

DECISION



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

FILE: B-179866

DATE: JUL 31 1974

MATTER OF: Pay and allowances - , CS2,
USN

DIGEST: Navy member who while on authorized leave was arrested by civilian authorities and then restricted to State of South Dakota while awaiting trial, at which he was convicted, and who apparently performed no duties commensurate with grade or specialty is not entitled to pay and allowances during period subsequent to authorized leave as absence was result of own misconduct and was not excused as unavoidable.

This action is in response to letter dated July 16, 1973 (file reference 300:DMT:rr 7220), with enclosures, from the deputy disbursing officer, Navy Regional Finance Center, Great Lakes, Illinois, requesting an advance decision as to the legality of crediting the pay account of , CS2, USN, with basic allowance for quarters, base pay and standard maintenance allowance for the period from July 16, 1972, through March 20, 1973. The request was forwarded to this Office by endorsement of the Comptroller of the Navy, dated October 11, 1973 (file reference NCF-411 7220/MPAC), and has been assigned submission number DO-N-1205 by the Department of Defense Military Pay and Allowance Committee.

It appears that while on authorized emergency leave from the U.S.S. Coucal (ASR-8) homeported at Pearl Harbor, Hawaii, the member was taken into custody by civil authorities in Rapid City, South Dakota, on July 7, 1972, and charged with possession of marijuana. He was held in jail overnight and then released on bond, the terms of which restricted his movement to the State of South Dakota pending disposition of the case.

The record shows that while still in a leave status, Petty Officer consulted personnel at the Navy Recruiting Station in Rapid City regarding his inability to leave the state. Telephonic approval from the Commandant, Ninth Naval District, Great Lakes, Illinois, was obtained for the member to remain within the area until disposition of his case. According to the submission, the member's authorized leave expired on July 15, 1972, but he remained in South Dakota during the period from July 16, 1972, until March 20, 1973.

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The disbursing officer indicates that during this period, Petty Officer [redacted] appeared at the recruiting station from time to time usually because of his own personal problems with the Navy. A report from the Commandant, Ninth Naval District, states that although the member did not have scheduled musters with the recruiting station he reported there on the average of two to four times per week and frequently did odd jobs at the station.

On March 9, 1973, he was tried, found guilty and sentenced to one year's probation. The member returned to military jurisdiction on March 21, 1973.

Title 37 of the United States Code, section 503(a), provides that:

"A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or Environmental Science Services Administration, who is absent without leave or over leave, forfeits all pay and allowances for the period of that absence, unless it is excused as unavoidable."

This Office consistently has held that during periods of detention by civil authorities a member is entitled to pay for such part of the period of the detention as is covered by an authorized grant of leave, but a member not on authorized leave whose misconduct has caused him to be in the hands of civil authorities and thus unable to fulfill the obligation to be at his post of duty must be regarded as absent without leave and his pay for such period of unauthorized absence is forfeited. 36 Comp. Gen. 173, 175 (1956).

We held in decision, B-132595, August 26, 1957, that where the member was confined to his military base for civilian authorities, the term "confinement" as used in 36 Comp. Gen. 173, *supra*, did not include periods when the member is in a duty status while awaiting civil trial even though his area of movement is restricted during such periods.

In the present case, the member was not present at his permanent duty station, U.S.S. Coucal during the period in question, nor was he assigned to temporary duty at the recruiting station in Rapid City, in spite of the fact that the member received telephonic

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approval to remain in the area until the disposition of his case. Further, while it is indicated that the member did appear at the Navy Recruiting Station on the average of twice a week, there is conflicting evidence as to what he did at the recruiting station. In any event it does not appear that he performed the duties commensurate with his rank and grade. Compare 52 Comp. Gen. 317 (1972).

There is nothing of record to indicate that Petty Officer absence was excused by his commanding officer or any other authority, as unavoidable. Furthermore, such action, in view of the member's conviction by the civil court, would not appear to be proper as it is clearly evident that the member placed himself in a situation where his absence was a loss to the Government of his services as a direct result of the civil offense which he committed. See 45 Comp. Gen. 766 (1966).

Consequently, based on the record before us, it is our view that the member's pay account may not be credited with pay and allowances for any portion of the period from July 16, 1972, through March 20, 1973.

R.F.KELLER

Deputy Comptroller General
of the United States