

DECISION



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

FILE: B-185887

DATE: OCT 15 1976

MATTER OF:

A1C, USAF

DIGEST: Air Force member is not entitled to reimbursement for expense of elective surgery he had in civilian hospital without Air Force approval, when adequate military medical service was available, notwithstanding fact he may have been erroneously informed that he could have surgery at civilian facility and be reimbursed by the Air Force. Also, such claim does not contain such elements of legal liability or equity as would warrant submission to Congress under the Meritorious Claims Act of 1928, 31 U.S.C. 236.

This action is in response to the claim of A1C USAF, for reimbursement of expenses he incurred for an operation performed upon him by a civilian doctor in a civilian hospital in Altus, Oklahoma, during July 13-15, 1975. The claim was forwarded to this Office by letter dated February 3, 1976, from Lieutenant Colonel Wayne E. Robinson, USAF, Staff Judge Advocate, Headquarters United States Air Force, for consideration under the provisions of the Meritorious Claims Act of 1928, 31 U.S.C. 236 (1970).

The submission indicates that Airman in June 1975 attempted to make arrangements for an operation at the Air Force Hospital in Altus, Oklahoma, but the doctor who normally performed the operation in question was away until August. The surgery involved was elective and not related to the member's immediate health. He indicates that since he did not wish to wait until August for the operation, he called the registrar's office at the base hospital to see if he could have the surgery performed off base under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). He indicates that he was informed that he could have the operation performed under that program. He also indicates that he called back (presumably a few days later) to inquire about obtaining necessary forms and was advised that military members are not eligible to receive CHAMPUS, but that the base hospital business office might be able to help him.

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The member indicates that he then telephoned the business office and explained his problem to an individual he believed to be Airman McCraw, who assured him that he might have to pay the civilian hospital, but that upon presentation of his receipts to the business office, the Air Force would definitely reimburse him for the expenses.

On June 27, 1975, Airman made arrangements with a civilian doctor to have the surgery performed on July 14, 1975. He apparently entered the civilian hospital on July 13, had the surgery performed, and was released from the hospital on July 15, 1975. He states he was informed that he would have to pay the bill and the Air Force would not reimburse him for it.

The member contends that since he contacted a person supposedly qualified to furnish him information concerning Air Force policy, with which he was not familiar, he should be reimbursed for the indebtedness incurred in reliance upon the erroneous information he received. The submission indicates that no one working in the business office of the Air Force Hospital, including Airman McCraw, claims to have made such representation.

The regulations covering reimbursement for medical care furnished members of the Air Force from civilian sources are provided in Air Force Regulation 168-10 (December 12, 1973), paragraph 2a of which states that civilian medical care for active duty Air Force military personnel at Government expense is authorized only when the required treatment cannot be obtained from uniformed services medical facilities. Paragraph 6 of that regulation specifically provides that civilian medical care at Air Force expense is not authorized for, among others:

"a. Elective treatment unless explicitly approved in advance by HQ USAF/SG and the member's commander.

"b. Treatment when adequate medical or dental service is available from an Air Force or other government medical or dental facility in the vicinity."

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It appears that adequate medical service from the Air Force was available and all that the member had to do was await the return of the surgeon in August. Apparently, he preferred not to wait and, instead, he elected to have the surgery performed at a civilian facility. The advance approval required by the regulation was not secured.

While it is unfortunate that the member was not familiar with the regulations or that he may have even been misinformed, those facts afford no legal basis to allow him reimbursement not otherwise authorized by law or regulations. Since there is no legal basis for reimbursement in this case, this Office may not authorize payment of the claim.

Concerning the application of the Meritorious Claims Act of 1928, that act provides that when a claim against the United States is filed in this Office that may not be lawfully adjusted by use of an appropriation, but which in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, it shall be submitted to the Congress with our recommendations. The remedy is an extraordinary one and its use is limited to extraordinary circumstances in which there are elements of legal liability or equity on which the General Accounting Office would take action and allow but for the fact that there is no appropriation available for adjustment. 34 Comp. Gen. 490 (1955).

The cases which we have reported to Congress have generally involved circumstances of an unusual nature which are unlikely to present a recurring problem, since to report to Congress a particular case where similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances.

Based on the information submitted, we do not consider that this claim has elements of equity of an unusual nature which would be unlikely to recur. In fact we are aware of a number of other cases of a similar nature in which members were not reimbursed.

Accordingly, we do not believe it would be appropriate to submit a recommendation to the Congress for relief of

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Airman under the Meritorious Claims Act, and no further action will be taken by this Office in the matter.

R. F. KELLER

Deputy Comptroller General
of the United States

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