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DECISION



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

FILE: B-187537

DATE: April 22, 1981

MATTER OF: Thomas G. Wise, M.D. - Variable Incentive Pay ^[Entitlement to]

DIGEST: Public Health Service (PHS) officer who agreed to accept a commission in PHS in October 1973 and thereafter signed a memorandum of understanding for participation in the PHS Commissioned Officer Residency Deferred program in August 1974 whereby he received a deferral from active military duty under the Military Selective Service Act, should not be considered to have disqualifying active duty obligation for purposes of variable incentive pay authorized pursuant to 37 U.S.C. § 313 (1976) since induction authority, with certain exceptions not relevant here, under Military Selective Service Act expired June 30, 1973.

The issue presented is whether a commissioned officer in the Public Health Service (PHS) who was appointed and assigned to the Commissioned Officer Residency Deferred (CORD) program after authority for induction and training pursuant to the Military Selective Service Act had expired and who was otherwise qualified should have been denied Variable Incentive Pay (VIP). The answer is no.

[Dr. Wise was appointed in the Public Health Service] as an assistant surgeon [in the inactive Reserve Corps] effective October 12, 1973, [and was assigned to the CORD program. He entered on extended active duty] July 1, 1975, and served on active duty as surgeon in the Reserve Corps of the PHS until June 30, 1977. which based on yrs.

In a letter dated September 6, 1973, from the Commissioned Personnel Division, [Dr. Wise was informed of his selection for sponsorship under the CORD program contingent upon his being found fully qualified for a commission in the PHS. That letter also informed him that active duty in the Commissioned Corps of the PHS for a period of 2 years would fulfill his obligation under the Military Selective Service Act and that in the event of resumption of induction under that Act, 2 years of active duty in the PHS would relieve him from further service and training.] In a further letter dated October 12, 1973, from the

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Commissioned Personnel Division, Dr. Wise was informed of his appointment as a commissioned officer in the PHS with assignment to the CORD program. There was no explanation of the CORD program in that correspondence. The October 12, 1973 correspondence was accompanied by a PHS Commissioned Corps Appointment Affidavit to which he subscribed on October 26, 1973. No mention is made of the CORD program in the affidavit.

It also appears that [Dr. Wise executed an undated "Request for Deferment and Hospital Agreement"] for the period of July 1, 1974, through June 30, 1975, [before serving his Selective Service obligation in the PHS Commissioned Corps.] The hospital agreement portion of the form was completed by an official of Strong Memorial Hospital and dated August 14, 1974. On that same date, August 14, 1974, he signed a memorandum of understanding concerning participation in the CORD program.

On June 6, 1975, Dr. Wise was sent a VIP service agreement together with a memorandum explaining the VIP. On June 12, 1975, [he signed the service agreement to remain on active duty for 2 years for purposes of qualifying for VIP. Dr. Wise was recommended for the VIP by his superiors in the PHS but his application was denied for the reason that his CORD status rendered him ineligible since it had been determined that all officers appointed in the CORD program] prior to September 3, 1974, [would have an initial active duty obligation to perform.] 37 U.S.C. § 313(a)(4) (1976).

[The purpose of VIP is to increase the pay provided to medical officers in the uniformed services in an attempt to provide an incentive for those professionals to remain voluntarily in the uniformed services in view of the disparity in pay between physicians in the private sector and the pay and allowances otherwise allowable to members of the uniformed services.] H.R. Rep. No. 93-883, 93d Cong., 2d Sess. 7 (1974).

[To effect this purpose of attracting physicians who would otherwise remain in the private sector, the Department of Health, Education and Welfare regulations in effect at the time, provided among other things, that the medical officer have no "disqualifying active duty obligation."]

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This requirement is derived from section 313(a)(4) of title 37, which provides that VIP will not be paid to a medical officer "* * * serving an initial active duty obligation of four years or less * * *." The regulations defined "disqualifying active duty obligation" to include an obligation to enter or remain on active duty incurred as a result of "An agreement entered into by an individual to serve after a period of deferment. (CORD, Berry Plan.)"

The CORD and Berry Plan programs implemented pursuant to section 4(j) of the Military Selective Service Act of 1967 (the forerunner of which was originally enacted June 24, 1948, ch. 625, 62 Stat. 604), as amended, 50 U.S.C. App. 454(j), incorporated an agreement whereby the participants agreed to serve for 2 years of active duty as Reserve commissioned officers of a uniformed service in return for a deferment from active duty to complete their medical training.

[The issue as to whether Dr. Wise should have been considered disqualified from receiving VIP until his completion of 2 years' active duty under the CORD program is raised here because at the time of his election and appointment in the CORD program on October 12, 1973, he could not have been involuntarily inducted into the Armed Forces.] Authority for induction for training and service in the Armed Forces under the Military Selective Service Act expired on June 30, 1973, the termination date for inductions as set forth in section 17(c), as amended (50 U.S.C. Appendix 467(c) (Supp. V. 1975)).

[Although the induction authority under the Act expired, the law itself remained unchanged. Similarly, the CORD program was continued by the PHS. At the time the VIP regulations were promulgated in September 1974, it seems a determination was made that those already in the CORD program would be considered as serving an initial active duty obligation which would preclude the payment of VIP.] 37 U.S.C. § 313(a)(4) (1976). [Individuals who had entered the CORD program prior to expiration of the induction authority were properly considered to be serving an obligated period of active service. However, those entering the program after the expiration date did not have an obligated period of service and since the authority to induct had expired, there was no reason to grant a deferment.]

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In view of this, it is our opinion that individuals entering the CORD program subsequent to the expiration of induction authority under the Military Selective Service Act, should not be considered as serving an initial active duty obligation for the purposes of 37 U.S.C. § 313(a)(4) (1976).

Thus, it is our view that Dr. Wise should not have been considered as having a disqualifying active duty obligation under 37 U.S.C. § 313(a)(4) (1976), and if otherwise eligible, is entitled to VIP computed on the service he performed from July 1, 1975, to June 30, 1977.

Milton J. Avolan

Acting Comptroller General
of the United States