF: Alyeska Pipeline Service Company v. United States--Interest on judgment

DIGEST: Interest is allowable on Court of Claims judgment under 28 U.S.C. § 2516(b) only in cases of unsuccessful appeal by the Government. Delay resulting from consideration of whether to seek further review, or from filing of post-judgment motions, does not create entitlement to interest. Therefore, Plaintiffs are not entitled to interest on Court of Claims judgment where Department of Justice did not certify judgment to General Accounting Office for payment until after Court had denied Government's motion to vacate. 59 Comp. Gen. 259, 58 Comp. Gen. 67 explained.

The plaintiffs in Alyeska Pipeline Service Co. v. United States, Ct. Cl. No. 384-78, claim that they are entitled to post-judgment interest. We hold that they are not for the reasons stated below.

Facts

Alyeska was an action filed by a group of pipeline companies against the United States in the Court of Claims. (The merits of the case are not relevant to this discussion.) The Court rendered a judgment on the issue of liability only on June 18, 1980, holding that the plaintiffs were entitled to recover on their first claim. The Government moved for reconsideration of the judgment, which the Court denied on October 3. On October 31, the Court entered a judgment of \$12,253,730 based on the trial judge's recommendation and the stipulation of the parties. The plaintiffs filed a certified copy of the judgment with the General Accounting Office on November 13.

On January 19, 1981, the Government filed a motion to vacate the judgment with the Court of Claims. On March 4, 1981, the United States moved to withdraw its motion. The Court denied the motion to vacate on March 6.

During much of the time the Government's motion to vacate the judgment was pending in the Court of Claims, the Solicitor General was in the process of making his determination of whether to petition the Supreme Court for certiorari. The Government's deadline ordinarily would have been January 2, 1981, based upon the lower court's denial of the motion for reconsideration on October 3, 1980. However, on December 19, 1980, the Government requested, and was granted, a 60-day extension. Accordingly, the time for filing the Government's petition expired on March 2, 1981.

The Department of Justice informed GAO on February 27, 1981, that the Solicitor General had decided not to petition for certiorari. The Department also instructed GAO not to certify payment of the judgment, however, until the Court of Claims had disposed of the motion to vacate which was still before it. On March 12, the Department notified GAO that the Court of Claims had denied its motion, that the Department did not intend to seek further review, and that it did not object to payment of the judgment. Our Claims group issued a Certificate of Settlement for payment of the judgment on March 16.

Discussion and Conclusion

The statutory provisions governing interest on judgments of the Court of Claims are 28 U.S.C. § 2516 and the second proviso of 31 U.S.C. § 724a. 28 U.S.C. § 2516(a) provides, in essence, that the Government may pay interest on Court of Claims judgments only as provided by contract or statute. Subsection 2516(b) provides:

"(b) Interest on judgments against the United States affirmed by the Supreme Court after review on petition of the United States shall be paid at the rate of four percent per annum from the date of the filing of the transcript of the judgment in the Treasury Department to the date of the mandate of affirmance. Such interest shall not be allowed for any period after the term of the Supreme Court at which the judgment was affirmed.
* * *

The second proviso of 31 U.S.C. § 724a later substituted the GAO for the Treasury Department as the agency with which the transcript must be filed. Accordingly, the statutes when read literally,

provide that the United States is liable for interest on Court of Claims judgments only when the Government appeals and loses, and then only from the date a copy of the judgment is filed with GAO to the date of the mandate of affirmance.

The plaintiffs contend that they are entitled to 4 percent interest from the date of the filing of the transcript until March 12, 1981--the date on which the Department of Justice notified GAO that the motion to vacate the judgment before the Court of Claims had been denied, and that the Department had no objection to payment. In support of their contention, the plaintiffs rely on two Comptroller General decisions in which we allowed interest even though the "mandate of affirmance" requirement had not been met literally--Vaillancourt v. United States, 58 Comp. Gen. 67 (1978) and Edmonds v. United States, 59 Comp. Gen. 259 (1980). (Both decisions actually involved district court judgments. However, as discussed in Vaillancourt, the district court provisions were patterned after the Court of Claims interest provisions and are essentially similar, except that interest in district court cases is triggered by the filing of an intermediate appeal rather than petition for certiorari to the Supreme Court.)

In Vaillancourt, the Government filed a notice of appeal and, after a delay of over a year, agreed to a stipulation to dismiss the appeal. We construed the requirement for a mandate of affirmance in light of the purpose of the interest provision which was to compensate a plaintiff for the delay in receiving payment of his judgment due to the Government's unsuccessful appeal. We held that it was consistent with this purpose to allow interest when the Government appeals and simply does not prosecute the appeal.

In Edmonds, the United States appealed the denial of its motion to reopen a district court judgment so that taxes could be withheld from the judgment proceeds. The Government filed a notice of appeal and then agreed to a stipulation dismissing the appeal 3 weeks later. Following Vaillancourt, we allowed interest even though there was no mandate of affirmance because the Government's appeal had delayed the plaintiff's receiving payment.

In Edmonds, in the course of our discussion of our reasoning in Vaillancourt, we said that "the basic purpose of the [interest] statute, as supported by the legislative history, is to compensate a successful plaintiff for the delay in receiving his money judgment attributable solely to Government action or inaction." Citing this statement, the plaintiffs interpret the two cases as standing for the proposition that claimants are

entitled to interest whenever there is any delay in receiving judgment proceeds attributable to the Government--not just when there is a delay because of an appeal. The plaintiffs cite the United States' motion for reconsideration, its request for extension of time, and its motion to vacate the judgment as actions attributable solely to the Government causing delay in payment.

Before preparing this decision, we solicited the views of the Justice Department. For essentially the same reasons discussed below, Justice concluded that there was no entitlement to interest. We agree.

Vaillancourt and Edmonds do not support the plaintiff's contention. An appeal is the only Governmental action causing a delay in receiving payment which entitles a plaintiff to post-judgment interest under 28 U.S.C. § 2516(b). In both Vaillancourt and Edmonds the Government appealed, and then consented to dismiss its appeal. The issue in the two cases was whether, in view of the "mandate of affirmance" requirement of the first proviso of 31 U.S.C. § 724a, the plaintiffs were entitled to post-judgment interest even though the appellate court had not conducted a review on the merits. We concluded that the filing of a notice of appeal and the subsequent stipulation to dismiss the appeal satisfied the statutory condition since, as discussed above, the essence of the provision is delay in receiving payment occasioned by an unsuccessful Government appeal. Our statement in the Edmonds case concerning delay should be read in the context of the facts of the case--delay occasioned by appeal by the Government. Vaillancourt and Edmonds stand for the proposition that a review of a case on its merits is not necessary to the payment of interest under 31 U.S.C. § 724a as long as the delay encountered by the plaintiff in receiving his money is caused by the United States' appeal of the case, and the ultimate resolution is the same as if there had been a mandate of affirmance--i.e., where the appeal is dismissed by stipulation.

Moreover, the legislative history of 31 U.S.C. § 724a suggests that Congress did not intend that the appropriation it established be available to pay post-judgment interest in every case in which a plaintiff suffers a delay in receiving payment of his judgment which may be attributable to the Government.

Rather, the history shows that Congress intended to provide interest only in cases in which the delay resulted from an appeal. When Congress established the permanent indefinite appropriation for the payment of judgments in 1956, it also changed the rule with respect to interest on district court judgments to make it the same as the rule for interest on judgments of the Court of Claims. In so doing, Congress showed that it did not want interest paid in cases such as this one. Prior to the change, interest was paid on most district court judgments, whether or not the case was appealed, from the date of the original judgment. See 28 U.S.C. § 2411(b). Under the old rule, any delay in the payment of the plaintiff's judgment such as those experienced in this case could cause additional interest to accrue. However, in view of the fact that Congress specifically eliminated the old district court rule when it was enacting the judgment appropriation, we see no basis to broaden our interpretation of the Court of Claims post-judgment interest provisions to include cases not appealed.

Congress was aware that eliminating post-judgment interest in cases not appealed would save the Government money. In fact, this was the very reason for the provision. The Bureau of the Budget (now Office of Management and Budget) had worked with GAO and the Justice Department in drafting the provision that became 31 U.S.C. § 724a. The Bureau prepared a report which explained the interest provisions and their purpose. The report was inserted into the record of the hearings on the 1957 Supplemental Appropriations Bill. The report stated:

"Interest on judgments

"The present situation with respect to the payment of interest is undesirable in two respects--first, the Government, because of the delay in making appropriations, bears the expense of interest which could be saved if appropriations were available for payment of the judgments when rendered; and second, there is a wide variance between the provisions of law respecting the payment of interest on judgments rendered by the district courts as compared with those rendered by the Court of Claims. Interest is paid on Court of Claims judgments only when the United States appeals and then only from the date when the transcript of the judgment is filed with the Treasury Department to the date of the mandate of affirmance.

Interest is paid on judgments of the district courts, regardless of whether the Government appeals, from the date of the judgment to a date not later than 30 days after the making of an appropriation for payment of the judgment.

"It is believed that the provision for payment for interest in cases where the Government appeals, as now prescribed by law with respect to judgments in the Court of Claims, is fair and equitable and need not be disturbed. If this belief is correct, it would follow that interest should be paid on judgments of the district courts on the same basis. If interest on judgments of the district courts were placed on the same basis as the Court of Claims, interest on district courts judgments not appealed by the United States would be eliminated entirely. In district court cases which are appealed by the Government, interest would be eliminated from the date the judgment was rendered to the date the plaintiff filed a transcript thereof with the proper Government agency, and from the date of the mandate of affirmance to the time when a specific appropriation could be secured for the payment of the judgment. This latter period averages about 6 months.

"A specific study by the General Accounting Office in 1953 indicated that the interest savings in the 82d Congress would have been approximately \$70,000 if the basis for payment of district court judgments were conformed to the Court of Claims practice and if appropriations were available for immediate payment of judgments when they become final. Since there is no indication that judgments are likely to decrease in number or amount, it appears that substantial amounts of interest could be saved in each Congress under such a procedure." Hearings on Supplemental Appropriation Bill, 1957, Before Subcommittees of the House Committee on Appropriations, 84th Cong., 2d Session, pt. 2, at 883-84 (1956). (Emphasis added.)

This statement makes it clear that providing interest in cases where the Government has not appealed but there has been delay was specifically considered and rejected.

Even if there were no relevant legislative history, the explicit language of the governing statute presents a barrier to the plaintiffs' claim which we find insurmountable. Quoted earlier in this decision, 28 U.S.C. § 2516(b) authorizes interest only on those Court of Claims judgments that are "affirmed by the Supreme Court after review on petition of the United States." This language leaves little if any room for interpretation. The term "petition" in this context can mean only a petition for certiorari, since this is the only vehicle by which the judgment may be "affirmed by the Supreme Court." A motion to vacate filed with the Court of Claims simply does not suffice. To hold otherwise would be to ignore the plain words of the statute.

In sum, absent explicit statutory or contractual authority, delay in payment, even where the delay is attributable solely to the Government, does not create an entitlement to interest. See, e.g., United States v. N.Y. Rayon Importing Co., 329 U.S. 654 (1947); Grey v. Dukedom Bank, 216 F.2d 108, 110 (6th Cir. 1954); United States v. James, 301 F. Supp. 107, 132 (W.D. Tex. 1969); B-182346, February 4, 1975.

Delay in paying a judgment may be caused by a number of things: the Government's consideration of whether to seek further review, including any permissible extensions of time; the filing of various post-judgment motions with the trial court; or simple administrative delay. Our Vaillancourt and Edmonds decisions allowed interest only in the one situation recognized by the governing statutes--delay occasioned by a Government appeal. They were not intended to suggest that interest is allowable in any other situation, nor should they be so construed.

We note in this connection that Congress has recently amended the statutes governing post-judgment interest against the United States, Pub. L. No. 97-164, § 302, 96 Stat. 23, 55 (enacted April 2, 1982, effective October 1, 1982). The thrust of the new law is to increase the rate of interest, where allowable, to a more equitable level. (The 4 percent rate specified in 28 U.S.C. § 2516(b) had been unchanged since 1890.) However, the new law expressly retains the essential prerequisite of an unsuccessful appeal by the Government. That this was clearly the intent of the new law is confirmed by its legislative history. See Cong. Rec., December 8, 1981 (daily ed.), pp. S-14699-700, especially the two letters to Senator Dole from the Director, Office of Management and Budget.

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Accordingly, since the Government did not file a petition for certiorari in this case, we conclude that there is no basis to allow the plaintiffs' claim for post-judgment interest.

for *J. H. Barclay, Jr.*
Comptroller General
of the United States