

# DECISION



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

maguire  
30695

FILE: B-216755

DATE: March 15, 1985

MATTER OF: Felix Saucedo, Jr.

## DIGEST:

The failure of Government personnel to provide an individual an opportunity to participate in a short term health plan during process of separation from the Navy is not a basis for the Government to pay his claim for medical bills incurred during the period that he would have been covered by the insurance, since the United States is not liable for the erroneous acts of its employees even though committed in the performance of their official duties.

Felix Saucedo, Jr., requests reconsideration of our Claims Group's July 16, 1984 denial of his claim for payment of medical costs he incurred within 30 days after his discharge from the Navy. There is no authority for payment of these costs by the Government.

After completing a period of enlistment Mr. Saucedo was separated from the United States Navy on July 29, 1983. During the separation process he indicated that he wished to enroll in an insurance program known as MAJORCARE 90. MAJORCARE 90 is a commercial short term health insurance plan for separated service members and their dependents provided by Mutual of Omaha. Navy instructions require that all Navy personnel being separated from the service be informed of the availability of the plan. See NAVMILPERSCOM INSTRUCTION 1760.1A, 17 March 1983. The plan is not Government insurance but purely commercial insurance which separating members may participate in for their protection during the first 90 days after separation.

In order to participate in the plan, individuals must enroll by filling out an application and paying the required premium. The premium is paid solely by the individual who is being separated and is paid to Mutual of Omaha.

The Navy is not required to provide any health care plan for those individuals being separated and the Navy does not endorse the plan. Although the Navy forwards the application and payment to Mutual of Omaha, all matters regarding

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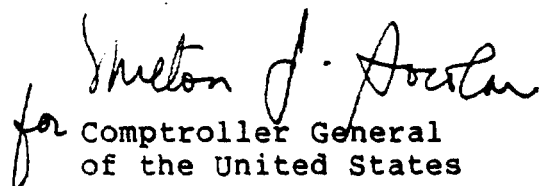
coverage and benefits under the plan must be directed to Mutual of Omaha and participation in the plan is strictly a private agreement between the participant and Mutual of Omaha.

In spite of Mr. Saucedo's indication that he wished to participate in the plan, he apparently did not fill out the required application form and did not pay the required premium. Since both are required in order to participate in the plan, Mr. Saucedo was never covered under MAJORCARE 90.

On August 19, 1983, Mr. Saucedo was involved in a motorcycle accident and required medical treatment. The accident occurred within the period he would have been covered by MAJORCARE 90 had his application and payment been properly processed. Mr. Saucedo alleges that he was not included in the plan due to the negligence of the personnel who processed his separation. He argues that, but for the negligence of the Navy, the medical bills would have been paid under the plan and, therefore, the medical bills should be paid by the Navy.

As pointed out above, MAJORCARE 90 is a private health care plan offered to separated individuals by Mutual of Omaha. Although the Navy informs individuals of the availability of the health plan upon separation, it has no duty to provide separated members with health care or to ensure coverage under the plan. Further, there is no statutory authority which would allow payment of Mr. Saucedo's medical bills from appropriated funds.

Thus, even if Mr. Saucedo's failure to participate and obtain benefits under the plan had been due to the negligence of Government personnel, there is no legal basis for payment of his claim. It has long been held that, in the absence of specific statutory authority, the United States is not liable for the negligent or erroneous acts of its officers, agents or employees, even though committed in the performance of their official duties. 56 Comp. Gen. 943, 950 (1977), and cases cited therein. Accordingly, our Claims Group's settlement of July 16, 1984, is sustained.

  
for Comptroller General  
of the United States