

DECISION

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

FILE:

B-184867

DATE: AUG 3 1976

MATTER OF:

CW2 James B. Hayward, USAR

DIGEST:

Where record shows that Reserve member who is claiming entitlement to disability pay and allowances under 37 U.S.C. 204(g)(2) for injury sustained while on inactive duty training, was not medically examined prior to subsequent injury for which he claimed benefits as a civilian Government employee and prior to which he had lost no time from his military duty, subsequent injury should be treated as intervening cause, and since member fails to demonstrate that disability was direct result of injury sustained in line of duty, military disability pay may not be allowed.

This decision is in response to letter of January 28, 1976, from CW2 James B. Hayward, USAR, requesting further consideration of his claim for pay and allowances incident to a disabling injury reportedly sustained by him on February 3, 1974, while participating in inactive duty training as a member of the United States Army Reserves. Warrant Officer Hayward's claim was disallowed by our Claims Division settlement dated January 6, 1976.

The member claims to have sustained an injury to his back while lifting a projector during inactive duty training on February 3, 1974, and that such injury later prevented him from performing his military duties.

The record reflects that the member, by his own admission, had injured his back on January 16, 1974, in connection with his civilian employment in the Army Reserve Technician Program. That injury was followed by the event of February 3, 1974. The record further reflects that the member injured his back on February 27, 1974, again in connection with his civilian employment and was examined on February 28, 1974, by the civilian physician who apparently had examined and treated him for his earlier civilian employment injury. As a result of that latter injury and examination, the member was listed as being in a temporary disability status from his civilian occupation for the period
1974 to April 15, 1974.

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While the record reflects that the member took sick leave following the injuries which occurred on January 16, 1974, and on February 27, 1974, there is no evidence that he lost any time from either his civilian employment or his military duties between February 3, 1974, and February 27, 1974. Moreover, there is no evidence to show that the member was found not fit for military duty by military authority during the period February 3 to February 27.

In our reconsideration, the member has asked us to consider several factors. He argues that his civilian job with the Army Reserve Technician Program requires that he be a member of the Army Reserve. Therefore, any injury he sustained during such employment entitles him to pay and allowances under 37 U.S.C. 204(g)(2). We do not agree. Subsection 204(g)(2) of title 37, United States Code, provides in part that a member of the Army other than a member of the Regular Army is entitled to pay and allowances of members of the Regular Army, if disabled in the line of duty by injury sustained while performing inactive duty training. There is nothing contained in those provisions which in any way relate to any occupation other than military duty. Again, there is nothing in the record to indicate that the member was found unfit for military duty between February 3, 1974, and February 27, 1974, when the subsequent injury occurred at his civilian job.

It is also argued that the record contains evidence showing that while the member attended Reserve drills during the period February 3 through February 27, 1974, he was unable to perform physical work due to the injury.

The right of a Reserve member to receive disability pay and allowances under the before-cited provisions of law, is based upon a physical disability to perform military duty as established by service medical evidence. His ability to perform or not perform normal civilian pursuits is not the standard to be used in determining entitlement to military disability pay. A thorough search of the record has revealed no evidence that a determination was made by service medical authorities that the member had an inability to perform regular military duties during this period, or that he was unable to perform such duties.

Accordingly, in the absence of such information, there is no legal basis upon which the claim may be allowed and the action taken by our Claims Division in this case is sustained.

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The member has also inquired about his appeal rights in the event of an adverse ruling. The decisions of this Office are final and binding on the Executive Branch of the Government. See 31 U.S.C. 74. However, the United States Court of Claims and the Federal District Courts have jurisdiction to consider matters in this area, if brought to their attention within the 6-year period prescribed for such action. See 28 U.S.C. 1346, 1491, 2401 and 2501.

E.F. KELLER
[Deputy] Comptroller General
of the United States