

DECISION

J. K. [unclear]
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

7610

FILE: B-191395

DATE: September 12, 1975

MATTER OF: Andrew L. Kulp - Insurance proceeds for administrative leave

- DIGEST:
1. Since neither the Federal Medical Care Recovery Act, 42 U. S. C. §2651, nor other authority gave the U. S. the right to collect from the liability insurer of a negligent driver the value of administrative leave granted an injured officer of Secret Service Uniformed Division under 5 U. S. C. §6324, the amount mistakenly collected may be paid to the officer.
 2. Without legislative authority, the U. S. has no legal claim against third-party tortfeasors or their liability insurers for benefits the U. S. provides persons because of injuries caused by tortfeasors. Under Supreme Court decisions, such claims involve fiscal policy for Congress to decide. However, in a proper case, the U. S. can have a valid claim as a third-party beneficiary under insurance contract terms such as for no-fault, medical payment, and uninsured motorist coverages. Court cases cited.

This action responds to a request from the Director of the Secret Service for an opinion whether Officer Andrew L. Kulp is entitled to insurance proceeds paid by the insurance company to the United States for administrative leave granted to Officer Kulp under 5 U. S. C. §6324 because of injury sustained in the line of duty.

During a routine scooter patrol for the Executive Protective Service (now the Secret Service Uniformed Division) on October 27, 1975, Officer Kulp suffered a knee injury in the District of Columbia when an automobile backed into the scooter he was operating. His administrative leave, authorized for 112 hours because of his injury, was valued at \$644, based on an hourly wage of \$5.75. In addition, the Government's expense for Officer Kulp's medical treatment was \$151.74.

Officer Kulp retained a private attorney who proceeded to settle with the liability insurer of the driver causing the injury. On December 22, 1975, the Executive Protective Service requested the

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insurer in writing to pay the Government's expenses of \$795.74 incurred as a result of the accident, separately itemizing the \$644 for administrative leave, as well as the Government's cost for medical treatment. By letter of January 5, 1976, the insurer requested the Executive Protective Service to furnish, among other information, the statute or other legal authority permitting the Government's recovery from the insurer. On January 12, 1976, an officer of the Executive Protective Service responded, evidently informing the insurer by telephone that the Government's claim upon the insurer for the administrative leave, as well as the Government's medical expense, was authorized by the Federal Medical Care Recovery Act, Pub. L. 87-693, September 25, 1962, 76 Stat. 593, as amended, 42 U. S. C. §§2651-2653.

Complying with Executive Protective Service's request for payment, the insurer paid the United States \$795.74 on September 3, 1976, representing a portion of the \$1,600 settlement the insurer had granted Officer Kulp. However, he questioned the legality of this payment to the United States rather than himself. Subsequently, it was administratively determined that the Uniformed Division's policy of collecting such payments for administrative leave was without legal authority. Since then, the Uniformed Service has ceased efforts to collect these payments, although it continues to pursue collections for medical expenses against third-party tortfeasors and their insurers under the Federal Medical Care Recovery Act.

The Federal Medical Care Recovery Act states in pertinent part, at 42 U. S. C. §2651:

"* * * In any case in which the United States is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, under circumstances creating a tort liability upon some third person * * * to pay damages therefor, the United States shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished * * *." (Emphasis added).

The underscored portion clearly means that the care and treatment furnished by the United States for which it may recover against liable third parties are limited to those items specifically mentioned, i. e., "hospital, medical, surgical, or dental care and treatment" the

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United States is authorized or required by law to furnish. Administrative leave, although intended for absence with pay because of injury or sickness resulting from the performance of duty, is not within the meaning of "hospital, medical, surgical, or dental care and treatment." Accordingly, we share the view expressed by Secret Service staff that the Federal Medical Care Recovery Act did not authorize collection against the liability insurer for the value of administrative leave granted Officer Kulp under 5 U. S. C. §6324.

The Secret Service asks that the following issues be addressed:

1. Assuming that the Federal Medical Care Recovery Act does not authorize the recovery of administrative leave granted under 5 U. S. C. §6324, is there any other authority permitting recovery based on any Government obligation to furnish the leave?
2. If the Government is authorized to recover but fails to assert its claim under the proper authority, must it return the funds it has obtained?
3. If the Government cannot support a valid legal claim over the funds by any theory, must the funds be returned to the employee (officer Kulp in the present case)?

Concerning the first issue, we are not aware of any legal authority permitting the Government's recovery against tortfeasors or their insurers for administrative leave granted to officers of the Secret Service Uniformed Division, even though there may be an obligation to furnish the leave under 5 U. S. C. §6324. Subsection (a) of this provision states:

"(a) Sick leave may not be charged to the account of a member of the Metropolitan Police force or the Fire Department of the District of Columbia, the United States Park Police force, or the United States Secret Service Uniformed Division for an absence due to injury or illness resulting from the performance of duty." (Emphasis added).

The purpose of 5 U. S. C. §6324 is to permit absence from duty for job-related sickness or injury without using up accumulated sick leave. H. Rept. No. 1220, 88th Cong., 2d Sess., March 6, 1964, and S. Rept. No. 1347, 88th Cong., 2d Sess., August 7, 1964. It

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provides a statutory benefit similar to sick leave. The Supreme Court in United States v. Standard Oil Co. of California, 332 U.S. 301 (1947), ruled that the United States in the absence of legislative authorization has no right to recover from a third party liable in tort for injuring a military member who received Government benefits because of his injuries. The Court said the question involved Federal fiscal policy to be determined by the Congress, not the courts. This principle was extended in United States v. Gilman, 347 U.S. 507 (1954), denying the Government's claim for indemnity against a Federal employee whose negligence required the United States to pay an injured third party under the Federal Tort Claims Act.

It is to be noted, however, that the Government's inability to recover against tortfeasors and their insurers under a liability policy in no way detracts from any valid claim the Government may have as a third-party beneficiary under certain insurance contract provisions, for example, no fault, uninsured motorist, and medical payments coverages. United States v. Government Employees Ins. Co., 440 F. 2d 1338 (5th Cir. 1971) (uninsured motorist provisions); United States v. Government Employees Ins. Co., 461 F. 2d 58 (4th Cir. 1972) (medical payments clause); United States Automobile Assoc. v. Holland, 283 So. 2d 381, 385-386 (Fla. App. 1973) (no fault). The Secret Service Legal Counsel informally advised that in Officer Kulp's case, no policy provision of this kind exists.

Since the answer to the first issue is in the negative, it is unnecessary to address the second issue.

As to the third issue, we would have no objection if the Secret Service paid Officer Kulp the \$644 for administrative leave mistakenly collected from the insurer of the negligent driver.



Acting Comptroller General
of the United States