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DECISION



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

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FILE: B-217652

DATE: March 18, 1985

MATTER OF: Charles E. Hopkins

DIGEST:

1. Members of the Reserve components of the armed forces who are disabled in the line of duty from injury while performing active duty for training are entitled by law to military pay and allowances during subsequent periods when they are incapacitated for the performance of their normal military duties. A disabled reservist's right to pay and allowances is not limited to the initial period of incapacitation resulting from a line-of-duty injury, but extends to subsequent periods of incapacitation determined to have resulted from a relapse, or a recurrence of the original disability.
2. When military reservists are injured in the line of duty while performing active duty for training, determinations concerning the subsequent periods of their disability for pay purposes are left to the exercise of sound administrative judgment. Those determinations should, whenever possible, be based upon the findings and conclusions of service medical personnel, clearly setting forth the period or periods of inability to perform normal military duties because of the particular injury. In the absence of specific determinations by medical personnel, however, it is permissible for a reservist's unit commander to make the necessary administrative fitness-for-duty determination using secondary evidence, including personal observations and interviews of the reservist.
3. If a military reservist is injured while performing active duty for training and

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as a result becomes eligible for military pay and allowances for subsequent periods of disability, entitlement to pay and allowances terminates when a determination is made by service medical authorities that the reservist is again physically fit for military duty, in the absence of clear and uncontrovertible contrary proof of continued physical incapacitation. Hence, an Army Reserve sergeant injured on June 1, 1980, during a 15-day tour of active duty who was determined by Army physicians to be fit for military duty effective October 14, 1980, may not be allowed disability pay for periods after October 14, notwithstanding his belief that he remained disabled.

4. The burden of establishing the existence and nonpayment of a valid claim against the Federal Government is ultimately upon the person asserting the claim. Ordinarily, proof of the validity of a claim can be found in Government files, but in situations where official records or other evidence which may prove or disprove the validity of a claim cannot be produced from Government files or elsewhere, the claim must be denied. Therefore, in the case of a former Army Reserve sergeant who asserted a claim in 1984 for disability pay on account of an injury suffered during a 15-day tour of active duty that ended on June 14, 1980, no payment may be allowed for the period between June 15 and August 18, 1980, where the Army medical records and command certifications remaining available showed only a relapse from physical fitness and incapacitation during the subsequent period from August 19 to October 14, 1980.

Mr. Charles E. Hopkins requests reconsideration of our Claims Group's settlement of his claim for additional

amounts of military pay and allowances believed due on account of an injury he suffered on June 1, 1980, while he was serving on active duty as a member of the Army Reserve.^{1/} In light of the facts presented, and the applicable provisions of statute and regulation, we sustain the earlier settlement of Mr. Hopkins' claim.

Background

The records before us indicate that Mr. Hopkins was ordered as a staff sergeant of the Army Reserve to perform 15 days of active duty for training from May 31 to June 14, 1980, at Fort Chaffee, Arkansas. He was injured on June 1, 1980, and the injury was subsequently determined to have been incurred in the line of duty. He was hospitalized at Fort Chaffee as the result of the injury from June 5 to 10, 1980.

The available records further indicate that several months later, Mr. Hopkins was again hospitalized on account of the injury he suffered on June 1, 1980. The second period of hospitalization was apparently from September 19 to October 14, 1980, at Reynolds Army Hospital, Fort Sill, Oklahoma. A medical record dated October 14, 1980, reflects that an Army medical board convened on October 10 diagnosed his condition as "(m)echanical low back pain." The board also determined that he was medically qualified for military duty, subject to specified assignment limitations.

In addition, the records presented in this case show that 2 weeks after Mr. Hopkins was released from the hospital at Fort Sill, the commanding officer of his Army Reserve unit on October 27, 1980, certified that he had been incapacitated for duty during the earlier period from August 19 to September 18, 1980, that is, during the month before he was admitted to the hospital for further treatment and evaluation on September 19, 1980.

By letter dated January 24, 1984, Mr. Hopkins submitted a claim to the headquarters of Fort Sill for military pay and allowances for the period from August 19 to September 18, 1980, and in support of this claim he presented a

^{1/} This decision is issued under 31 U.S.C. § 3702 and 4 C.F.R. § 32.1 at the request of the claimant, Mr. Hopkins.

copy of his commanding officer's October 27, 1980 certification. Army officials at Fort Sill forwarded this claim to the Army Finance and Accounting Center in Indianapolis with a statement that "records of the period involved have been destroyed at this station; cannot verify payment or non-payment." Officials at the Finance Center apparently then determined that the commander's certification had not previously been presented, and that payment of military pay and allowances had not previously been made to Mr. Hopkins for the period from August 19 to September 18, 1980, on the basis of that certification. On May 7, 1984, a check was issued to him as military disability pay and allowances for that period.

By letter dated May 14, 1984, Mr. Hopkins indicated he believed he was due additional amounts of military disability pay from the Army. His renewed claim was for military pay and allowances for the period from June 1, 1980, through February 2, 1981, less the amount previously received for the period from August 19 to September 18, 1980. In June 1984 the Army Finance and Accounting Center forwarded this claim to our Office as a matter involving doubtful questions of fact and law.

On January 8, 1985, the Claims Group of our General Government Division declined to authorize payment of all amounts claimed by Mr. Hopkins, but the Claims Group did authorize the Army Finance and Accounting Center to allow him military pay and allowances for the period of his hospitalization if it could be determined that he had not already received payment. Mr. Hopkins has expressed disagreement with this settlement of his claim, contending that he should be allowed additional amounts under the statutes and regulations governing the military pay of Army Reserve members disabled in the line of duty.

Analysis and Conclusion

Subsection 204(g) of title 37, United States Code, provides that a member of the Army Reserve is entitled to the pay and allowances provided by law or regulation for a member of the Regular Army of corresponding grade and length of service, whenever he is called or ordered to active duty for any period of time, and is disabled in line of duty from injury while so employed.

Subparagraph 80254(d)(3) of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) provides that the entitlement of a member of a Reserve component to pay and allowances while disabled terminates upon determination by proper authority that the member has recovered sufficiently to perform normal military duties, or when actually restored to normal military duties, whichever occurs first.

Rule 1, table 8-2-4 of the DODPM, provides that if a member of a Reserve component is disabled in line of duty due to injury while serving on active duty for any period of time, then the member is entitled to active duty pay and allowances until the orders terminate. The rule also provides that if disability continues beyond the termination of orders, or if there is a recurrence of the disability, and the member is unfit to perform normal military duty, entitlement exists to active duty pay and allowances and medical benefits commensurate with the Regular forces.

We have held that the right to active duty pay and allowances under 37 U.S.C. § 204(g) (and similar statutory provisions applicable to members of other Reserve components of the armed forces) is based upon an injured reservist's physical disability to perform normal military duty, and determinations concerning periods of disability are left to the exercise of sound administrative judgment. In each case the service concerned is to determine when the injured reservist has recovered sufficiently to perform normal military duties.^{2/} In addition, however, a reservist's right to pay and allowances is not limited to the period of initial hospitalization and incapacitation resulting from a line-of-duty injury, but extends to subsequent periods of rehospitalization and incapacitation which are determined to have resulted from a relapse, or a recurrence of the original disability.^{3/}

^{2/} See 54 Comp. Gen. 33, 36 (1974); 52 Comp. Gen. 99 (1972); and 43 Comp. Gen. 733, 737 (1964).

^{3/} See, e.g., 52 Comp. Gen. 667, 670-671 (1973); 39 Comp. Gen. 498, 500 (1960); 30 Comp. Gen. 185 (1950); SP4 David R. Lepper, ARNG, B-185439, August 3, 1976. Compare also William D. Fitzgerald, B-193764, August 6, 1979.

We have further expressed the view that administrative determinations concerning disability should, whenever possible, be based upon the findings and conclusions of service medical personnel, clearly setting forth the period or periods of inability to perform normal military duties because of the particular disability.^{4/} A determination made by service medical authorities that a reservist is physically fit for duty terminates entitlement to disability pay and allowances, in the absence of clear and incontrovertible contrary proof of continued physical incapacitation. In such circumstances, the reservist's complaint of continued physical discomfort and further treatment by civilian physicians are generally insufficient in themselves to overcome the presumption that the reservist has recovered the ability to resume the performance of normal duty.^{5/}

We have also recognized that cases may occur in which an injured reservist is released from hospitalization or care by service medical personnel without specific determinations having been made regarding the dates of the period or periods of disability. In such cases it is permissible for the reservist's unit commander or other appropriate military authority to use secondary evidence, including personal observations and interviews of the reservist, in making the necessary administrative fitness-for-duty determination.^{6/}

In the present case, Army medical officers at Fort Sill, Oklahoma, determined that Mr. Hopkins was physically fit for military duty as of October 14, 1980, subject to specified assignment limitations. There is no evidence of record to suggest that this medical determination was arbitrary or erroneous, nor is there any indication that the assignment limitations precluded him from performing the normal duties of his military specialty. Hence, we have no basis for allowing Mr. Hopkins' claim for additional amounts

^{4/} See 47 Comp. Gen. 531, 534 (1968); and 36 Comp. Gen. 692, 694 (1957).

^{5/} See 52 Comp. Gen. at 670; SP4 Carl L. Adams, ARNG, B-193386, June 8, 1979.

^{6/} 36 Comp. Gen. at 694; SP4 Carl L. Adams, ARNG, B-193386, supra.

of disability pay and allowances for the period from October 15, 1980, to February 2, 1981.

Concerning Mr. Hopkins' claim for additional amounts of disability pay and allowances believed due for the time between June 1 and October 15, 1980, we note that the Army medical board convened in his case in October 1980 did not clearly set forth any specific findings concerning the dates of the prior period or periods of his disability. We note further, however, that he was in an active duty status with his unit between May 31 and June 14, 1980, and as a matter of administrative regularity we presume that he was then paid his active duty pay and allowances for these 15 days. Moreover, he has been authorized disability pay and allowances for the period from August 19 to October 14, 1980, based on his rehospitalization and his commander's certification of incapacity when not hospitalized during that time. The remaining claim at issue is thus one for additional disability pay and allowances for the period from June 15 through August 18, 1980.

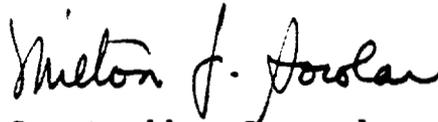
The documents presented by Mr. Hopkins do not show that he was certified by Army medical or command authorities as incapacitated due to physical injury during the period from June 15 through August 18, 1980, nor do those documents reflect that he was excused from his normal military Reserve training duties on account of physical disability during that time. The commanding officer's certification which was presented concerning his incapacitation for the period from August 19 through September 18, 1980, contains no information regarding his condition during the earlier period at issue. Further, a records search initiated by the Army Finance Center in 1984 at the Reserve unit, at the Fort Sill hospital, and at the Army Reserve Components Personnel and Administration Center in St. Louis, produced no additional documentary evidence of relevance. In addition, the Finance Center was unable to locate the individual who had been the Reserve unit commander in 1980.

Thus, although Mr. Hopkins suggests that he was disabled between June 15 and August 18, 1980, no documentary evidence has been presented to show the appropriate Army medical or command authorities made the requisite administrative determination that he actually was incapacitated for military duty during that time. We point out that the burden of establishing the existence and nonpayment of a

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valid claim against the Federal Government is ultimately upon the person asserting the claim. Ordinarily, proof of the validity of a claim can be found in Government files, but in situations such as this where official records or other evidence which may prove or disprove the validity of a claim cannot be produced from Government files or elsewhere, the claim must be denied. Here, in the absence of documentary evidence that Mr. Hopkins was determined by appropriate military authority to be disabled for duty between June 15 and August 18, 1980, we have no alternative but to presume the official determination was that he was physically fit for duty during this period, and the subsequent period of incapacitation was determined to be a recurrence of the disability resulting from the June 1 injury.

Accordingly, we disallow Mr. Hopkins' claim for additional amounts believed due and sustain our Claims Group's previous settlement in the matter.

for 
Comptroller General
of the United States