

DECISION

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

*Write
PLM-II
29148*

FILE: B-204347

DATE: August 22, 1984

MATTER OF: National Guard Members - Incapacitation Pay and Benefits

DIGEST:

Members of federally recognized National Guard units and organizations who are disabled by disease while on full-time duty for periods of 30 days or less under 32 U.S.C. § 502(f) are eligible for the incapacitation payments and related benefits prescribed by 10 U.S.C. §§ 3722 and 8722, and the implementing regulations. These benefits include continuation of the basic pay and allowances to which they were entitled at the time the disease was contracted for a period of up to 6 months beyond the end of the tour of duty, plus medical care and transportation to and from hospitals. Master Sergeant Howard R. Harper, ARNG, B-204347. December 23, 1981, modified.

The question presented is whether National Guard members disabled by disease while on full-time duty under 32 U.S.C. § 502(f) for 30 days or less are eligible for the incapacitation payments and medical benefits prescribed by 10 U.S.C. §§ 3722 and 8722.^{1/} We conclude that they are eligible for those payments and benefits.

Background

In presenting this question, National Guard officials note that Rule 6 of Table 8-2-4, Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), provides that if a Reserve of the Army or the Air Force is disabled in line of duty due to disease while serving on active duty for 30 days or less, he is entitled to continuation of the basic pay and allowances to which he was entitled at the time the disease was contracted for a period

^{1/} This action is in response to a request for a decision received from the Chief of the National Guard Bureau's Office of Legal Advisor.

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of up to 6 months beyond the end of his tour of duty or training. Rule 6 provides that in addition to this incapacitation pay, the Reserve member is also entitled to hospitalization and medical care, including transportation to and from the hospital, for as long as the disability can be improved materially by further treatment. The officials observe that Rule 6 is based on provisions of statute contained in 10 U.S.C. § 3722 for Reserves of the Army, and 10 U.S.C. § 8722 for Reserves of the Air Force, which authorize these payments and benefits for Reserve members who contract a disease "in line of duty while on active duty in time of peace" for periods of 30 days or less.

The concerned National Guard officials further note that in Master Sergeant Howard R. Harper, ARNG, B-204347, December 23, 1981, we determined that a member of the Army National Guard disabled by disease while serving on full-time duty for 30 days or less under 32 U.S.C. § 502(f) was ineligible for any of the incapacitation payments and related benefits authorized by 32 U.S.C. § 318 or any other provision of that title. We did not consider the argument that Army and Air National Guard members disabled by disease in such circumstances might otherwise be eligible for the incapacitation pay and benefits authorized by 10 U.S.C. §§ 3722 and 8722, and the implementing provisions of Rule 6, Table 8-2-4, DODPM. That argument is now raised.

Incapacitation Payments and Medical Benefits

Sections 3722 and 8722 of title 10, and section 319 of title 32, United States Code, contain parallel provisions and are all derived from the act of June 15, 1936, ch. 547, 49 Stat. 1507, which was designed to provide medical care, and incapacitation pay for up to 6 months, for members of the Army Reserve Corps and the National Guard who were injured or suffered disease while in military training. See, generally, B-166852, May 27, 1969. This act is now codified in 10 U.S.C. §§ 3722 and 8722 and in 32 U.S.C. § 319. The more limited provisions protect Reserves and National Guard members when they are not entitled to the full medical benefits and continued military status provided for Reserves and members of the National Guard who are disabled by disease while serving on active duty for a period in excess of 30 days or are injured in the line of

duty while on active duty or inactive duty. Compare 10 U.S.C. §§ 3721, 8721; 32 U.S.C. § 318; see also, 37 U.S.C. § 204(h).

Under 32 U.S.C. § 319 incapacitation payments and medical benefits are authorized for a National Guard member disabled by disease "while attending an encampment, maneuver, or other exercise, or a service school, under section 503, 504, or 505 of this title" for a period of 30 days or less. This provision by its terms does not cover full-time duty performed under 32 U.S.C. § 502(f). Conversely, 32 U.S.C. § 318, which does refer to duty performed under 32 U.S.C. § 502, provides coverage relating to disease when the period of duty is more than 30 days. Thus, we held that section 318 does not provide a basis for allowing incapacitation payments and benefits to Guard members disabled by disease when ordered to duty under 32 U.S.C. § 502(f) for a period of 30 days or less. Master Sergeant Howard R. Harper, ARNG, B-204347, supra.

As indicated, however, 10 U.S.C. §§ 3722 and 8722 authorize incapacitation payments and medical benefits for Reserves of the Army and Air Force who are disabled by disease while on active duty for periods of 30 days or less. See Rule 6, Table 8-2-4, DODPM; SP4 Bobby B. Binns, USAR, B-181014, July 10, 1974. Moreover, we have recognized that these provisions apply equally to National Guard members^{2/} called to active duty in Federal service, under authorities other than 32 U.S.C. § 502(f), for a period of 30 days or less. Cf. 57 Comp. Gen. 305, 308 (1978).

The specific question to be resolved is, therefore, whether full-time duty performed under 32 U.S.C. § 502(f) likewise may be considered active duty in Federal service for purposes of the payments and benefits authorized by 10 U.S.C. §§ 3722 and 8722.

^{2/} Members of the Army and Air National Guard of the United States are Reserves of the Army and of the Air Force, respectively. 10 U.S.C. §§ 269(b), 3497, 8497.

Status of Duty Under 32 U.S.C. § 502(f)

Subsection 502(f) was added by Public Law 88-621, approved October 3, 1964, 78 Stat. 999. It was designed to parallel 10 U.S.C. § 683(a), which authorizes members of the Army Reserve and the Air Force Reserve to be ordered to active duty with or without pay as the Secretary concerned may prescribe.^{3/}

Of importance here is that this new provision in section 502 added an authority to order members of the National Guard to full-time duty. That section otherwise covers inactive duty training and participation in "encampments, maneuvers, outdoor target practice and other exercises." This latter type of service is also covered by section 503 and, therefore, the only full-time duty covered by 502 alone is full-time duty performed under the 1964 amendment adding subsection 502(f).

Some time after the enactment of that amendment it was realized that individuals performing full-time duty under that authority did not receive all the protections received by reservists performing similar duty. As a result an amendment to 10 U.S.C. §§ 3686 and 8686 adding 32 U.S.C. § 502 to the sections referred to in those sections was enacted. Those sections now provide:

"For the purposes of laws providing benefits for members of the * * * National Guard of the United States and their dependents and beneficiaries--

* * * * *

"(2) full-time training or other full-time duty performed by a member of the * * * National Guard of the United States in his status as a member of the * * * National Guard under sections 316 and 502 through 505 of title 32 for which he is entitled to pay from the United States, or for which he has

^{3/} See S. REP. NO. 1584, 88th Cong., 2d Sess., reprinted in 1964 U.S. CODE CONG. & AD. NEWS 3800. See also H.R. REP. NO. 886, 88th Cong., 1st Sess. (1963).

waived such pay, shall be considered active duty for training in Federal service as a Reserve * * *;" (Emphasis added.)

The amending legislation was designed to extend generally to members of the Army and Air National Guard on full-time duty under 32 U.S.C. § 502 the same rights and benefits available to members of the Army Reserve and Air Force Reserve when called to active duty, since it was determined that "there is no reason to distinguish service under section 502 for purposes of benefits from other active duty service performed by National Guardsmen or reservists."^{4/} Although the legislative history does not mention hospitalization and continuation of pay for members contracting a disease while on active duty for periods of 30 days or less, it does mention medical care for dependents among other benefits which were to be given these National Guard members.

Conclusion

Members of the Army and Air National Guard of the United States performing full-time duty under 32 U.S.C. § 502(f) are generally entitled to active duty military pay from appropriated Federal funds,^{5/} and the provisions of 10 U.S.C. §§ 3686 and 8686 make them otherwise eligible for the benefits generally available to Reserves of the Army and Air Force on active duty.

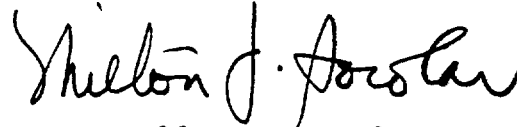
While the intent of Congress might have been made more clear and specific if an amendment to 32 U.S.C. § 319 had been enacted, the amendments to 10 U.S.C. §§ 3686 and 8686

^{4/} S. REP. NO. 850, 96th Cong., 2d Sess. 1-2, 15-17, partially reprinted in 1980 U.S. CODE CONG. & AD. NEWS 2833. See also H.R. REP. NO. 605, 96th Cong., 1st Sess. (1979).

^{5/} See 37 U.S.C. § 204(d). The Army and Air National Guard of the United States include all federally recognized National Guard units and organizations. 10 U.S.C. §§ 3077, 8077.

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have broad coverage. Also it is clear that Congress intended to give National Guard members on full-time duty under the authority of 32 U.S.C. § 502(f) benefits equal to those granted reservists on active duty for 30 days or less. In view of the inclusive language of 10 U.S.C. §§ 3686 and 8686 and in the absence of any indication that Congress did not intend to give these National Guard members hospitalization and pay while incapacitated, we find that they are covered by the provisions of 10 U.S.C. §§ 3722 and 8722 which provide hospitalization and continuation pay for Reserves who become ill while on active duty for less than 30 days. The decision Master Sergeant Howard R. Harper, ARNG, B-204347, is modified accordingly.



Acting Comptroller General
of the United States