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**DECISION**



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

**FILE:** B-207339

**DATE:** February 8, 1983

**MATTER OF:** Major Robert L. Robbins, USAF

**DIGEST:** Air Force reservist who served 355 days of active duty and 10 periods of inactive duty training in fiscal year 1981 is entitled to receive pay for all service performed. Although active duty pay is paid on a daily basis inactive duty pay is paid for drill sessions which may be less than a day. Therefore, in the absence of regulations to the contrary the total pay need not be restricted based on the combined total.

An Accounting and Finance Officer, United States Air Force Accounting and Finance Center, has requested a decision on the validity of a military pay order for active duty pay for Major Robert L. Robbins, USAFR, which would result in payment to him of more than 360 days' basic pay for fiscal year 1981. Because the pay is a combination of less than 360 days' basic pay for active duty plus 10 days' compensation for inactive duty the payment is authorized.

The Air Force declined to pay Major Robbins for 5 days of the active duty he served during 1981, citing 5 U.S.C. § 5505. This provision establishes a general rule that individuals who perform active duty for a calendar month or more shall be paid as if the calendar month had 30 days. This law was interpreted to mean that Major Robbins' combined active duty and inactive duty training pay for 1981 could not exceed pay for 360 days.

During fiscal year 1981, Major Robbins performed 10 periods of inactive duty training on 5 days between two assignments to active duty which covered the rest of the fiscal year. From October 1, 1980, to March 27, 1981, and again from April 3 through September 30, 1981, Major Robbins served under orders in active duty status at the Consolidated Reserve Personnel Office in Denver, Colorado. As indicated, he was not paid for his last 5 days of active duty based upon an interpretation of 5 U.S.C. § 5505, that a member may not receive more than 360 days' pay during a fiscal year.

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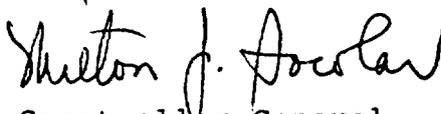
Members of the Armed Forces are entitled to pay based on their military status and grade. Once Armed Forces members have accrued pay, it cannot be taken away from them, except in accordance with provision of statute. Bell v. United States, 366 U.S. 393, 401-02 (1961).

Major Robbins was entitled to pay under two different statutory provisions. As a member of a uniformed service on active duty, he was entitled to the basic pay of his grade under 37 U.S.C. § 204(a), and we have found no provision of law or regulation requiring withholding the pay due him for that service. For completing 10 inactive duty training periods he was entitled to compensation computed at the rate of 1/30 of his monthly basic pay for each period served. 37 U.S.C. § 206(a). These entitlements did not overlap because Major Robbins was never placed in both active and inactive duty status on the same day. Department of Defense Military Pay and Allowances Entitlements Manual, paragraph 80302; 50 Comp. Gen. 868 (1971).

Aside from the question of entitlement to pay, basic differences in the language and construction of 37 U.S.C. §§ 204(a) and 206(a) suggest that they should be treated separately in determining reservists' pay. For example, section 204(a) does not specify a method of computing basic pay, it merely lists those entitled to it. To compute basic pay, one must first refer to 5 U.S.C. § 5505 and applicable Comptroller General decisions. See 54 Comp. Gen. 952 (1975). By contrast, section 206(a) specifies how inactive duty will be calculated, i.e., at the rate of 1/30 of a reservist's authorized basic pay for each completed training period of at least 2 hours. It is up to the Secretary concerned to prescribe the maximum number of periods performable for pay in each fiscal year. 37 U.S.C. § 206(b). Consequently, despite the fact that compensation is based on monthly basic pay, the amount of compensation payable to an individual depends on how inactive duty training periods were authorized and performed. B-165244, October 2, 1969. See also B-179882, December 4, 1974, in which we held that a member must waive only 1 day of retirement pay in order to receive pay for two inactive duty training periods.

Accordingly, we find nothing in the applicable provisions of law which would prevent payment of pay for active duty and inactive duty for a total of more than 360 days. We have found no applicable provision of regulation which would limit inactive duty training pay in these circumstances, although the Air Force may wish to consider whether it is appropriate to allow members on active duty for most of a year to perform several periods of inactive duty training when relieved of active duty for a few days. We note particularly that the practice when authorized for members who are working with Reserve programs could lead to excessive and unnecessary payments of drill pay.

For the reasons stated the claim may be paid if otherwise proper.

*for*   
Comptroller General  
of the United States