

DECISION



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

FILE: B-184236

DATE: FEB 12 1976

MATTER OF: SSgt. , USAF

DIGEST:

1. Air Force Reserve member, who was issued clothing to complete his initial clothing issue requirements upon his recall to extended active duty in 1968 and who did not turn in clothing incident to his discharge from that duty for purpose of enlistment in the Regular Air Force in 1969, is not entitled to an initial clothing monetary allowance at that time under the provisions of subparagraphs 30501(b) and 30511(a) of the Department of Defense Military Pay and Allowances Entitlements Manual.
2. Where service member, who is not entitled to payment of an initial clothing monetary allowance, may have relied on erroneous advice by his superiors that he was so entitled, such reliance does not afford a legal basis for entitlement to payment from appropriated funds since it is well established that in the absence of specific statutory authority, the United States is not liable for the erroneous advice of its officers, agents, or employees, even though committed in the performance of their official duties. See 53 Comp. Gen. 834 (1974) and cases and decisions cited.

This action is in response to a letter dated June 3, 1975, from Staff Sergeant , USAF, , wherein he requests reconsideration of our Transportation and Claims Division settlement dated April 22, 1975, which disallowed his claim for an initial clothing monetary allowance incident to his service in the United States Air Force.

The record shows that by Special Order No. A-6, dated January 26, 1968, issued by Headquarters 821st Military Airlift Group (MAC),

ram

B-184236

Sergeant [redacted] was relieved from his Air Force Reserve assignment with Headquarters 921st Military Airlift Group (CAC), Kelly Air Force Base, Texas, and ordered to active duty with assignment to Headquarters 921st Military Airlift Group (MAC), Kelly Air Force Base, Texas, for a period of 24 months. The record indicates that Sergeant [redacted] served in this duty assignment until November 12, 1969, when he was discharged for the purpose of enlistment in Regular Air Force on November 13, 1969. The record further indicates that in December 1969, Sergeant [redacted] acquired clothing, which he apparently believed was an initial clothing issue to which he was entitled incident to his enlistment in the Regular Air Force. The record also shows that Sergeant [redacted] states that on December 15, 1969, he was informed that deductions would be made from his pay as payment for the clothing he received that month.

The record indicates that prior to August 1970, Sergeant [redacted] claimed an initial clothing allowance in the amount of \$210.27. By letter dated September 15, 1970, in response to an inquiry from the Air Force Accounting and Finance Center, the Supply Management Officer, Headquarters, 433d Military Airlift Wing (AFRES), Kelly Air Force Base, states that, at the time of entry on active duty in January 1968, Sergeant [redacted], as a member of the 921st Military Airlift Group, a "MAC" gained reserve unit, was fully equipped under the provisions of Air Force Regulation 67-57 with the same clothing as a member of the Regular Air Force and that 6 months after entry onto active duty Sergeant [redacted] began receiving a monthly clothing maintenance allowance.

By submission dated July 17, 1974, the Air Force Accounting and Finance Center forwarded Sergeant [redacted] claim to our Transportation and Claims Division for direct settlement and recommended disallowance. It was stated therein that Sergeant [redacted] was issued clothing to complete his initial issue requirements upon his recall to active duty in January 1968; that he did not receive an initial clothing monetary allowance; that deductions in the amount of \$210.27 were made in 1970 for his subsequent purchase of clothing; and that he was paid a monthly clothing maintenance allowance effective January 26, 1968.

By settlement dated April 27, 1975, our Transportation and Claims Division disallowed the member's claim, which was believed to be a claim for clothing allowance upon recall to active duty in

B-184236

1968. By letter dated June 3, 1975, the member indicates that his claim is for an initial clothing allowance incident to his enlistment in the Regular Air Force in November 1969. In that letter, the member states his understanding that the clothing issue he received in December 1969 was an initial clothing issue and was told by his superiors that the cost of this clothing issue would be paid by the Government, but that on December 15, 1969, he was informed that deductions would be made from his pay as payment for the clothing he received that month. In that letter the member also questions whether he has received the proper amount of monthly clothing allowance from 1969 through 1975.

Section 418 of title 37, United States Code, provides that the President may prescribe the quantity and kind of clothing to be furnished annually to an enlisted member of the armed services and may prescribe the amount of a cash allowance to be paid to such a member if clothing is not so furnished to him.

By Executive Order 10113, dated February 24, 1950, the President delegated to the Secretary of Defense the function relative to prescribing the quantity and kind of clothing that shall be furnished to enlisted members of the armed services and relative to prescribing the amount of cash clothing allowance to be paid such enlisted members in lieu of clothing.

Pursuant to authority delegated to the Secretary of Defense under Executive Order 10113, the Secretary of Defense prescribed certain policies and regulations with respect to issuance of clothing, and payment of cash allowances in lieu of furnishing clothing in kind, by Department of Defense Directive No. 1338.5, dated June 25, 1962, and that official there delegated to each of the armed services under his jurisdiction the authority to issue appropriate instructions to implement the policies and regulations there prescribed.

Subparagraph 30501(b) of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), implementing that Directive, provides that enlisted members of the Air Force on extended active duty are credited with the amount of the initial clothing allowance against which the authorized clothing is furnished and that a monthly cash maintenance allowance may also be authorized for repair and replacement of clothing. Subparagraph 30511(a)(3) of the DODPM provides that enlisted members of the Reserve components upon recall to active duty for more than 6 months are entitled to

E-184236

an initial clothing allowance, however, Air Force members are required to return to active duty with the clothing required for service in the Reserve forces. It is also provided in subparagraph 30511(a)(5) that an enlisted member of the Air Force upon reenlistment within 3 months after discharge is entitled to an initial clothing monetary allowance if the complete initial allowance was not received or the turn-in of clothing was required.

Since the Air Force administratively reports that Sergeant [redacted] was issued his full authorization of clothing prior to his reporting for extended active duty in 1968 and since turn-in of such clothing was not required incident to his discharge for the purpose of enlisting in the Regular Air Force in 1969, the member is not entitled to receive an initial clothing monetary allowance incident to his enlistment in the Regular Air Force in 1969.

Even if the member's superiors told him that the cost of the clothing issued to him in 1969 would be paid by the Government, such a fact does not permit payment of such cost to the member. We have consistently held that the receipt of erroneous information by one dealing with a Government official, even where such information was relied upon by the recipient to his detriment, does not afford a legal basis for a payment from appropriated funds. It is well established 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. See 53 Comp. Gen. 834 (1974) and the cases and decisions cited therein.

With regard to the member's question concerning receipt of the proper amount of monthly clothing maintenance allowance from 1969 through 1975, copies of his Air Force pay records have been secured from the Air Force Accounting and Finance Center and are being reviewed by the Claims Division of this Office. If upon that examination, it is determined that his clothing maintenance allowance was improperly computed, appropriate action will be taken and the member advised accordingly.

R. F. KELLER

[Deputy] Comptroller General
of the United States