

DECISION

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

FILE: B-207015

DATE: December 14, 1982

MATTER OF: Wesley E. Pitts

DIGEST:

1. Where the wife of a former employee seeks to garnish for child support money due the employee for accrued annual leave and the former employee's whereabouts and/or continued existence is unknown, payment may be made without determination of the status of the employee since in this case under 5 U.S.C. 5582, the wife would also receive any money due the employee if he is deceased.

2. Where the wife of a former employee seeks to garnish for child support money due the employee for accrued annual leave, payment must be in accordance with the limitations contained in section 303(b) of the Consumer Protection Act, 15 U.S.C. 1673(b), since under Office of Personnel Management Regulations, those limitations also apply to garnishment of payments in consideration of accrued leave.

This action is in response to a letter from an Accounting and Finance Officer at McGuire Air Force Base, New Jersey, requesting an advance decision concerning the propriety of paying a voucher in the amount of \$1,003.62, to satisfy a writ of garnishment for amounts due Mr. Wesley E. Pitts, formerly an employee at McGuire.

Mr. Pitts was employed at McGuire Air Force Base from February 1968 until September 1978. In July 1978, Mr. Pitts failed to report to duty following a period of approved annual leave. He was declared a missing person in August 1978 and formally removed from his position at McGuire in September 1978. A New Jersey Superior Court garnishment order for child support to be paid into the County Probation Department on behalf of Mr. Pitts' family has been served on the Air Force Accounting and Finance Center. The order was

obtained by Mr. Pitts' wife who apparently has custody of their children. The only entitlement due Mr. Pitts and held by the Air Force is \$1,003.62 representing 129 hours of accrued annual leave. Since Mr. Pitts' whereabouts and/or continued existence are unknown, the Accounting and Finance Officer inquires whether the funds are properly subject to garnishment.

Under section 459 of Public Law 93-647, January 4, 1975, 88 Stat. 2337, 2357, salaries of Federal employees can be garnished to satisfy child support and alimony obligations. That section, which is codified as 42 U.S.C. 649 (Supp. IV, 1974), provides that:

"Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States (including any agency or instrumentality thereof and any wholly owned Federal corporation) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments."

This section did not create a new Federal garnishment law. It merely removed the bar of sovereign immunity that prevented garnishment. See Matter of the State of Washington, 55 Comp. Gen. 517 (1975); Bolling v. Howland, 398 F. Supp. 1313 (M.D. Tenn. 1975); and Wilhelm v. United States Department of the Air Force, 418 F. Supp. 162 (S.D. Tex. 1976).

The Office of Personnel Management has published regulations governing the processing of garnishment orders issued against the United States which are found at 5 C.F.R. 581.101-501. Section 581.103(a)(12) includes "[a]ny payment in consideration of accrued leave" among those amounts which are subject to garnishment under the statute. Therefore, the amount due for Mr. Pitts' accrued annual leave is subject to garnishment. However, as we noted in Matter of Wells, 57 Comp. Gen. 420 (1978), in 1977 the Social Security Act was amended for the purpose of

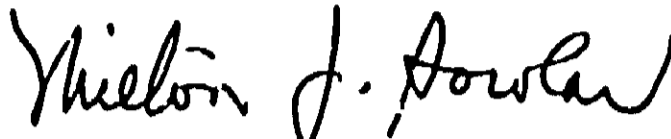
clarifying the garnishment provisions, and section 303(b) of the Consumer Protection Act, 15 U.S.C. 1673(b) (1970), was amended to provide that the maximum disposable earnings of an individual for any workweek which are subject to garnishment shall not exceed the limits contained in section 303(b). See section 501 of Public Law 95-30, May 23, 1977, 91 Stat. 126, 157-162. We held in Wells that no court of the United States or any state may make, execute, or enforce any order or process in violation of section 303.

The garnishment order against Mr. Pitts' accrued leave seeks to obtain the total amount held by the Air Force. However, the restrictions contained in section 303(b) (15 U.S.C. 1673(b)) apply to the garnishment of amounts due for accrued leave under the provisions of 5 C.F.R. 581.401 which defines "aggregate disposable earnings" as used in 15 U.S.C. 1673(b) for purposes of garnishment of a Federal employee's salary as "remuneration for employment." Remuneration for employment (as indicated above) includes any payment in consideration of accrued leave. See 5 C.F.R. 581.103(a)(12).

Notwithstanding the above, the Air Force normally would be precluded from disbursing the amount due Mr. Pitts for accrued leave in the absence of a showing that he was alive at the time the garnishment order was served since, if he were dead, the amount due him would be subject to payment to the appropriate beneficiary under 5 U.S.C. 5582. Matter of Shook, B-187165, September 16, 1974. In the circumstances of this case, however, such a determination is not a condition precedent to disbursing the money representing Mr. Pitts' accrued leave to the extent permitted under 15 U.S.C. 1673(b). Section 5582 of title 5, United States Code, governs the payment of unpaid compensation due deceased civilian employees of the Federal Government to beneficiaries or proper claimants in accordance with an order of precedence contained therein. We have been advised by the Air Force that Mr. Pitts did not designate a beneficiary to receive money due upon his death. Under 5 U.S.C. 5582(b), Mr. Pitts' unpaid compensation, in the event he is deceased, would by statute be paid to his widow. Since the beneficiary under 5 U.S.C. 5582 of Mr. Pitts' unpaid compensation is the same person who has properly garnished his accrued leave, it is not necessary in these circumstances to determine whether Mr. Pitts is missing or deceased. Mrs. Pitts is entitled to some or

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all the money due in either situation. Accordingly, a voucher may be certified for payment in accordance with the garnishment order subject to the limitations of 15 U.S.C. 1673(b). The remaining funds may be dispersed to the proper party when Mr. Pitts' status is determined.

for 
Comptroller General
of the United States