

DECISION



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

JUL 15 1974

FILE:

DATE:

B-179874

MATTER OF:

Request for advance decision for disability pay
and allowances in the case of Captain

DIGEST:

Military reservist who sustained serious injury with accompanying inability to perform his military duties where such injury is determined to have been in line of duty and who attends scheduled inactive duty training assemblies between the date of injury and hospitalization for surgery for such injury, since he had not been found fit for duty in any capacity by service medical authorities during that time, he is entitled to disability pay and allowances from date of injury until service medically determined to be fit to resume military duties, less any drill pay received during period.

This action is in response to a request for an advance decision from the Finance and Accounting Officer, Headquarters, United States Army Field Artillery Center, Fort Sill, Oklahoma, concerning the propriety of making payment of disability pay and allowances in favor of Captain [redacted], USAR, SSAN, during the period May 6, 1972, to August 7, 1972, in the circumstances described. This submission was forwarded to this Office by letter dated October 11, 1973 (file reference DACA-CSJ-E), from Office of the Comptroller of the Army, Department of the Army, and has been assigned Control Number DO-A-1204, by the Department of Defense Military Pay and Allowance Committee;

The file shows that by Letter Orders No. S-03-3709, dated March 31, 1972, the member was ordered to annual training for a 12-day period to commence April 24, 1972. While serving on that duty, the member was authorized leave for the period from 1600 hours on April 26, 1972, until 0730 hours on April 27, 1972, which were nonduty hours, it appearing that the member's normal duty hours during annual training were from 0730 hours to 1600 hours. On that evening, at approximately 11:30 p.m. and during official nonduty hours the member sustained injuries in a fall from the roof of a house he was building and was treated by a civilian physician at the nearest hospital.

The file reflects that on May 7 and 21, 1972, the member, apparently not fully aware of the extent of his injuries, attended
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several MUTA-2 assembly meetings in an attempt to fulfill his continuing military obligation. On May 24, 1972, the member was referred to a Veterans Administration Hospital where he was admitted for surgery on May 25. Following surgery, he remained in the hospital until June 16, 1972, but was not released to military duty until August 8, 1972 and on November 24, 1972, final action was taken by the Army to determine that Captain injury was suffered in line of duty.

The provisions of law concerning entitlement to pay and allowances during periods of disability for members of the Army other than Regular Army are contained in 37 U.S.C. 204(g), which provides generally that they are entitled to receive pay and allowances as may be provided by law or regulation for members of the Regular Army if called to active duty for more than 30 days and suffer disability in line of duty from disease while so employed, or if ordered to active duty or inactive duty training for any period of time and suffer disability in line of duty from injury while so employed.

The legislative history of 37 U.S.C. 204 establishes that it was the intention of Congress that non-Regular members of the uniformed service disabled in line of duty under the conditions prescribed therein should be kept in a pay status until their hospitalization is completed and their case finally settled, that is, while awaiting a final decision of their case. In this regard, we have held that the standard to be applied in determining a member's right to receive disability benefits while he is temporarily disabled by an injury incurred in line of duty, is his physical inability to perform military duty and not the duties of his civilian employment. See 43 Comp. Gen. 733 (1964) and 47 Comp. Gen. 531 (1968).

In this connection, paragraph 80254(d)(3) of the Department of Defense Military Pay and Allowances Entitlements Manual, in effect at the time, stipulated that disability pay and allowances terminated upon release or restoration (including limited or restricted duty) to military duty and attendance at reserve unit training assemblies constituted restoration to military duty.

The file reflects that service medical authority had not made a finding of fit for duty in the member's case, limited or otherwise, during the period between the date of injury and the date admitted to the hospital. In such circumstances, the mere attendance at the

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MUTA-2 assemblies should not be considered determinative in his case. It is our view that, since the record indicates that the injuries sustained were sufficiently serious so as to require surgery within one month following the accident, that the member's injury with an accompanying inability to perform his military duties, continued virtually without interruption from the date of the accident until August 7, 1972, when he was found fit for full military duty.

In view of the in line of duty determination made in this case, payment of disability pay and allowances may be made to the member for the period May 6, 1972, to August 7, 1972, less drill pay received during that period, if otherwise correct.

R.F. KELLER

Deputy] Comptroller General
of the United States