

Volpe
C.P.

DECISION



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

04643

FILE: B-190291

DATE: January 3, 1978

MATTER OF: Robert E. Bates, Jr., Deceased
Unpaid Compensation--Indebtedness to
United States

DIGEST: Deceased employee was found to have
obtained over \$64,000 from Government
through falsified purchase orders and
invoices. Indebtedness may be col-
lected from unpaid salary and accrued
annual leave.

This action is in response to the request for a decision from Mr. Albert C. Allen, an authorized certifying officer of the Department of Health, Education, and Welfare, concerning the disposition of unpaid compensation due the beneficiaries of Robert E. Bates, Jr., a deceased employee.


The administrative report states that an employee of the Center for Disease Control (CDC) during the period from January 1969, through January 1977, obtained at least \$64,836.85 from the Government through the use of falsified purchase orders and altered invoices. The report states further that the employee was notified by CDC of the termination of his employment and that on the evening prior to his termination date the employee allegedly committed suicide. The authorized certifying officer inquires as to whether unpaid compensation in the amount of \$10,276.22, representing unpaid salary and accrued annual leave, may be applied toward the deceased employee's indebtedness to the Government. CDC has also filed a notice for recovery of indebtedness with the U.S. Civil Service Commission to be applied against the employee's retirement contributions or such annuity as might be paid to his survivors.

Our Office has long held that where an employee is indebted to the United States the debt may be withheld or collected from final salary payments, lump-sum payments for leave, and retirement contributions or annuities. 29 Comp. Gen. 99 (1949); 21 *id.* 1000 (1942). See also Boerner v. United States, 117 F.2d 387 (2nd Cir. 1941); United States v. United States Fidelity & Guaranty Co., 35 F.Supp. 959 (E. D. Pa. 1940); O'Leary v. United States, 82 Ct. Cl. 305 (1936).

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The Government's right of setoff is founded upon the common-law right of a creditor to apply amounts due a debtor to liquidate an indebtedness.

Accordingly, in the present case, if the evidence establishes a prima facie case of liability on the part of the deceased employee for the losses sustained by the Government, the agency may apply the unpaid compensation towards liquidation of the indebtedness. 23 Comp. Gen. 723 (1944); 19 id. 88 (1939).


Deputy Comptroller General
of the United States