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DECISION

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

FILE: B-201118

DATE: May 21, 1981

MATTER OF: Maury L. Hanson, Jr., M.D. - Variable Incentive Pay

[Refund of]

DIGEST: A medical officer of the Public Health Service signs a 1-year variable incentive pay (VIP) agreement but voluntarily leaves the Service before completing 1 year. Medical officer is required to refund entire amount of VIP paid under the agreement in accordance with regulations promulgated under 37 U.S.C. 313(c) (1976).

The issue presented in this case is whether a commissioned officer in the Public Health Service (PHS) who executes a 1-year variable incentive pay (VIP) agreement authorized by 37 U.S.C. 313 (1976) and voluntarily terminates the agreement before completion of the 1-year agreement may be required to refund the entire VIP payment or should any refund be based on a pro rata basis. When an officer voluntarily fails to complete a 1-year contract, refund of the entire amount of VIP paid is required.

Maury L. Hanson, Jr., M.D., was appointed and called to active duty in the Commissioned Corps of the PHS in April 1976. On May 25, 1979, Dr. Hanson executed a VIP agreement, whereby he agreed to remain in the Service for 1 year in exchange for VIP of \$11,000 in addition to his regular pay and allowances. The effective date of his VIP agreement was June 25, 1979. On January 5, 1980, Dr. Hanson was released at his own request from active duty with PHS and accepted employment with the Department of Labor. Since Dr. Hanson separated before June 24, 1980, thus failing to complete his contractual obligation to remain on active duty for 1 year after the effective date of his VIP agreement, he was required under PHS regulations to refund the entire amount of his VIP agreement, \$11,000. In addition, Dr. Hanson was divested of his separation entitlements, specifically his entitlement to transportation for himself and his dependents, shipment of household goods, and lump-sum payment for unused annual leave.

Dr. Hanson requested that his accumulated annual leave (55 days) be transferred to the Department of Labor. This request was initially denied because the transfer of

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accumulated annual leave in lieu of lump-sum payment for unused annual leave was considered an element of an officer's separation entitlements. In a later determination, the Assistant Secretary for Health, PHS, directed that Dr. Hanson's unused annual leave be transferred in this particular case. Dr. Hanson's unused annual leave was transferred from PHS to the Department of Labor. Therefore, the transfer of annual leave is no longer an issue in this case.

The remaining issue is whether Dr. Hanson is required to refund the full amount of \$11,000 for failure to complete a 1-year VIP agreement or whether, as Dr. Hanson suggests, he should be required to refund only that portion of the \$11,000 which represents the unserved part of his 1-year contractual obligation.

The PHS has denied Dr. Hanson's suggestion on the basis that it is not in concert with PHS Commissioned Corps regulations and policy.

The VIP agreement signed by Dr. Hanson stated that:

"'IF I VOLUNTARILY TERMINATE THIS AGREEMENT I WILL BE DIVESTED OF ENTITLEMENTS FOR TRANSPORTATION FOR MYSELF AND MY DEPENDENTS, SHIPMENT OF HOUSEHOLD GOODS AND LUMP-SUM PAYMENT FOR UNUSED ANNUAL LEAVE. I WILL REFUND VIP IN ACCORDANCE WITH ESTABLISHED REGULATIONS.' [emphasis added]"

Under 37 U.S.C. § 313 (1976) and regulations promulgated pursuant thereto by the Secretary of Health, Education and Welfare, a medical officer of the PHS who is otherwise eligible and executes a written active duty agreement will receive incentive pay for completing a specified number of years of continuous active duty. Upon acceptance of the written agreement by the Secretary or his designee, he may be paid an amount not to exceed \$13,500 for each year of the agreement, in addition to any other pay and allowances to which he is entitled.

This statute also provides that an officer who voluntarily or through his own misconduct does not complete

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the service for which he received the VIP payment, will be required to refund any amounts received in accordance with regulations promulgated by the Secretary. 37 U.S.C. 313(c).

A table provided in the VIP regulations indicates that an officer who executes a 1-year agreement and does not complete the agreement is not entitled to VIP for that year and is required to refund the full amount of any payment made. This table, together with a fact sheet that accompanied all VIP agreements, was disseminated to PHS commissioned medical officers.

A VIP agreement is not renegotiable to a lesser commitment. Terms of a VIP agreement are binding on the parties and an officer who does not complete the active service agreed to is subject to the refund provisions of the agreement and the regulations requiring repayment of amounts received. 58 Comp. Gen. 77 (1978). To the same effect see B-192285, December 15, 1978.

In the present case, Dr. Hanson executed an agreement to serve for 1 year and knew or should have known that if the agreement was not completed he would be required to refund any VIP payments received under the 1-year agreement. This was not a punitive action on the part of PHS but rather a requirement of his agreement as authorized by statute and PHS regulations. The fact that he had previous meritorious service or that he completed three other VIP agreements does not provide a basis to relieve him of his obligation under the agreement executed in 1979.

Accordingly, it is our view that the actions of the PHS were proper in the circumstances and the denial of Dr. Hanson's claim should be sustained.


Acting Comptroller General
of the United States