

DOCUMENT RESUME

07999 - [C3288403]

[Garnishment Order against Coast Guard Member's Retired Pay].
B-192719. November 21, 1978. 3 pp.

Decision re: Sr. CPO Winfield G. Pearce, Jr.; by Robert F.
Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters
II.

Organization Concerned: Coast Guard; Massachusetts: Probate
Court of Middlesex County; New Mexico: District Court of
Otero County.

Authority: Social Security Amendments of 1974 (P.L. 93-647; 88
Stat. 2337; 88 Stat. 2357). (P.L. 95-30; 91 Stat. 126; 91
Stat. 157; 42 U.S.C. 659; 42 U.S.C. 661). 42 U.S.C. 659. 56
Comp. Gen. 593.

A decision was requested as to whether payment should
be made in accordance with a garnishment order issued by a
Massachusetts court against a Coast Guard member's retired pay.
Decrees in another State absolved the member of support for his
wife. In view of the conflict between the two States' court
decrees and to protect the interest of the United States, the
agency should hold in escrow the amount required under the
garnishment decree and forward the matter to the Department of
Justice to take appropriate action to resolve the conflict.
(Author/BTW)

DECISION

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

8403

FILE: B-192719**DATE: November 21, 1978****MATTER OF: Senior Chief Petty Officer Winfield G.
Pearce, Jr., USCG, Retired**

DIRECT: Coast Guard member's retired pay was garnished under a Massachusetts court order for the support of his wife and child. Subsequently, the member procured divorce and child-support decrees in New Mexico absolving him of any support for his wife. In view of the conflict between the two states' court decrees, to protect the interests of the United States, the Coast Guard should hold in escrow the amount required under the garnishment decree and forward the matter to the Department of Justice to take appropriate action to resolve the conflict.

This action is in response to letters dated August 22 and 28, 1978, from Mr. Donald H. Senker, Chief, Retired Pay Branch of the United States Coast Guard, requesting a decision as to whether he should make payment in accordance with a garnishment order against the retired pay of Senior Chief Petty Officer Winfield G. Pearce, Jr., USCG, Retired. The submission has been assigned control No. ACO-CG-1301, by the Department of Defense Military Pay and Allowance Committee.

The facts presented indicate that Mr. Pearce and Jacklyn E. Pearce were married in Seattle, Washington, in 1959. One child, Elizabeth, was born of that marriage in 1961. Subsequently, Mr. and Mrs. Pearce separated, with Elizabeth remaining with Mrs. Pearce.

The Coast Guard has been ordered to garnish the retired pay of Mr. Pearce by a March 28, 1978 Finding and Order for Approval of Attachment issued by the Probate Court of Middlesex County, Commonwealth of Massachusetts, for spouse and child support in the monthly continuing amount of \$400. In accordance with that order the Coast Guard remitted \$400 from Mr. Pearce's retired pay in May and in June 1978 to the Clerk of the Probate Court, Middlesex County.

Subsequently, the Coast Guard received an Order for Child Support Pendente Lite issued in Action No. DR-203-78 by the

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District Court of Otero County, State of New Mexico, dated June 15, 1978. That order directed Mr. Pearce to pay child support to Mrs. Pearce in the amount of \$150 a month for the support of their daughter, Elizabeth, during the pendency of Cause No. DR-187-78, a divorce action brought by Mr. Pearce in the District Court of Otero County. The order also directs that no other amounts shall be payable to Mrs. Pearce for her support, or otherwise, arising out of the marital relationship. The order provides no specific mechanism for the payment of the child support and is not a garnishment order against Mr. Pearce's retired pay.

Subsequently, the Coast Guard was furnished copies of a decree in the Otero County Cause No. DR-203-78, dated August 11, 1978, Jacklyn E. Pearce v. Winfield G. Pearce, Jr. This order directs Mr. Pearce to contribute to Mrs. Pearce \$150 a month to the support of Elizabeth Pearce, their minor daughter. The order further stipulates that any claim of any right of support by Mrs. Pearce from Mr. Pearce is denied. This order was entered contemporaneously in Otero County Cause No. DR-187-78, the divorce action brought by Mr. Pearce in which a Final Decree was entered on August 11, 1978, copies of which were also furnished the Coast Guard. The Final Decree in Cause No. DR-187-78 orders, among other things, that the bonds of matrimony are dissolved between Mr. Pearce and Mrs. Pearce, that no alimony or support is accorded on Mrs. Pearce's behalf, that Mr. Pearce's Coast Guard retired pay is set aside to him as his separate property, and that he shall pay support on behalf of his minor daughter, Elizabeth, in the monthly amount of \$150, until May 16, 1979 (her eighteenth birthday).

Based on the actions taken in the New Mexico court, Mr. Pearce seeks to have the Coast Guard cease making the \$400 deductions from his retired pay under the Massachusetts garnishment order and apparently establish an allotment of \$150 per month in favor of his daughter in its place. Mrs. Pearce's attorney has advised the Coast Guard that the Massachusetts court still feels it has jurisdiction equal or superior to the New Mexico court. And, apparently the Massachusetts garnishment order has not been rescinded.

In view of the doubt in the matter the Coast Guard has not made any payments from Mr. Pearce's retired pay for court-ordered support since June 1978. Instead, beginning in July 1978, the Coast Guard is holding in escrow \$400 per month from his retired pay pending our decision as to what amount, if any, should be paid under the court decrees.

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Under sections 450, 461, and 462 of the Social Security Act, as added by the Social Services Amendments of 1974, Public Law 93-647, January 4, 1975, 88 Stat. 2337, 2357, and section 501 of Public Law 95-30, May 23, 1977, 91 Stat. 126, 157-162 (42 U.S.C. 659, 661 and 662), the bar of sovereign immunity has been lifted in very limited circumstances to permit garnishment of the pay of Federal employees and members of the armed services for the enforcement of legal obligations to provide child support or make alimony payments. Alimony is defined to include "alimony pendente lite" and "spousal support." 42 U.S.C. 662(c).

In this case the Coast Guard was served with the Massachusetts attachment order which the Coast Guard determined was in compliance with the law and must be honored. However, the continued effectiveness of that order is now questionable in view of the subsequent New Mexico court decrees.

While obtaining changes in, or release from, court-ordered garnishment of pay under 42 U.S.C. 659 is primarily a matter for the individuals concerned, the United States is treated as a private person under that statute, and in some cases may be held liable for not complying with a garnishment order. Compare 56 Comp. Gen. 593 (1977). Therefore, to protect the interests of the United States, the Coast Guard should refer the matter to the Civil Division, Department of Justice, Washington, D. C. 20530, for appropriate court action to resolve the conflict between the State courts in this matter.

Pending action by the Department of Justice to resolve the conflict, in view of the terms of the Massachusetts garnishment order, the Coast Guard should continue to hold in escrow \$400 per month from Mr. Pearce's retired pay and advise Mr. Pearce and William H. Diamond, Esq., Mrs. Pearce's attorney, of this action taken.

Deputy

R. F. K. 114
Comptroller General
of the United States