

DECISION

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

FILE: B-215037

DATE: September 18, 1984

MATTER OF: Carlton C. Hurley, Jr.

DIGEST:

A person who was appointed as a captain in the Army National Guard received temporary Federal recognition. Since he performed training duty after the period of temporary Federal recognition had expired under color of authority and without knowledge, either actual or constructive, of the fact that the temporary Federal recognition had expired, he is entitled to retain the pay and allowances received by him in good faith for the service as a de facto officer.

A National Guard officer's temporary 6-month Federal recognition expired on June 15, 1982; however, he performed duty during the period June 15, 1982, through November 9, 1982, when he had no Federal recognition. We are asked whether he was entitled to pay after the 6-month authorization in temporary Federal recognition status had expired and no notification was made to him that he was not to attend regularly scheduled training.^{1/} We conclude that he is entitled to retain any pay and allowances he received since it appears that he had no indication that his temporary Federal recognition had expired.

To be entitled to receive active duty pay and allowances or pay for inactive duty training (drill pay) from Federal funds, a member of the Army National Guard must be "federally recognized." See 37 U.S.C. §§ 101(6) and (7), 204, 206. To receive Federal recognition, an officer must meet the requirements provided by law and regulations. See 32 U.S.C. §§ 305-310.

Captain Carlton C. Hurley, Jr. was appointed as an Army nurse in the Louisiana Army National Guard with temporary Federal recognition on December 16, 1981. On June 15, 1982, Captain Hurley's temporary Federal recognition expired in

^{1/} The Assistant Secretary of the Army (Financial Management) submitted this request for a decision and it has been assigned control number SS-A-1437 by the Department of Defense Military Pay and Allowance Committee.

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accordance with 32 U.S.C. § 308. Although permanent Federal recognition had not been received, it appears that notification was not made at that time to Captain Hurley that he was not to attend regularly scheduled training with the Louisiana Army National Guard Unit.

In August 1982 Captain Hurley was issued a conditional release from the Louisiana Army National Guard for relocation to another state. The North Carolina Army National Guard appointed him an Army nurse on September 11, 1982. On November 9, 1982, the North Carolina Army National Guard discovered that Captain Hurley had not been granted permanent Federal recognition and that the temporary Federal recognition had expired. At that point he was suspended from active drill status.

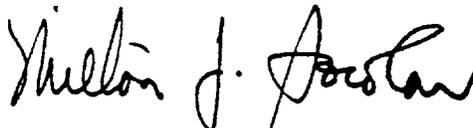
At the time the North Carolina Army National Guard discovered the lack of permanent Federal recognition, Captain Hurley had already performed and was paid for duty in October and November 1982. He had also performed military duty with the Louisiana Army National Guard subsequent to the expiration of his temporary Federal recognition on June 15, 1982.

The National Guard Bureau notified the North Carolina Army National Guard on December 13, 1983, that Captain Hurley would not be extended Federal recognition as an Army National Guard nurse. He was separated from the North Carolina Army National Guard on January 11, 1984, with an effective date of September 12, 1982.

Paragraph 2-11, NGR 600-100, provides that temporary Federal recognition may be extended to an officer who has been appointed in the Army National Guard of a State and found qualified by a Federal Recognition Board pending a final determination of eligibility for an appointment as a Reserve commissioned officer of the Army. Such recognition, if not replaced by permanent recognition, shall automatically terminate 6 months after the effective date. 32 U.S.C. § 308.

Paragraph 1-6, NGR 37-104-3, provides that temporary Federal recognition granted in accordance with NGR 600-100 will entitle an officer to pay for all training performed from the effective date of recognition until the withdrawal of recognition by the Chief, National Guard Bureau because of failure to qualify for permanent Federal recognition, or until expiration of the 6-month period of temporary Federal recognition permitted by law, whichever date is earlier.

Captain Hurley performed training duty commencing with his appointment with temporary Federal recognition on December 16, 1981, with both the Louisiana Army National Guard and the North Carolina Army National Guard. Both of the National Guard organizations apparently were unaware of the expiration of his temporary Federal recognition. Captain Hurley was not informed of the expiration of Federal recognition until November 1982. It appears that he served during this period under color of authority and without knowledge, either actual or constructive, of the fact that temporary Federal recognition had expired. Therefore, he is entitled to retain the pay and allowances received by him in good faith for service as a de facto officer for the period after the expiration of the temporary Federal recognition through the date of notification that it had expired. See 33 Comp. Gen. 475 (1954).

for 
Comptroller General
of the United States