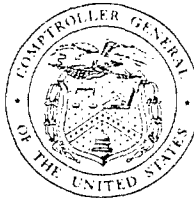


1st BJH

Per. Law II
N. Metcalf

DECISION



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

8967

FILE: B-192114

DATE: January 25, 1979

MATTER OF: [Medical and disability entitlements for
National Guard personnel]

DIGEST: A National Guard member is in a travel status for medical and disability entitlements for injury incurred while traveling to and from active duty training when he leaves his living quarters with the intention of going directly to the place where ordered to perform such duty and such travel status continues upon completion of his tour when he returns directly from his place of duty to his home until he has entered his living quarters.

This action is in response to a letter dated June 5, 1978, from the National Guard Bureau, Departments of the Army and the Air Force, requesting a decision regarding medical and disability entitlements for National Guard personnel injured while traveling to or from duty under sections 503, 504, and 505 of title 32, United States Code.

The question presented in the submission involves when and where travel status begins and ends in certain situations where the members were either proceeding to or from their duty station without deviation or delay. The cases in question include:

(a) A member of the Ohio Air National Guard (ANG) was ordered under section 503, supra, to report at 5:30 a.m., for annual training (AT) during the period February 10 through February 24, 1978. At 5 a.m., on February 10, 1978, the member proceeded from his house, walked down the exterior steps, slipped and fell on ice causing injury to his back.

(b) A member of the New York ANG was ordered under section 503, supra, to full-time training duty (FTTD) from 12:01 a.m., August 15 through 12 p.m., August 19, 1977. On returning home at 8:30 p.m., on August 19, the member slipped and fell on his driveway area resulting in a fractured hand.

(c) A member of the Washington ANG ordered under section 503, supra, to FTTD for one (1) day, October 18, 1977, returned from duty on this day at 8:30 p.m. When the member

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attempted to open his electric garage door, he found it inoperative. He attempted to lift the door manually and while doing so he suffered severe back injury requiring orthopedic surgery.

Section 204, title 37, United States Code, provides in pertinent part as follows:

"(h) A member of the National Guard is entitled to the pay and allowances provided by law and regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever he is called or ordered to perform training under section 502, 503, 504, or 505 of title 32—

* * * * *

"(2) for any period of time, and is disabled in line of duty from injury while so employed." (Emphasis supplied.)

Subsection 318(2) of title 32, United States Code, also provides benefits to members of the National Guard who are disabled in line of duty from injury while so employed.

Paragraph 4b, Section B, Air Force Regulation (AFR) 168-6, September 3, 1974, provides that Reserve and National Guard personnel who incur an injury in line of duty while on active duty (including active duty for training) or while traveling to and from such duty may be provided medical care including rehospitalization for the injury until the disability cannot be materially improved.

Line of duty determinations and investigations of members of the ANG incurring an injury while on tours of active duty training are made in accordance with AFR 35-67, August 14, 1964, as changed by Change A, of April 20, 1965, and Change B of December 2, 1968. Paragraph 2a, Section A, of this regulation provides that all determinations are "in line of duty" unless the injury resulted from the person's own misconduct, occurred while in desertion status, occurred while absent without authority, or existed prior to service.

We are not aware of any specific rulings by either this Office or the courts with regard to when travel commences and terminates for members of the Reserve components or the National Guard when they are ordered to active duty or active duty for training or the equivalent. However, we have found analogous situations in cases involving the award of workmen's compensation for injuries.

As a general rule, injuries sustained by workmen while going to and from work are not compensable. See 99 CJS 232. However, where an employment contract covers a period of going to and from work, injury incurred during such travel may be compensable. 99 CJS 233.

Since a member of a Reserve component or the National Guard who is disabled while traveling to active duty or its equivalent is considered to have incurred the injury in line of duty while so employed (see Adams v. United States, 127 Ct. Cl. 470 (1954) and 33 Comp. Gen. 599 (1954)), such situations must be considered analogous to an employee who is compensated for traveling to and from his employment.

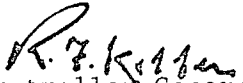
In this regard ample authority exists concluding that such an employee on departing his residence is considered to be "in the course of his employment" even if he sustains injury while walking down his own outside stairs or slips in his driveway. See Cohen v. Central Home Furniture Co. et al., 23 A 2d 70 (1941); Bitker Cloak & Suit Co., et al. v. Miller, et al., 6 NW 2d 664, 665 (1942); Eaton v. Webster Motors of Glen Falls, Inc., et al., 39 NYS 2d 32 (1943); In the Matter of Fred T. Craik and Dept. of Agriculture, 12 ECAB 28 (1960); and Black River Dairy Products, Inc., et al. v. Dept. of Industry, Labor & Human Relations, et al., 207 NW 2d 65 (1973).

Based upon the foregoing, we have concluded that a member entering on active duty begins a travel status when he leaves his living quarters with the intention of going directly to the place where ordered to perform such duty and such travel status continues upon completion of his tour when he returns directly from his place of duty to his home until he has entered his living quarters.

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Accordingly, if the facts in the cases presented show that the member had left his residence with the intention of traveling directly to his place of duty, in contrast to merely preparing to depart or, on return, that he had proceeded directly to his residence without deviation, a finding of disabled in the line of duty by injury while so employed would be appropriate.

Doubtful cases may be submitted to this Office for decision.


Deputy Comptroller General
of the United States