



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thomas D. Matte, M.D. - Public Health Service
Medical Officer - Retention Special Pay

File: B-231407

Date: March 6, 1989

DIGEST

A medical officer of the Public Health Service is not eligible to enter into a service agreement for retention special pay when he is satisfying a pre-existing service obligation incurred as the result of financial assistance he received in medical school under the National Health Service Corps Scholarship Program.

DECISION

Dr. Thomas D. Matte claims additional special pay, commonly referred to as "retention" special pay, in the amount of \$9,000 per year during the period of his active duty as a medical officer of the Public Health Service (PHS).^{1/} In light of the facts presented, and the applicable provisions of law, we conclude that his claim should be denied.

BACKGROUND

From September 1977 through April 1980, and from April 1981 through May 1982, Dr. Matte received financial assistance under the National Health Service Corps (NHSC) Scholarship Program while he attended medical school. He thereby incurred a commitment to perform a 4-year "period of obligated service" as a member of the NHSC in a "health manpower shortage area."

Following his graduation from medical school in May 1982, Dr. Matte received a 2-year deferral of his NHSC Scholarship Program service obligation while he participated in a residency program in internal medicine. Upon completing

^{1/} This action is in response to correspondence received from Dr. Matte requesting reconsideration of the denial of his claim by the PHS, and by the Claims Group of our Office.

the residency program in 1984, he received grants under the National Research Service Award (NRSA) program to enable him to study epidemiology at the Harvard University School of Public Health, and he received a further deferral of his NHSC Scholarship Program service obligation while he continued his education under that award program.

Dr. Matte studied epidemiology under the NRSA program from September 1984 through June 1986. He then accepted an appointment as a medical officer with the Commissioned Corps of the PHS. Following his appointment, he reported for duty on July 7, 1986, at the PHS National Institute for Occupational Safety and Health, Atlanta, Georgia. His assignment entailed research and teaching in the field of epidemiology. He is satisfying his NHSC service obligation by performing 4 years of teaching and research activities in that assignment.

The PHS offered Dr. Matte that assignment in April 1986. At that time he was advised that he would receive annual pay and allowances as a PHS medical officer in a total amount of approximately \$42,000 per year, including \$9,000 per year in retention special pay. Shortly before he was scheduled to report for duty in Atlanta in July, however, the PHS advised him that he was not eligible for retention special pay because of his pre-existing service commitment. Dr. Matte entered on duty as a PHS medical officer in Atlanta in July 1986, and he has been serving in that capacity as a research epidemiologist since then.

In August 1987, Dr. Matte filed a claim for retention special pay with the Claims Group of our Office. Our Claims Group denied his claim in April 1988, and he subsequently requested a further review of the matter and a final administrative decision.

ISSUE

Dr. Matte's claim was previously denied on the basis of a determination made by the Office of the Secretary of the Department of Health and Human Services, and the Claims Group of our Office, that under the applicable laws PHS medical officers who are providing obligated service incurred under the NHSC Scholarship Program are ineligible for retention special pay.

Dr. Matte acknowledges that he is satisfying the 4-year service obligation he incurred under the NHSC Scholarship Program through his service as a PHS medical officer. Nevertheless, he notes that he is not providing this service through clinical practice in a "health manpower shortage

area," but rather through teaching and research at the National Institute for Safety and Health under the authority of 42 U.S.C. § 254m(e). He argues that under the applicable provisions of law he is therefore eligible for the retention special pay at the rate of \$9,000 per year. In the alternative, he argues that he should be allowed payment on the basis of the offer made to him in April 1986, which was later retracted, that his annual salary would include the retention special pay.

APPLICABLE LAWS

Provisions of law governing the NHSC program, and the retention special pay entitlements of PHS medical officers, are contained in title 42 of the United States Code. Retention special pay in the amount of \$9,000 per year is authorized for PHS medical officers with less than 10 years' service who execute written agreements to remain on active duty for a period of not less than 1 year.^{2/} However, 42 U.S.C. § 210(a)(2)(B) imposes the following limitation:

"(B) A commissioned medical officer in the Regular or Reserve Corps (other than an officer serving in the Indian Health Service) may not receive additional special pay . . . for any period during which the officer is providing obligated service under . . . section 254m of this title"

Under 42 U.S.C. § 254m individuals with NHSC Scholarship Program service obligations are generally required to perform their obligated service through clinical practice in "health manpower shortage areas."

Subsection (e) of 42 U.S.C. § 254m further provides, however, that:

"Notwithstanding any other provision of this subchapter, service of an individual under a National Research Service Award . . . shall be counted against the period of obligated service which the individual is required to perform under the Scholarship Program."

The legislative history of this provision indicates that it was designed to strengthen the nation's medical research and teaching programs, and it authorizes individuals who

^{2/} 42 U.S.C. § 210(a); 37 U.S.C. § 302(a)(4).

receive NRSA grants to perform their NHSC service obligations through activities involving medical research or teaching following their period of study under the NRSA program.^{3/}

DISCUSSION AND CONCLUSION

As indicated, 42 U.S.C. § 210(a)(2)(B) prohibits a PHS medical officer from entering into a retention special pay agreement "for any period during which the officer is providing obligated service under . . . section 254m of this title" In our view, this precludes a PHS medical officer with a preexisting NHSC Scholarship Program service obligation from receiving the special pay regardless of whether the officer is satisfying that obligation through clinical practice in "health manpower shortage areas" as generally required by section 254m, or through medical research and teaching as specifically authorized by subsection (e) of that section. In either case, the officer "is providing obligated service . . . under section 254m," and our view in that the plain wording of 10 U.S.C. § 210(a)(2)(B) thus operates to bar eligibility for retention special pay. Hence, we are unable to agree with the argument advanced by Dr. Matte in this case that he should be allowed retention special pay on the basis that he has been authorized under 42 U.S.C. § 254m(e) to satisfy his service obligation and the NHSC Scholarship Program through medical research and teaching instead of through clinical practice.

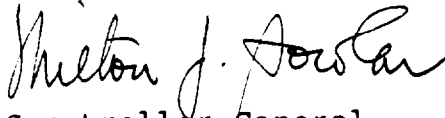
As to Dr. Matte's suggestion that the PHS should nevertheless be bound by the advice it furnished him in April 1986 that he would be eligible for retention special pay, it has long been held that the receipt of information, later established to be erroneous, by one dealing with a government official does not afford a legal basis for a payment from appropriated funds.^{4/} It is also well settled that the pay entitlements of members of the uniformed services are governed exclusively by statute, and that common law rules

^{3/} H.R. Rep. No. 208 (Conference), 97th Cong., 1st Sess. 802-804 (1981). See also 42 C.F.R. § 62.8(f).

^{4/} See Federal Crop Insurance Corporation v. Merrill, 322 U.S. 380 (1947); Parker v. United States, 198 Ct. Cl. 661 (1972); and 56 Comp. Gen. 943, 950 (1977).

concerning employment contracts are not applicable.^{5/} Thus, the fact that Dr. Matte was misled or misinformed by the PHS about his entitlement to retention special pay under the applicable statutes cannot properly afford a legal basis for payment of the special pay to him.

Accordingly, we sustain the denial of Dr. Matte's claim.

for 
Comptroller General
of the United States

^{5/} United States v. Larionoff, 431 U.S. 864, 869 (1977); Bell v. United States, 366 U.S. 393, 401 (1961); 64 Comp. Gen. 67, 68 (1984).