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**DECISION**



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

FILE: 203169

DATE: March 4, 1982

MATTER OF: Barbara Sonnevil Colella

**DIGEST:** Former member of Air National Guard, while on active duty, sustained in-line-of-duty injury, for which she later obtained civilian treatment without specific military authorization. She seeks reimbursement for medical and transportation expenses incurred and civilian wages lost in obtaining civilian treatment for her injury. Under the circumstances she is entitled to payment for emergency or immediate non-emergency civilian treatment and civilian treatment received subsequent to reporting to military authorities for treatment at the military clinic until her discharge from the Air National Guard. She is not entitled to payment for deferred non-emergency civilian treatment prior to that time, nor to transportation expenses or lost wages.

This action is in response to the request of Captain E.C.A. Phillips, Chief of the Accounting and Finance Branch, Comptroller Division, Wurtsmith Air Force Base, Michigan, for an advance decision concerning the entitlement of Barbara Sonnevil Colella to reimbursement for medical and transportation expenses incurred and civilian wages lost in obtaining treatment for an injury she sustained in the line of duty while a member of the Air National Guard.

We have concluded that Ms. Colella is entitled to payment for emergency or immediate non-emergency civilian treatment as well as that received after she sought treatment at a military medical facility. She is not entitled to payment for deferred non-emergency treatment received prior to reporting for treatment at a military facility. She is not entitled to transportation expenses or wages lost during treatment.

On October 28, 1976, while on active duty in the Air National Guard, Ms. Colella reported to the dental clinic at Grissom Air Force Base in Peru, Indiana, for a routine dental procedure. In a sworn statement she says that during the procedure she sustained an injury to her jaw and experienced the pain which has required continued treatment.

At the time of the injury, the attending dentist consulted an oral surgeon, who referred Ms. Colella to Wright-Patterson AFB, Ohio, where she was hospitalized for treatment of temporomandibular joint pain and headaches and for a defective filling. Ms. Colella states that following her discharge from Wright-Patterson AFB hospital, the pain persisted and grew increasingly worse, but she could not be returned to the hospital due to holiday congestion at the facility.

Ms. Colella was released from active duty in the Air National Guard on March 10, 1977, and continued her Reserve obligation. On April 18, 1977, she was treated for acute pain by a civilian doctor when, as she states, the pain had become unbearable. She also was treated by civilian doctors on April 27, 1977, and May 9, 1977. An Air Force form 348 submitted with the request for decision shows that she reported to the Air National Guard medical clinic for treatment of the pain on May 14, 1977, after which an investigation was ordered to determine whether her condition resulted from the treatment she received on October 28, 1976, or from the aggravation of a pre-existing condition. During the period of the investigation, which continued for more than 2 years, Ms. Colella was treated for the injury and associated pain by civilian doctors.

On July 26, 1978, the determination was issued that there was no evidence of a causal relationship between Ms. Colella's condition and the October 28, 1976 procedure, and that, therefore, the injury was not sustained in the line of duty. However, following a Request for Reinvestigation, an in-line-of-duty determination was issued on June 19, 1979, based upon additional information provided by Ms. Colella's attorney and civilian physicians.

Under the provisions of 32 U.S.C. § 318 (1976) and implementing regulations, Air National Guard Regulations 168-10, paragraph 4a, a member of the Air National Guard who is injured in the line of duty while on active duty is entitled to medical care for the injury until the resulting disability cannot be materially improved by further hospitalization or treatment. Medical and dental care received by Air National Guard members from civilian sources at Air National Guard expense for a line of duty injury is authorized only when the required treatment cannot be obtained at medical facilities of the uniformed services. Air National Guard Regulations 168-10, Paragraph 2a. However, at paragraph 9a, the regulations state the following exception to the general rule:

"Emergency and immediate nonemergency medical or dental care may be obtained from a civilian source without advance authorization by or in behalf of [eligible] members \* \* \*. Emergency dental care is limited to treatment for the relief of pain and to prevent loss of oral tissue, treatment of acute septic conditions, essential correction of dental injuries, or damage to dental prostheses requiring immediate attention."

In paragraph 1e of ANGR 168-10, "emergency care" is defined as "immediate medical or dental care required to save life, limb, sight, or to prevent undue suffering and loss of body tissue." "Immediate nonemergency care" is defined in paragraph 1f as:

" \* \* \* medical, surgical, or dental care for other than an emergency condition, which is necessary at the time and place for the health and well being of the member."

The question arises as to whether Ms. Colella's condition could be classified as an emergency due to the recurring nature of her visits and the type of services provided. It appears, however, that when she first consulted a civilian doctor on April 18, 1977, the pain

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was acute. In addition, the dentist who treated her at that time, stated that she reported to his office with acute pain.

It would, thus, appear that Ms. Colella's treatment on April 18, 1977, was either emergency dental care, required immediately to prevent undue suffering, or immediate nonemergency dental care necessary at that time and place for her health and well-being. ANGR 168-10, para. 9a. Therefore, advance authorization was not required for payment of the medical expenses she incurred for treatment on that occasion.

Ms. Colella was next treated by a civilian dentist on April 29 and May 9, 1977. Paragraph 9b of ANGR 168-10 requires that the member request authority prior to contracting for civilian medical or dental care for deferred nonemergency or elective medical or dental treatment. Considering the amount of time that had elapsed since her initial treatment for acute pain on April 18, we conclude that her treatment on April 27, and May 9, must be considered deferred nonemergency care, for which the regulation requires a request for authorization prior to treatment. Since the record bears no evidence of such a request or efforts to secure treatment at a military medical facility prior to being treated, she is not entitled to reimbursement for the cost of these services. See B-193764, August 6, 1979.

When she reported to the Air National Guard clinic on May 14, 1977, her commanding officer and the medical officer should have been aware of the situation and her continued need for treatment, since these officers were aware of the possibility that her condition was caused by the October 28, 1976 dental procedure. There is no evidence of what actually occurred when she reported to the clinic. However, it is our view that there was sufficient notice that she required further treatment which was not provided by the clinic. This view is supported by the fact that shortly after the visit to the clinic, an investigation was ordered to determine the line-of-duty status of her injury.

Since the investigation resulted in a determination that her injury was sustained in the line of duty, and Air National Guard officers were aware of her need for treatment, she was entitled to treatment at Air National Guard expense, and thereafter until her condition could not be materially improved or until she was discharged from the Air National Guard. Therefore, payment of her claim for the civilian treatment she received for the in-line-of-duty injury following her visit to the clinic on May 14, 1977, for Government treatment until the date of her discharge on October 31, 1978, from the Air National Guard, is authorized.

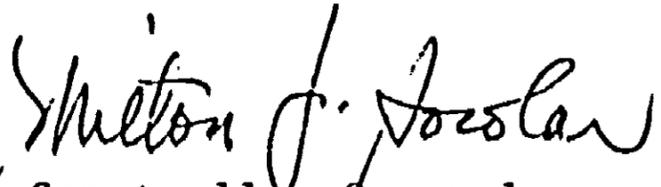
Ms. Colella's claim for wages lost from civilian employment must be denied. A claim of this nature would sound in tort and we have no jurisdiction over such claims. If Ms. Colella was incapacitated from performing her military duties she would be entitled to pay and allowances under 37 U.S.C. § 204(h). However, her commanding officer indicates that there is no evidence that she was disabled from performing these duties and, in fact, she satisfactorily performed 16 unit training assemblies for which she was paid. Accordingly, she is not entitled to pay and allowances for the period of her claim. See 52 Comp. Gen. 667 (1973).

Ms. Colella is also seeking reimbursement for transportation costs she incurred in connection with the treatment of her injury. Although the record does not show under what authority the line of duty determination was made, the only provision for paying transportation costs is paragraph M6005 of Volume 1 of the Joint Travel Regulations. This regulation authorizes the payment of transportation costs in connection with hospitalization or rehospitalization of a member of the National Guard. Mileage may not be paid under this authority. Since no evidence has been presented showing that Ms. Colella required hospitalization during the period of her claim, she is not entitled to reimbursement for these expenses.

Ms. Colella is entitled to be reimbursed for the treatment expenses of April 18, 1977, and after

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May 14, 1977, through the date of discharge, October 31, 1978. She is not entitled to be reimbursed for lost wages or transportation expenses.

*for*   
Comptroller General  
of the United States