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D. 6812.

June 28, 1922.

The Honorable

The Secretary of the Treasury.

Sir:

I am in receipt by your reference of a submission by the Acting Surgeon-General, Public Health Service, wherein I am requested to decide whether the Public Health Service is authorized to pay for repairs to cover damages inflicted by the Quarantine tug Argonaut upon a dock belonging to the State of California.

There is attached to the letter mentioned a copy of what is designated as a proposal to furnish supplies or service other than public, the preamble to which is dated at San Francisco, Cal., June 10, 1921.

"(Signature) Board of State Harbor Commissioners,  
per Hilda Gohman,  
Secretary."

Following this preamble is the following statement under the title "Dockage":

"It is AGREED to furnish sufficient wharf space to afford safe and satisfactory dockage to the U. S. Quarantine Steamer Argonaut, during the fiscal year ending June 30, - 1922, for the sum of One hundred (\$100.00) Dollars per month.

"This wharf space is located at Barge Office wharf.

Section C, Seawall, foot of Jones Street, San Francisco, California, and it is understood and agreed that it will be available for use of the Argonaut both day and night, at any hour.

"It is further agreed that the provisions of the above proposal are subject to revocation by either party on thirty days' notice.

"Total amount of bid \$1200.00"

Assuming that this proposal has been accepted by letter, and that the consequent agreement is all that constitutes the basis of the undertakings by both parties, there is no apparent understanding or provisions for the United States to pay for any damages arising from the use of wharf space.

In explanation of how the damage to the wharf occurred it is stated as follows:

"A thorough investigation was conducted of the circumstances leading up to the accident, and it appears that it was due to a defect in the signal system on board quarantine tug. When the vessel was approaching the wharf the Pilot gave the signal to stop (two bells - one to slow down, the other to stop). These signals were received by the Engineer on duty at the throttle and were obeyed. On near approach to the wharf the Pilot alleges that he gave a signal for full speed astern (two bells and a jingle) but the Engineer alleges that he received a signal of only one bell and a jingle, which indicated full speed ahead, instead of full speed astern and acted accordingly, and as a consequence the tug with increased momentum crashed into the wharf instead of backing away.

"It developed upon examination that there was a broken spring in the trigger of the signal system and this in a location where it was not plainly evident. The Pilot of the vessel has been in the service sixteen

and one half years and has a record of being painstaking and careful and his veracity has never been the subject of doubt under any circumstances. The Chief Engineer has an equally commendable record, and the officer in charge of the quarantine station after a thorough investigation was unable to determine any individual dereliction and came to the conclusion that the accident was due to an improper transmission of the signals by reason of the broken spring in the trigger of the signal system."

The Quarantine Officer is now recommending that the Dock Board be authorized to carry out the repairs at an estimated cost of approximately \$265, this to be charged against the Government. Payment is proposed to be made out of the appropriation for the Public Health Service, Quarantine Service, 1922, Sundry Civil Act, March 4, 1921, 41 Stat., 1377, which provides: "For maintenance and ordinary expenses exclusive of pay of officers and employees, of quarantine stations at \* \* \* San Francisco, \* \* \* California;"

Payment of repairs in the nature of damages can not be construed as coming within the provisions for maintenance since maintenance does not comprehend expenditures for repairs to private property unless comprising a part of the consideration in a contract. Neither are such damages an item of ordinary expenses. They are in fact extraordinary and not anticipated. The appropriation quoted, supra, is therefore not available. For further information and authorities see 1 Comp. Dec., 261; id., 288; and 1 Comp. Dec., 309.

2139

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Upon the facts as stated I have therefore to inform you that you are without authority to authorize the proposed repairs to the dock in question.

Respectfully,

*J. M. Carl.*

Comptroller General.

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

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Review No. 879. *WAA*

June 28, 1922.

Elmer A. Brookfield requested January 30, 1922, review of settlement No. W-129589, dated December 20, 1921, by which was settled his claim for arrears of pay for the period September 1, 1918, to November 9, 1919, while serving in the Army as an enlisted man. During a portion of the period claimant was paid as a private; he contends he was entitled to the pay of a cook, having attended the school for bakers and cooks and upon completion of the course and return to his organization in September, 1918, he was assigned the duties of a cook, although he was not paid the pay of a cook until April, 1919. Accordingly, he claimed specifically the difference in the pay of a cook and a private September, 1918, to March, 1919, inclusive.

In the examination of his account it was found that claimant had been underpaid in May, 1919, \$3.20 and for foreign service July 11 to October 20, 1919, \$5.34. In settlement these amounts were allowed and the specific claim for the difference between pay of cook and private was disallowed as it appeared he had been paid the pay of a cook from date of appointment as such. The Adjutant

General reported that the records of the War Department showed claimant was appointed cook January 26, 1919, although the December, 1918, roster showed him a cook during that month. Payroll for February, 1919, shows claimant appointed cook from private January 26, 1919, by Company Order No. 3, Headquarters P. W. E. Co. 251. This agrees with the records of the War Department and the date therein named must be accepted notwithstanding the roster for December, 1918, unless the War Department, on the basis of further official evidence, will certify a different date of appointment.

Claimant's statement that he was assigned the duties of a cook prior to January 26, 1919, may be correct but it is the grade held by a soldier and not the duties performed that determines his basic pay. The number of grades in an organization are limited; before pay of a higher grade is payable there must be evidence of appointment to an existing vacancy. Paragraph 278, Army Regulations, 1917, provides:

"\* \* \* cooks \* \* \* are enlisted as privates, and after joining their organizations are appointed by their respective organization commanders. For inefficiency or misconduct they are subject to reduction by the same authority, and in case of desertion their appointments are vacated from the date of their unauthorized absence."

Nor does the satisfactory completion of the course

of instruction at the school for bakers and cooks entitle the soldier to the pay of a cook until appointed to an authorized vacancy. War Department Special Regulations No. 17 of 1917. Claimant is entitled to the pay of a cook only on and after the date of his appointment as such. Statement of the soldier's account for the period September 1, 1918, to November 9, 1919, (date of discharge) is as follows:

CREDITS

Pay. September 1 to 13, 1918,	@ \$20 per month	\$13.00
" " 14 to 30, "	" 25 " "	18.70
Oct., Nov. and Dec. "	" 25 " "	99.00
January 1 to 25, 1919,	" 25 " "	27.50
" 26 to 31, "	" 24 " "	7.33
Feb. Mar. Apr. May and June 1919	" 24 " "	220.00
July 1 to 10, 1919	" 24 " "	14.67
" 11 to 31, "	" 25.60 " "	30.40
Aug. and Sept. "	" 25.60 " "	91.20
Oct. 1 to 20, "	" 25.60 " "	30.40
" 21 to 31, "	" 25 " "	12.67
Nov. 1 to 9, "	" 23 " "	11.40
Travel pay on discharge,		8.05
Bonus on honorable discharge		60.00
		<u>\$644.32</u>

DEBITS

Pay paid currently by paymasters in the Army Sept. 1, 1918, to Nov. 9, 1919,	\$476.63	
Insurance,	91.10	
Travel pay,	8.05	
Bonus	60.00	\$635.78
		<u>\$ 8.54</u>
Balance due claimant		\$ 8.54