

1996

Student Loan Debtor's Wage Offset Upheld Under Federal Law

Tisha Pates Underwood

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Tisha P. Underwood *Student Loan Debtor's Wage Offset Upheld Under Federal Law*, 8 Loy. Consumer L. Rev. 278 (1996).

Available at: <http://lawcommons.luc.edu/lclr/vol8/iss4/4>

This Recent Case is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

RECENT CASES

Student loan debtor's wage offset upheld under federal law

by Tisha Pates Underwood

In *Sibley v. U.S. Dep't of Educ.*, 913 F. Supp. 1181 (N.D. Ill. 1995), the United States District Court for the Northern District of Illinois, Eastern Division upheld a decision by the Department of Education and a subsequent review by an administrative law judge ("ALJ") that a federal employee's salary may be offset to collect a debt on a federally insured student loan where the employee failed to establish that such garnishment would cause "extreme financial hardship." In so doing, the court examined the appropriateness of the ALJ's application of the statutory procedures and found them to be neither arbitrary and capricious nor violative of the employee's constitutional rights.

Department offsets wages of student debtor

In the 1980-81 academic year, George Sibley ("Sibley") borrowed \$9,337 from a commercial lender as part of a student loan program guaranteed by the Illinois State Scholarship Commission ("lender"). In turn, the federal government guaranteed payment of the loan to the ISSC. In 1982, the ISSC reimbursed the lender after Sibley, a then full-time Internal Revenue Service employee, defaulted on the loan. From 1982 to 1988, the ISSC negotiated repayment plans with Sibley. Finally, in 1988, the Department of Education ("Department") notified Sibley that if he and the

Department could not agree upon a repayment plan, the Department would deduct, or "offset", 15% of his "disposable pay" from each paycheck. The Code of Federal Regulations, 34 C.F.R. § 31.2(5), defines "disposable pay" as the amount remaining from a federal employee's salary after deductions for federal, state, and local taxes, social security taxes, retirement program contributions, and life and health insurance premiums.

In response, Sibley requested that the Department refrain from imposing the 15% offset, alleging it would cause him "extreme financial hardship." A series of transactions occurred between the initial request in 1989 and this court action in 1995, including: written correspondence between Sibley and the Department, an internal and independent review of Sibley's hardship request, written demand for oral hearing, a request for a review by the Department's regional office, a refusal to participate in a telephone hearing before an ALJ, and a request to be re-assigned to a new ALJ. In 1994, after considering all of Sibley's requests, the ALJ held that the 15% offset would not cause extreme financial hardship.

Subsequently, Sibley filed this *pro se* action in federal court contesting the hardship decision. He alleged that the Department's procedures were arbitrary and capricious. Sibley also claimed the Department denied him due process and equal protection under the law,

the ALJ's ruling constituted cruel and unusual punishment, and the salary offset subjugated him to slavery under the Thirteenth Amendment of the U.S. Constitution. The Department moved for summary judgment, and the court granted the request.

Department decisions not arbitrary or capricious

The court limited its review of the agency determination and recognized the Department's reasonable interpretations of its own regulations. First, the court examined the appropriateness of the ALJ's decision to offset Sibley's salary. Second, the court reviewed the overall process used by the Department in its course of dealings with Sibley. Based on these two considerations, the court held that the Department's decisions were not arbitrary or capricious. In reviewing the decision, the court examined whether the ALJ considered the "relevant factor" and whether she made a clear error of judgment under the circumstances.

The court grounded its analysis in the definition of "extreme financial hardship," as found in 34 C.F.R. § 31.8(b)(1) and promulgated pursuant to 5 U.S.C. § 5514(b)(1). This section explains that an employee would suffer "extreme financial hardship" if a wage offset "would prevent the employee from meeting the costs necessarily incurred for essential subsistence expenses." In

addition, a relevant factor in determining extreme financial hardship is whether the expenses "have been minimized to the greatest extent possible." Under 34 C.F.R. § 31.8(b)(2), these expenses are defined as the costs of "food, housing, clothing, essential transportation, and medical care."

An employee requesting a hardship dispensation bears the burden of proving that the offset would cause extreme financial hardship. In assessing the merits of the ALJ's ruling, the district court found that the ALJ's holding that "Sibley could endure the offset without suffering extreme financial hardship" was reasonable. *Sibley*, 913 F. Supp. at 1187.

The court held that the Department properly considered these relevant factors — namely Sibley's \$48,109 annual gross salary, his extraordinary expenses (e.g., \$525 per month for food for himself alone), and his inability to provide relevant documentation supporting and rationalizing his extraordinary expenses. Accordingly, the ALJ correctly reduced Sibley's asserted "essential expenses." In addition, Sibley did not provide receipts for his alleged dental care expenses and did not prove the extent to which his health insurance covered those expenses. Nevertheless, the ALJ allowed \$500 per month for medical expenses. Thus, this consideration of Sibley's medical and other subsistence expenses constituted an adequate review of the relevant factors in this case. In light of the ALJ's "well-reasoned conclusion" based on a review of these factors, the ALJ's determination was neither arbitrary and capricious nor clearly erroneous under the circumstances.

Department's procedures were appropriate

After contesting the validity of the agency's determination, Sibley attacked the Department's procedures as arbitrary and capricious. The court rejected Sibley's arguments. The court held that the Department promptly and correctly stayed the wage offset and internally considered Sibley's hardship request on two separate occasions. The court also found that Sibley had benefited from numerous continuances and that the denial of other continuance requests was appropriate. Finally, the court determined that the ALJ provided adequate time for Sibley to submit supporting materials which Sibley failed to take advantage of and that a telephone hearing was adequate under the circumstances. Accordingly, the Department's overall procedures used in managing Sibley's situation were not arbitrary or capricious.

Constitutional challenges rejected

The court relegated Sibley's procedural due process concern to a footnote where, applying the three factor test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court held that "Sibley received the process he was due." *Sibley*, 913 F. Supp. at 1187.

Sibley also claimed that a ten year statute of limitations barred the Department from collecting his debt. However, the court disagreed and held that, even under Sibley's interpretation, the statute had not run because the Department sent its first notice well before the expiration date. More importantly, the court

found Sibley's statute of limitations defense meritless because Congress repealed all limitations periods that were "previously applicable to a suit . . . , offset, garnishment, or other action initiated or taken" by the Department for repayment of federally insured student loans under 20 U.S.C. § 1091(a)(2)(D). Thus, the retroactive application of the repeal does not violate due process.

Sibley also claimed that the statutory provision permitting the Department to collect a federal employees' debt through a wage offset system violated his Fifth Amendment right to equal protection under the law. However, the court held that the federal employee classification was not a classification subject to heightened review as a protected class under the U.S. Constitution. The court found that collecting funds owed to the federal government is a legitimate government purpose and that salary offsets "constitute a rational manner to effectuate the government purpose." Therefore, the Department did not violate the Equal Protection Clause.

Sibley also raised an argument based on the equitable defense of laches, but the court found that neither laches nor the traditional rules of subrogation are necessarily applicable against the federal government. In addition, the court held that, even assuming that the right of subrogation was applicable in this case, Sibley waived his right to assert the defense, and that no harm or prejudice occurred to Sibley caused by the lapse in time. Therefore, the court denied Sibley's laches defense.

Finally, Sibley claimed that the Department's decision to offset his salary constituted cruel and unusual

punishment under the Eighth Amendment and subjected him to slavery in violation of the Thirteenth Amendment. The court disposed of these claims as "patently meritless" for two reasons. First, the court found that Sibley received adequate protection in this case. Second, the

Thirteenth Amendment generally protects against labor compelled by the "use or threatened use of physical or legal coercion." The court also dismissed Sibley's Thirteenth Amendment claim after finding that the salary offset did not coerce Sibley to work for the

government.

In sum, the court held that no compelling basis existed for setting aside the Department's decision to offset Sibley's salary. Therefore, the court entered summary judgment was entered for the defendant.

Cosigners protected against primary liability

by Jennifer L. Schilling

In *Lee v. Nationwide Cassel, L.P.*, 660 N.E.2d 94 (Ill. App. Ct. 1995), cosigners to loans sought damages from Nationwide Cassel, a credit finance company, for violation of the Illinois Consumer Fraud Act and the Illinois Sales Finance Agency Act. The trial court dismissed the complaint because the cosigners failed to set out facts necessary to state a claim under the Consumer Fraud and Deceptive Practices Act. The appellate court reviewed each of the trial court's findings and subsequently held that the trial court erred in dismissing the cosigners' claim.

The plaintiffs, Rodney Lee and Edelmira Rivera, ("the cosigners") in separate and unrelated circumstances acted as "cosigners" to loans financed through the defendant, Nationwide Cassel ("Cassel"). Both Lee and Rivera, signed as cosigners to a loan for a motor vehicle financed through Cassel in order to help a friend obtain credit approval. The cosigners brought action against Cassel for damages because Cassel requested that the cosigners sign as "buyers" and subsequently attempted to make them primarily responsible for the loan. The cosigners claimed that Cassel violated § 18 of the Motor Vehicle Retail Installment Sales Act ("Motor Vehicle Act"), which serves to protect cosigners from being held primarily responsible for defaulted loans. Under the statute, cosigners are only held primarily responsible if they "actually receive the vehicle" or if they are the spouse or parent of the cosigned individual. 815 ILL. COMP. STAT. 375/18 (West 1992). The cosigners asserted that Cassel's violation of § 18 amounted to "unfair and deceptive" practice under the Consumer Fraud and Deceptive Practices Act ("CFDPA").

The trial court identified three reasons for dismissal: (1) dismissal was the only course of action consistent with the holding of *Magna Bank of McLean County v. Comer*, 600 N.E.2d 855 (Ill. App. Ct. 1992); (2) the cosigners' signatures on the loan documents indicating that they were "buyers" established that they had "actually received" the vehicles; and (3) the cosigners' complaint failed to allege fraud with sufficient particularity to state a claim under the CFDPA. The appellate court reviewed each finding and ultimately reversed the trial court's dismissal of the claims.

Fraud and misrepresentation are not requisite elements

The trial court rejected the cosigners' claims for relief based on the holding in *Magna Bank of McLean County v. Comer*, 600 N.E.2d 855 (Ill. App. Ct. 1992), which provides that § 18 of the Motor Vehicle Act is an applicable defense from primary liability only when the seller engages in fraud or misrepresentation. The appellate court rejected the analysis in *Comer* and held that § 18 clearly requires "actual receipt" to establish primary liability. Liability does not depend on whether fraud or deceptive practices are involved. 815 ILL. COMP. STAT. 375/18 (West 1992). The appellate court held that, under § 18, a signatory who (1) takes "actual receipt"; or (2) is the parent or spouse of the individual who takes possession of the vehicle may be primarily liable. Any other individual who signs the sales agreement is only secondarily liable. An obligation only arises for parties who are secondarily liable after the seller, using reasonable and diligent efforts, has exhausted all