

DATE: March 20, 2012

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In Re: )  
          [REDACTED] ) Claims Case No. 2011-CL-112801.3  
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Claimant \_\_\_\_\_)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The interpretation of a statutory provision and implementing regulation by those charged with their execution, and the implementation of them by means of a consistent administrative practice, are to be sustained unless shown to be arbitrary, capricious or contrary to law.

Under 5 U.S.C. § 5520a(k), a state court judgment cannot be satisfied by withholdings from the military pay of a member when the applicable state law prohibits garnishment of the member's military pay.

**DECISION**

A claimant requests reconsideration of the February 14, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-CL-112801.2. In the appeal decision, a DOHA adjudicator disallowed the claimant's claim for garnishment of \$2,319.89 from the pay of a member of the U.S. Air Force.

**Background**

On January 6, 2011, the claimant secured a judgment of \$1,643.85 against the member in a state court. By Affidavit of Execution dated April 8, 2011, the sheriff's office reported to the clerk of the court that it could not locate the member and found no attachable property belonging to the member. At that time, the total amount owed by the member increased to \$1,797.33. On August 1, 2011, the claimant submitted an *Involuntary Allotment Application*, DD Form 2653, to DFAS, requesting an involuntary allotment be established from the pay of the member in the amount of \$2,319.89 (\$1,797.33 plus interest of \$522.56) to satisfy the judgment under 5 U.S.C. § 5520a. The Defense Finance and Accounting Service (DFAS) denied the claimant's request on the grounds that the regulations require that the member's pay could be garnished under applicable state law and that the applicable state law excluded from collection personal earnings of a debtor for satisfaction of a court-ordered judgment.

In the claimant's appeal of DFAS's decision to our office, he disputed DFAS's interpretation of the applicable statute and regulations. He stated that the state where he obtained the judgment was one of just four states that prohibits garnishment from the pay of members of the military. In the appeal decision, the DOHA adjudicator upheld DFAS's decision to deny the claimant's request for an involuntary allotment. The adjudicator reviewed the applicable statute, 5 U.S.C. § 5220a and implementing regulations, 32 C.F.R. §§ 112 and 113. The adjudicator found that under 32 C.F.R. § 113.6(b)(1)(iv)(F), a certification that the member's pay could be garnished under applicable state law was required in order for an involuntary allotment to be processed. The adjudicator reviewed the applicable state law and found that the state law does not permit the garnishment of personal wages for satisfaction of a judgment.

The claimant now seeks consideration of the appeal decision. He states that he intends to pursue his claim by initiating a charge in accordance with the Uniformed Code of Military Justice (UCMJ). He states that his unit commander would then take action against the member for failure to pay his lawful debt. He states that he intends to pursue this matter because of the disrespect, contempt and resentment the member exhibited toward him. He states that he hopes that the involuntary allotment can be lawfully authorized in order to resolve the matter, thereby preventing any adverse effect on the member's military career and future.

### **Discussion**

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. A claimant must prove by clear and convincing evidence on the written record that the United States Department of Defense is liable under the law for the amount claimed. *See* DoD Instruction 1340.21 (Instruction) ¶ E5.7 (May 12, 2004). Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations). The interpretation of a statutory provision and implementing regulation by those charged with their execution, and the implementation of them by means of a

consistent administrative practice, are to be sustained unless shown to be arbitrary, capricious or contrary to law. *See* DOHA Claims Case No. 05033105 (November 30, 2005); DOHA Claims Case No. 05021409 (March 30, 2005); and DOHA Claims Case Nos. 02101611 through 02101635 (December 12, 2002). Thus, a claimant must prove that DFAS's interpretation or implementation of its authority was arbitrary, capricious or contrary to law. *See* Instruction ¶ E7.3.4 and DOHA Claims Case No. 07032201 (April 4, 2007).

The statutory authority for garnishment of a member's pay to satisfy the debt resulting from a court-ordered judgment is established by 5 U.S.C. § 5520a(k). The implementing regulations authorized by 5 U.S.C. § 5520a(k) are found in 32 C.F.R. §§ 112 and 113. Part 112 establishes the policies for the collection of the debts of members through garnishment of their pay. Part 113 establishes the procedures for implementing part 112. Under 32 C.F.R. § 113.6(b)(1)(iv)(F), "a certification that the member's pay could be garnished under applicable state law and section 5520a(k) of the United States Code, if the member were a civilian employee," is required in order to establish an involuntary allotment. The procedures for receiving and processing an involuntary allotment application concerning active duty members are found under Chapter 41, Volume 7A of DoD 7000.14-R, the *Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures—Active Duty and Reserve Pay*. Under paragraph 410404, DFAS-Garnishment Operations, as the designated agent for receiving and processing the DD Form 2653, is required to conduct a legal review of the application to ensure that it complies with the requirements of 32 C.F.R. §§ 112 and 113, to include compliance with the Servicemembers Civil Relief Act in the judicial proceeding resulting in the final judgment, and determination that the member's pay could be garnished under applicable state law.

In this case, the applicable state law authorizes a judge to order "any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied." Both DFAS and the adjudicator found this language dispositive to prohibit the establishment of an involuntary allotment from the member's pay under 5 U.S.C. § 5520a. In his appeal of DFAS's denial of his claim, the claimant acknowledged that the applicable state law prohibits garnishment from the pay of members of the military. Thus, the claimant has failed to demonstrate that DFAS's interpretation or implementation of the involuntary allotment process was arbitrary, capricious or contrary to law. We find no error in the appeal decision.

As for any action the claimant intends to pursue under the UCMJ, we have no authority in such matters. Although the claimant raises other issues, our authority is limited to the liability of the United States for the monetary claims the claimant has made.

## Conclusion

For the reasons stated, the February 14, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-CL-112801.2 is affirmed. In accordance with Department of Defense Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board