

**DECISION**

DIGEST - L - *Mike*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

87

FILE: B-194189

DATE: January 7, 1980

MATTER OF: Major General [REDACTED], DCANG

- DIGEST: 1. A National Guard member may not be placed in a duty status in the absence of advance written or verbal orders, nor may he issue such orders to himself. Hence, an Air National Guard officer who stated that he planned to perform military duty on October 20, 1978, may not be regarded as being in a duty status at the time of his death on that date where no advance orders authorizing the performance of such duty had been issued.
2. A National Guard officer who stated he planned to perform military duty on the day he died, but who had not been ordered in advance to perform such duty, may not properly be placed in a duty status retroactively after his death, notwithstanding that on other occasions he had received credit for military duty performed without advance authorization, since the regulations requiring advance orders may not be disregarded as a matter of routine, and retroactive orders are permissible only to correct an apparent error or to confirm previously issued verbal orders.

The issue in this case is whether the beneficiaries of Major General [REDACTED], DCANG, [REDACTED], are entitled to death benefits in connection with his death on October 20, 1978. We have concluded that such benefits are not payable for the reason that General [REDACTED] was not in a duty status with the Air National Guard at the time of his death.

The issue was presented by letter dated February 16, 1979, from Major General La Vern E. Weber, Chief of the National Guard Bureau, questioning the status of General [REDACTED], who was a member of the District of

B-194189

Columbia Air National Guard (DC ANG) and a Special Assistant for Air National Guard matters to the Commander in Chief, United States Air Force in Europe.

The file indicates that on October 18, 1978, General [REDACTED] worked about 5 hours in the National Guard Bureau, Air Directorate Office of Aerospace Safety (NGB/SE) at the Pentagon reviewing documents relative to an Operational Readiness Inspection. Before he departed the Pentagon on October 18, he told National Guard Bureau officials that he would complete his review at his residence during the next two days and he took relevant documents home. It is said that it was considered normal for General [REDACTED] to perform some of his duties at home because the National Guard Bureau provided him no office space or secretarial services. The next day, he twice telephoned the National Guard Bureau to ask questions pertaining to his work, and indicated on the second call that he planned to spend October 20th working at the Pentagon. However, General [REDACTED] died at his home at about 1:30 a.m. on October 20, 1978.

As no orders had been issued placing General [REDACTED] on either active or inactive duty training for the period from October 18 to October 20, 1978, his status was listed on the initial casualty report as being in no duty status at the time of his death. The file indicates:

"\* \* \* However when it became clear that General [REDACTED] had in fact performed some duties in NGB/SE on 18 October, had worked on the same project at home on 19 October, and had said he planned to work again in NGB/SE on 20 October, the DCANG issued back dated orders to validate this period of duty. This was not an unusual practice; in fact, so far as General [REDACTED] was concerned it was the norm. \* \* \*"

The backdated orders listed General [REDACTED]'s status as being in inactive duty training/special training under

B-194189

state authority pursuant to 32 U.S.C. § 502<sup>✓</sup> and Air National Guard Regulation (ANGR) 50-01. Subsequently these orders were amended to read active duty training/special training under Federal authority pursuant to 32 U.S.C. § 503<sup>✓</sup> and ANGR 50-01. Each of these three possible status determinations produces a different result so far as death benefits are concerned.

The National Guard Bureau has suggested that General [REDACTED] might be regarded as being in an active duty training/special training status under Federal authority at the time of his death, based on his normal practice of validating his periods of duty by after the fact orders, with the knowledge, and presumably, tacit approval of both the Guard Bureau and the DC ANG. It is also suggested that because his position as Special Assistant required flexibility in duty periods, he perhaps also had the authority to issue himself orders for duty status.

With respect to the statutory authority for Air National Guard members to be placed in either an inactive or active duty status, section 502<sup>✓</sup> of title 32, United States Code (1976), authorizes the training of Air National Guard members in required drill and field exercises under regulations to be prescribed by the Secretary of the Air Force, while section 503<sup>+</sup> of title 32, United States Code (1976), provides for the participation of Air National Guard members in field or coast-defense instruction under regulations as the President may prescribe.

Implementing administrative directives are contained in the Air National Guard Regulations. Air National Guard Regulation 50-01, dated February 27, 1978, governing Air National Guard training policies provides:

- "2-7. Training Authorization. Authorization of pay, entitlement to retirement points, and any claim or benefit that may arise as a result of military service requires documentary evidence that the member was

3-194189

in a duty status as authorized by Federal law or regulation. Unit commander will issue written authorization governing training, in a pay or non pay status in advance of such training."

In the present case, it does not appear that advance authorization, either verbal or written, was issued by the unit commander as required by the applicable Air National Guard Regulations. We are unaware of any authority which might permit a National Guard member to order himself to perform inactive or active duty training, or to disregard the regulatory requirements as a matter of habit or routine. See B-181649, March 20, 1975; B-165712, January 30, 1969; B-161187, May 3, 1967, and 43 Comp. Gen. 281 (1963).

Regarding the issuance of retroactive orders, we stated the general rule applicable to retroactive orders in B-181649, supra, as follows:

"\* \* \* retroactive amendments are not permitted except in situations of apparent error, omission by error or inadvertence \* \* \*, or where they confirm previously issued verbal orders \* \* \*."

On the basis of the information provided, none of these circumstances appear applicable to this case.

Accordingly, in the absence of direct evidence that General [redacted] was performing duty under valid orders issued by the proper order issuing activity, we must conclude that he was not in a duty status at the time of his death. Any benefits payable as a result of his death must be determined on the basis of that status.



For The Comptroller General  
of the United States

ORDERS

Competent

Authority to ~~Issue~~

ORDERS

Competent

Failure to issue

NATIONAL GUARD

Pay, etc., entitlement

Death or injury

Duty status

ORDERS

Retroactive

Rule