Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chief Master Sergeant Roland L. Goad, USAF (Retired)

File: B-261169

Date: November 21, 1995

DIGEST

1. When the former spouse of a retired member properly requests from the Defense Finance and Accounting Service (DFAS) direct payment of a portion of the member's retired pay and presents a court order requiring such payment which is valid on its face, DFAS is required to honor the request under 10 U.S.C. § 1408. The member's claim for a halt to the direct payments and refund of amounts already paid to the spouse is denied.

2. Court-ordered sanctions cannot be withheld from the retired pay of a military member when the amounts collected cannot be considered a debt to the government.

DECISION

This is in response to two submissions regarding the retired pay of Chief Master Sergeant Roland L. Goad, USAF (Retired). The first is an appeal by Sergeant Goad of a Claims Group settlement which denied his claim for termination of direct payment of a portion of his retired pay to his former spouse by the Defense Finance and Accounting Service (DFAS) and refund of amounts already paid. The second is a request by DFAS for an advance decision regarding the propriety of paying $400 per month from Sergeant Goad's retired pay to a Federal District Court clerk in accordance with a court order.[1] Direct payment of a portion of Sergeant Goad's retired pay to his former spouse is proper, but DFAS may not comply with the federal court order to deduct sanctions from his retired pay.

Sergeant Goad and his former spouse were married in 1950. He retired from the Air Force in 1974, and upon their divorce in 1980, Mrs. Goad was awarded 12/27, or 44.4 percent, of Sergeant Goad's retired pay. In 1985, Mrs. Goad applied to DFAS for direct payment of her share under 10 U.S.C. § 1408, and her application was

[1]DFAS has assigned control number 95-2-M to its request.

approved. Sergeant Goad presented to DFAS his arguments against the direct payments, among them his contention that the payments constituted an illegal garnishment of his retired pay. The Claims Group reviewed Sergeant Goad's arguments and denied his claim, and he has appealed their denial.

Sergeant Goad also filed numerous lawsuits in state and federal court in connection with Mrs. Goad's entitlement to a portion of his retired pay and DFAS's direct payment of it. Sanctions were imposed on him in both state and federal court for filing frivolous suits. In Goad v. Rollins, 921 F.2d 69 (1991), the Fifth Circuit of the United States Court of Appeals imposed sanctions on Sergeant Goad in accordance with rule 38 of the Federal Rules of Appellate Procedure, which pertains to the filing of frivolous appeals. Sanctions to reimburse 22 defendants for their legal expenses in District Court totalled over $122,000. To collect that amount, the judge ordered that $400 per month be deducted from Sergeant Goad's retired pay and remitted to the Clerk of the Federal District Court. DFAS has submitted to us the question of whether such deductions are proper.

With regard to Sergeant Goad's appeal, under 10 U.S.C. § 1408, a court may, subject to certain limitations, treat military retired pay as the property of the member or as the property of the member and his spouse in accordance with applicable state law. A former spouse who is awarded a portion of a member's retired pay may request direct payment of that portion by DFAS. If the spouse meets the requirements of the statute and submits a court order which is valid on its face, DFAS is to honor the request.

In the present situation, direct payment of a portion of Sergeant Goad's retired pay to his former spouse is proper. It appears from the record that DFAS properly honored Mrs. Goad's request under 10 U.S.C. § 1408, after determining that the court order which awarded her 12/27 of Sergeant Goad's retired pay was valid on its face. We find no merit in Sergeant Goad's objections to the direct payments. Furthermore, the United States Court of Appeals has rejected his arguments, and the Supreme Court has refused to disturb that action.

As to the court-ordered sanctions, withholding of retired pay to enforce the court-ordered sanctions against Sergeant Goad would constitute a garnishment of his retired pay. The United States has waived its sovereign immunity so as to allow the garnishment of federal employees' pay only in limited circumstances. Since the amounts ordered to be collected to enforce the sanctions are ultimately to be paid to private individuals, we do not view them as a debt owed to the government; therefore, they cannot be collected under 5 U.S.C. § 5514 or 31 U.S.C. § 3716, which pertain to administrative setoffs of debts. As debts to private parties, they cannot be withheld under 5 U.S.C. § 5520a, which provides for garnishment of government employees' pay to satisfy debts owed to individuals, because retired military

members are excluded from § 5520a under interim regulations of the Department of Defense which we have no reason to question. See Indebtedness of Military Personnel, 59 Fed. Reg. 21,714, 21,715 (1994). We are aware of no provisions under which the court-ordered sanctions against Sergeant Goad can be withheld.

Sergeant Goad's retired pay should be handled accordingly.

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