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**DECISION**

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

FILE: B-195234

DATE: October 23, 1979

MATTER OF: EOCS Alexander D. Christie, USN

*Request For*

DIGEST: A member of the uniformed services is granted convalescent or sick leave while recuperating from surgery and although released from the hospital is restricted as to the distance he may travel while on leave. Member is not entitled to per diem or reimbursement for expenses incurred while on sick leave.

The issue presented in this appeal from a settlement of our Claims Division is whether a member of the uniformed services may be reimbursed for expenses incurred while on sick leave where he is restricted as to the distance he may travel while on leave and he was not informed that the leave would be at his own expense or that he had an option to remain at the hospital until able to return to his duty station. The answer is no.

*Sick leave  
Military personnel  
Substantive allowance  
Temporary duty  
expense allowance  
Travel logs in  
allowance  
Claims settlement*

A Chief Petty Officer Alexander Christie, a member of the United States Navy, while stationed at the Naval Communication Station Harold E. Holt in Western Australia, was assigned to temporary additional duty (TAD) at Tripler Army Medical Center in Honolulu, Hawaii, for medical treatment and upon completion of the medical treatment was ordered to return to his duty station in Western Australia and resume his regular duties.

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The employee Chief Christie underwent surgery, at Tripler Army Medical Center (and after 1 week of recovery was authorized sick leave for 30 days with the restriction that he was not to leave the State of Hawaii. He remained on leave from 1 p.m., April 25, 1977, until 8 a.m., May 5, 1977. Thereafter he was released from the hospital and returned to his duty station in Australia departing May 7, 1977. While on sick leave Chief Christie stayed in the Hale Koa Hotel, an armed forces recreation center in Honolulu, Hawaii.)

(Chief Christie contends that at the time he was released from the hospital for convalescent (sick) leave, he was not informed that the leave would be at his own expense or that he had the option to remain at the hospital until ready for release

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to active duty. He seeks reimbursement for expenses incurred while in a sick leave status (lodging and subsistence).)

( Military members do not have sick leave as such, but may be granted convalescent leave after serious illness. However, such convalescent or sick leave is not charged against a member's regular leave account.) Section 502(a) of title 37, United States Code (1976), provides in part as follows:

"(a) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or Environmental Science Services Administration, who is absent because of sickness or wounds, or who is directed by the Secretary concerned, or his designated representative, to be absent from duty to await orders pending disability retirement proceedings for a period that is longer than the leave authorized by section 701 of title 10, is entitled to the pay and allowances to which he would be entitled if he were not so absent. \* \* \*"

Under the current laws, convalescent leave is only expressly recognized for "illness or injury" incurred while the member was eligible for the receipt of hostile fire pay) under 37 U.S.C. 310 (1976). In that event, 37 U.S.C. 411a (1976) authorizes travel and transportation at Government expense for the member from place of treatment to a place selected by him and approved by the Secretary concerned, and return. Implementing regulations for 37 U.S.C. 411a are contained in Part K, Chapter 5 of Volume 1, Joint Travel Regulations (1 JTR). (Even in those situations) paragraph M5551, 1 JTR, provides that (payment for per diem, meal tickets, and reimbursement for subsistence and lodgings are not authorized in connection with convalescent leave travel.)

( Chief Christie's case does not fall within the purview of 37 U.S.C. 411a since there is no indication that his medical problem was incurred while he was eligible for receipt of hostile fire pay. However, even if he were eligible under that statute, he would not be entitled to the lodging and subsistence expenses he claims. )

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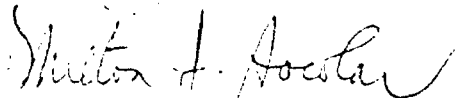
(Chief Christie's status while on sick leave in Honolulu was not unlike that of a member on liberty or pass.) While no statutory authority exists which gives a definitive limit to the military liberty or pass, by tradition it is limited in use to cover short periods when members would not ordinarily be scheduled for actual duty performance. However, (if liberty is made available, its use is at the discretion of the member and the Government has no obligation to pay his expenses while on liberty or a pass.)

Chief Christie makes a point of the fact that he was not notified by the hospital that leave would be taken at his own expense or that he had the option to remain at the hospital, where lodging and subsistence were available, until he was returned to active duty.

While he may not have been specifically advised of these matters, he should have known what his rights and benefits were, or he should have made inquiry on his own if he was in doubt. If his medical condition was such that it was not necessary for him to be confined in the hospital we are not aware of any authority that required him to be confined or retained there until released to active duty. So long as he was in such close proximity that he could be treated as an outpatient would appear to satisfy any medical requirements. This could have been accomplished by having Chief Christie billeted at any of the numerous military installations in the Honolulu area if he had made his wishes known.

Chief Christie was not obligated to take sick leave. However, since he apparently could not be returned to active duty and his services could not be used at the hospital there was no requirement or reason that he remain there until finally released to active duty. By limiting his travel to the State of Hawaii it was apparent that the military medical authorities wished to exercise some control over his activities. In such a situation they should not and apparently did not charge his leave account for his days of absence. However, as is stated above, a member is not entitled to lodging and subsistence expense reimbursement while on sick leave.

Accordingly, the action taken by our Claims Division denying the claim for expenses while on sick leave is sustained.



For the Comptroller General  
of the United States