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DECISION



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

FILE: B-205373

DATE: April 2, 1982

MATTER OF: Leland M. Wilson--Setoff against indebtedness
discharged in bankruptcy

DIGEST: Employee resigned and became indebted to the Government for violation of training and relocation service agreements. Agency filed notice of indebtedness with Office of Personnel Management (OPM). Indebtedness was discharged in bankruptcy, and employee subsequently filed for refund of retirement contributions. Setoff against retirement contributions did not occur upon agency filing notice with OPM; setoff can only happen when employee files for refund. Agency, which received employee's contributions from OPM, may not now attempt to set off these contributions against an indebtedness which had been discharged in bankruptcy. Contributions must be paid to employee.

ISSUE

The issue in this decision is whether an agency may set off an amount representing a former employee's contribution to the Civil Service Retirement Fund against a debt owed to the United States, after that debt has been discharged in bankruptcy. We hold that, since the debt to the United States has been discharged in bankruptcy, the agency may not set off funds which are otherwise payable to the former employee. The setoff against the employee's retirement contributions could not take effect until the employee applied for a refund, which was after the indebtedness had been discharged in bankruptcy.

BACKGROUND

This decision is in response to a request for an advance decision from F. P. Cantrell, Chief, Accounting Division, Western Region, Federal Aviation Administration (FAA). We have also received a claim from Mr. Leland M. Wilson, a former employee of the FAA, for return of his retirement contributions in the amount of \$12,398.91, the amount which is being withheld by the FAA.

Mr. Wilson resigned from his position with the FAA on March 9, 1979, and thereby violated service agreements he entered into incident to long-term training and a change of permanent duty station. Thus, he was indebted to the United States in an amount exceeding \$22,000, and, after the FAA set off Mr. Wilson's final salary and lump-sum payment for leave, he remained indebted in the amount of \$19,845.63.

The FAA notified the Office of Personnel Management (OPM) on March 22, 1979, of the indebtedness and of FAA's desire to set off Mr. Wilson's contributions to the retirement fund in satisfaction of the indebtedness. The FAA also denied Mr. Wilson's requests for waiver of the indebtedness.

On May 5, 1980, Mr. Wilson and his wife filed a petition in bankruptcy, and it appears from the record before us that his indebtedness to the FAA was listed in his schedule of debts. Mr. Wilson's debts were discharged in bankruptcy on September 3, 1980. Mr. Wilson then filed for return of his retirement contributions in March 1981, and, based upon the earlier FAA notice, OPM forwarded the amount to the FAA.

The FAA Western Region Office argues that the Government may set off indebtedness against annuity payments or refunds of retirement contributions, citing 58 Comp. Gen. 501 (1979). The agency also argues the setoff occurs when an agency files a notice with OPM and OPM has "indexed" the retirement fund for setoff. Thus, the agency argues that only the employee's vested right to a future annuity prohibits the agency from receiving the money, and the employee retains the right to receive an annuity by first satisfying the indebtedness.

DISCUSSION

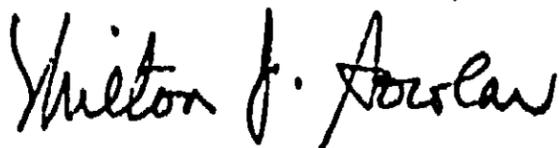
As to whether the indebtedness was discharged in bankruptcy, it is clear that once the debt was scheduled and released by the discharge, the Government may no longer collect that debt or any part of it by setoff or other legal process. 45 Comp. Gen. 342 (1965); 22 id. 1119 (1943); Stephen M. Hornberger, B-194360, February 15, 1980. A discharge in bankruptcy is a legal release of the obligation

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to the United States which may not be later collected against a refund of retirement contributions. 22 Comp. Gen. 1119, supra; Avant v. United States, 165 F. Supp. 802 (E.D. Va., 1958).

The remaining question is whether Mr. Wilson's retirement contributions were set off prior to the bankruptcy action, that is, upon the agency's filing a notice of indebtedness. Our Office has held that an employee's retirement account is not available for setoff until the employee withdraws his contribution or qualifies for a retirement annuity. 58 Comp. Gen. 501, 5 2-503; and 39 id. 203 (1959). See also Federal Personnel Manual Supplement 831-1, 819-3, stating that money payable from the retirement fund is available for setoff when the employee applies for refund or annuity benefits or his survivor files for lump-sum benefits.

In the case before us it is clear that Mr. Wilson filed for refund of his retirement contributions after his indebtedness had been discharged in bankruptcy. Under our decisions and OPM regulations, setoff could not take effect until he filed for the refund. Thus, the agency has erroneously attempted to set off an indebtedness which has been discharged in bankruptcy. The retirement contributions now held by the FAA, in the amount of \$12,398.91, must be paid to Mr. Wilson.

for 
Comptroller General
of the United States