The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Staff Sergeant Robert Stancavage, USAR

File: B-229909

Date: December 16, 1988

DIGEST

An Army reservist was injured in the line of duty while performing his annual 2 weeks of active duty for training. After he was released from active duty and returned to his home, he sought continued treatment for his injury from physicians engaged in the private practice of medicine. His claim for reimbursement of the medical expenses incurred for that continued treatment is denied since the private medical treatment sought had not been properly authorized, the treatment was not of an emergency nature, and there were federal treatment facilities available near his home.

DECISION

Staff Sergeant Robert Stancavage, U.S. Army Reserve, requests reconsideration of our Claims Group's disallowance of his claim for reimbursement of medical expenses incurred for the treatment of an injury he suffered while performing an annual 2-week period of active duty for training. We sustain the denial of his claim.

BACKGROUND

Sergeant Stancavage injured his leg on August 30, 1983, while performing 2 weeks of annual active duty for training with his Reserve unit at Fort Bragg, North Carolina. The Army determined that the injury had occurred in the line of duty. He received medical treatment for this injury at an Army hospital at Fort Bragg until the 2-week period of active duty ended on September 3, 1983. He then returned to his home in Scranton, Pennsylvania. He later incurred medical charges in a total amount of $3,969.85 when he sought private medical treatment in Scranton for continuing treatment of the leg injury in the following months.

It is the position of the Army that except for certain exceptions, not applicable here, expenses of medical care from nongovernmental providers are not reimbursable without proper authorization. Conversely, Sergeant Stancavage maintains that for three reasons the Army should reimburse him for the medical expenses he incurred. First, he says that he obtained authorization from an official whom he believed had the authority to approve nonemergency civilian medical treatment. He does not identify that official, however, and the record presented indicates that he received this advice from a fellow member of his Reserve unit. Second, he suggests that even if the private medical treatment was not properly authorized, under the applicable regulations he should nevertheless be reimbursed because the treatment involved an emergency. Third, he further suggests that he should be allowed reimbursement because there was no government facility available near his home in Scranton to treat him.

ANALYSIS AND CONCLUSION

Regulations governing the medical care of Army reservists are contained in Army Regulation (AR) 40-3. Paragraph 4-2, AR 40-3, provides that reservists are authorized medical care at government expense for injuries sustained in the line of duty during a period of active duty for training. Paragraph 17-7, AR 40-3, further provides that medical care from nongovernmental sources may be authorized if approved in advance by the Army Medical Center commander who is responsible for the reservist's medical care. Subparagraph 17-7.a(2) provides that nongovernmental medical care is authorized without such prior approval in the following circumstances:

> "(a) In emergencies when the urgency of the situation does not permit the obtaining of such prior authorization.
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> . . . . .
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> "(c) In areas where there are no Federal Medical Treatment Facilities (MTF) when authorized by the immediate Commander after a determination that the total cost for the entire course of medical treatment for a specific condition will not exceed $250."

In the present case it is reported that the Commander of Kimbrough Army Hospital, Fort Meade, Maryland, was the Army official assigned with the responsibility for Sergeant Stancavage's medical care. Sergeant Stancavage did not seek

that official's approval before he obtained nongovernmental medical treatment, and he indicates that he relied instead on the advice of an unidentified fellow member of his Reserve unit in the matter. Concerning his suggestion that in those circumstances there should be a waiver of the requirement of prior approval by the responsible Army hospital commander, it is well settled that the requirements of a regulation may not properly be waived or nullified on the basis of a service member's contention that he was misinformed about his rights under the regulation. See Schuhl v. United States, 3 Cl. Ct. 207, 210-211 (1983); Montilla v. United States, 198 Ct. Cl. 48, 64 (1972); and Airman First Class Daniel Trujillo, USAF, B-185887, Oct. 15, 1978. Hence, it is our view that Sergeant Stancavage may be allowed payment on his claim only if it is established that his situation falls within one of the circumstances prescribed by subparagraph 17-7.a(2), AR 40-3, in which reimbursable nongovernmental medical treatment may be obtained without the prior approval of the responsible Army hospital commander.

With regard to Sergeant Stancavage's argument that prior approval of the Army hospital commander was unnecessary under AR 40-3 due to the emergency nature of the treatment sought, our view is that follow-up treatment for an injury is not emergency medical care even though the treatment may be desirable or necessary from a medical point of view. See 25 Comp. Gen. 207 (1945); and Gerald M. Watson, Jr., B-188418, July 19, 1977. We have held in a case in which "emergency" medical expense reimbursement was sought that the term "emergency" is to be construed as it is used in its normal and customary sense as "an unforeseen combination of circumstances which calls for immediate action." See B-114715, July 21, 1967. In our view, Sergeant Stancavage's follow-up treatment months after his injury occurred does not qualify as "emergency" treatment under the regulation.

Finally, we are unable to agree with Sergeant Stancavage's suggestion that he should be allowed reimbursement for the nongovernmental treatment he obtained without proper prior approval, on the basis of the exception provided under AR 40-3 for situations in which no federal treatment facilities are available in the area. First, the expenses claimed, $3,969.85, far exceed the $250 limit stipulated in the above-quoted provisions of subparagraph 17-7.a(2), AR 40-3. Second, the existing facts do not support a determination that there were no federal medical treatment facilities in the Scranton, Pennsylvania, area where Sergeant Stancavage sought nongovernmental treatment. The United States Government Manual lists a Veterans' Administration Medical Center at Wilkes-Barre, Pennsylvania.

The Manual describes the facility as providing necessary ambulatory medical treatment, rehabilitation and support services. The distance between Scranton and Wilkes-Barre is 19 miles. We are thus unable to conclude that Sergeant Stancavage properly obtained the nongovernmental medical care at issue without the prior approval of the responsible Army hospital commander.

Accordingly, the Claims Group's disallowance of the claim is sustained.

for Milton J. Socolar
Comptroller General
of the United States