12864 GGM. Ms. Yudenfriend

DECISION

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

FILE: B-193927 DATE: February 13, 1980

MATTER OF: Edmonds v. United States and Hebert v. United States
Payment of Interest on Judgment

DIGEST: The permanent indefinite appropriation for payment of judgments (31 U.S.C. § 724a) is available to pay interest to a plaintiff whose judgment payment was delayed solely because the United States appealed and lost. Vaillancourt v. United States extended this principle to apply to situations in which the United States withdrew its appeal without a disposition of the case on its merits. Payment of interest will also be permitted when Government appeals denial of motion under Federal Rule of Civil Procedure (FRCP) 60(b) to reopen judgment on collateral issue and not on merits of the underlying judgment, since plaintiff's delay in receiving payment was caused by Government's unsuccessful appeal.

This decision is in response to a request by the legal representative of the classes of plaintiffs involved in Edmonds v. United States, Switzer v. United States, Wood v. United States, and Hebert v. United States, that interest be paid on judgments rendered for the plaintiffs in the respective cases. For the reasons stated below, interest should be paid on those judgments not paid prior to November 30, 1978 when the Government's appeal was dismissed. The interest period would run from the date the transcripts of the judgments were filed with the General Accounting Office to November 30, 1978.

The plaintiffs were awarded judgments in their cases (the merits of which are not relevant to this discussion) and duly filed transcripts of the judgments with this Office in accordance with 31 U.S.C. § 724a (1976). The transcripts were filed with us between August 10 and September 25, 1978. The judgments directed that payment be made in a lump sum to the Clerk of the District Court who would then distribute the money to the individual plaintiffs. After the Clerk had received the six checks that were involved from the Department of the Treasury but prior to distribution of the funds, the Internal Revenue Service (IRS) asked that taxes be withheld from the judgments. This request was not complied with because the judgments directed payment of the gross amount without providing that taxes be withheld. The United States then filed motions to restrain distribution of the judgment money and

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to amend the judgments to require withholding. The District Court denied these motions. On November 9, 1978, the United States filed a notice of appeal from the denial of these motions with the Court of Appeals for the Fourth Circuit. On November 30, 1978, three weeks later, the parties entered into a stipulation dismissing the appeal.

The plaintiffs contend that they are entitled to be paid interest on their original judgments because of the delay they encountered in receiving their money. They base this contention on a recent decision rendered by this Office which held that interest could be paid on a judgment against the United States, where the United States appealed the judgment and the appeal was subsequently dismissed by stipulation of the parties. Vaillancourt v. United States--Payment of Interest on Judgment, 58 Comp. Gen. 67 (1978). The plaintiffs argue that Vaillancourt is directly applicable to their situation.

In Vaillancourt, the appeal by the United States was dismissed by stipulation of the parties, one year after it was taken, without any Court review of the case on its merits. The judgment to which the plaintiffs were entitled was thus tied up for almost nine months, until the Department of Justice certified to us that no further proceedings reviewing the judgment would be taken. Our Claims Division originally denied the plaintiffs' claim for interest because 31 U.S.C. § 724a (1976), governing the payment of interest on judgments, provides that interest is payable only when the judgment has --

> "*** become final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance."

At that time, this statute had been interpreted as contemplating and requiring a review of the case on its merits, since a mandate of affirmance is used, procedurally, to rule on the merits. B-145389, April 18, 1961.

In Vaillancourt, we held, on reconsideration, that a review of the 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 was caused by the United States' appeal of the case. This decision was reached after careful consideration of the legislative history of the statutes involving the payment of interest, including 31 U.S.C. § 724a and 28 U.S.C. § 2516(b). We stated our belief that the Congress never contemplated a situation where an appeal would be filed and eventually dismissed, without an actual review of the case on its merits. When the interest statutes were enacted with language requiring a "review on appeal or petition" and a "mandate of affirmance,"

it was apparently assumed that this treatment would cover any possible situation in which payment of a judgment was delayed by further litigation by the United States. When we considered the problem in Vaillancourt, we extended our interpretation of 31 U.S.C. § 724a to allow interest on a judgment which was delayed when the United States appealed but failed to pursue the appeal, because the basic purpose of the 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.

In the instant case, the appeal was not from the original judgment, but from the denial of a motion filed under Rule 60(b)(6), Federal Rules of Civil Procedure (FRCP), asking the District Court to reopen the judgment so that taxes could be withheld from the payments. The FRCP 60(b) motion is used to ask the court for relief from a judgment on grounds of mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or for any other reasons justifying relief. This motion is viewed as independent from the original proceeding. Shay v. Agricultural Stabilization and Conservation State Committee for Arizona, et. al., 299 F. 2nd 516 (9th Cir. 1962). Although the question raised on this appeal has been regarded as a collateral issue, unrelated to the merits of the underlying judgment, the appeal did delay the payment of the judgment in the same manner as a direct appeal on the merits of the judgment. Thus, we believe that the rule in Vaillancourt applies in this situation too. Therefore, interest should be paid to all those plaintiffs in this case payment of whose judgments were delayed as a result of the appeal under FRCP 60(b)(6) from the date the transcript was filed with the GAO to November 30,1978, the date the appeal was dismissed.

R.F.Keller

Deputy Comptroller General
of the United States