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DECISION



119201

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

FILE: B-206547

DATE: August 16, 1982

MATTER OF: Master Sergeant Karin M. Winward, USAFR

DIGEST: An Air Force Reserve member who is released from active duty after completing at least 5 years of continuous active duty is not entitled to readjustment pay where her separation from duty is voluntary in nature. A service member's separation from duty is voluntary where, upon completion of a specific tour of duty, she volunteers for continued active duty contingent on assignment to a particular location or type of duty and is not accepted for such an assignment.

Master Sergeant Karin M. Winward, USAFR, appeals the Claims Group's denial of her claim for readjustment pay incident to her separation from active duty in the Air Force. Readjustment pay is not payable to a Reserve member who is released from service after completion of a specific tour of duty, and subsequently volunteers for continued active duty contingent on assignment to a certain type of duty or to a particular location. Since Sergeant Winward's actions indicated that she would accept continued active duty only if such contingencies were met, we affirm the Claims Group's denial.

Sergeant Winward served on active duty in the Air Force (with several short breaks) from January 7, 1975, to September 30, 1980. From August 1979 to September 30, 1980, she was stationed at Robins Air Force Base, Warner Robins, Georgia. In May 1980, in anticipation of the end of her scheduled tour of duty on September 30, 1980, Sergeant Winward began to submit applications to secure a new position. Specifically, she applied for several Administrative Technician positions (Nos. 702X0, 702XX, 732XX and 751XX) located at Headquarters Air Force Reserve (HQ AFRES), Robins Air Force Base. On July 1, 1980, Sergeant Winward was officially notified that her current tour of active duty would not be extended beyond September 1980. Shortly thereafter, in letters dated July 3 and July 9, 1980, she was informed that she had not been selected for any of the Administrative Technician positions she had applied for.

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On August 7, 1980, Sergeant Winward submitted an application for an active duty position as an Air Force recruiter under 10 U.S.C. § 678. As a result of this application, she was considered for several recruiter positions available in different locations. On August 19, 1980, the Air Force notified her that she had been selected to fill a recruiter position at Mountain Home Air Force Base, Idaho.

Her reply, dated September 19, 1980, stated that she had not applied for the recruiter position at Mountain Home, and indicated that she would not accept it but would accept an administrative position at Robins Air Force Base. Having turned down this offer, and having received no others, Sergeant Winward was released from active duty on September 30, 1980, at the end of her scheduled tour.

Pursuant to her separation from duty, Sergeant Winward seeks readjustment pay under 10 U.S.C. § 687 and its implementing regulations. Paragraph 40411 of the Department of Defense Military Pay and Allowances Entitlement Manual, promulgated to implement 10 U.S.C. § 687, provides in part in accordance with the statutory requirements:

"Reserve members who have completed at least 5 full years of continuous active duty immediately before involuntary separation are entitled to readjustment pay if they are not qualified for retirement." (Emphasis added.)"

Table 4-4-6 of the Manual further describes the specific conditions of entitlement under Paragraph 40411. Sergeant Winward cites Rule 9 of Table 4-4-6 in support of her position that she is entitled to receive readjustment pay. Rule 9 states that if the member:

"* * * is released from active duty upon completion of a specific tour of active duty and volunteers for an additional tour of active duty

in keeping with current directives,
and is not accepted for the additional
tour, then readjustment pay is payable."

Sergeant Winward asserts that in anticipation of the end of her scheduled tour of duty, she applied for four specific positions at Robins Air Force Base, any of which would have constituted "an additional tour of active duty in keeping with current directives" as specified in Rule 9. Since she was not accepted for an additional tour of duty in one of those positions, she maintains that she is entitled to readjustment pay under Rule 9.

The Air Force, on the other hand, argues that Rule 11 of table 4-4-6 best applies to the facts of this case and therefore should be used to determine Sergeant Winward's entitlement to readjustment pay. According to that rule, if the member:

"* * * is released from active duty upon completion of a specific tour of active duty and volunteers for a period of active duty contingent on assignment to certain type of duty or location* * * and is not accepted for the additional tour, then readjustment pay is not payable."

The Air Force asserts that while Sergeant Winward may have applied for various Administrative Technician positions at Robins Air Force Base, she also applied for a 10 U.S.C. § 678 recruiter position on August 7, 1980. As a result of that application, she was offered the exact job she had applied for--a 10 U.S.C. § 678 recruiter position. The position she was offered, however, was located at Mountain Home Air Force Base, Idaho, rather than at Warner Robins, Georgia. On September 19, 1980, Sergeant Winward turned down the Mountain Home position. The Air Force notes that she did so in spite of the fact that she had enclosed with her original application a statement of understanding dated June 5, 1980, acknowledging that she would be subject to relocation in her efforts to secure reassignment.

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In sum, the Air Force maintains that since Sergeant Winward refused to accept the position at Mountain Home, her application for duty was in fact contingent on assignment to a particular location, i.e., Warner Robins, Georgia. Thus, when she chose to terminate her active duty status rather than accept the position at Mountain Home, the Air Force found her separation from duty to be voluntary in nature and held that she was therefore not entitled to readjustment pay. Our Claims Division agreed with the Air Force's determination, and denied payment.

Sergeant Winward now argues that her medical status from May to October 1980 affects her entitlement to readjustment pay. She states that she did not volunteer for duty "contingent on assignment to a particular location" as the Air Force claims, and that Rule 11 thus does not apply to her case. Rather, she asserts that she turned down the recruiter position at Mountain Home not because of its location, but because she was not medically qualified to perform the recruiting duty she was offered there. She maintains that since she was only offered a position which she could not physically perform, her only true option as of September 30, 1980, was separation from active duty, and that her separation was therefore involuntary. She asserts that her decision to leave the service was not one of true choice, and that she had not been accepted for tours of duty which she was physically able to perform. For these reasons, Sergeant Winward claims that she is entitled to readjustment pay.

Sergeant Winward has submitted letters from several doctors in an effort to fully document her medical problem, and her resulting inability to perform the task of recruiting. In a June 25, 1981 letter to our Office, Sergeant Winward stated that the documents she has provided "clearly prove that a medical problem had been identified by appropriate physicians and that duty restrictions had been placed prior to [her] selection for a recruiting position."

However, based on its examination of the medical record and other relevant evidence, the Air Force states that when Sergeant Winward rejected the Mountain Home offer, she was not physically incapable of performing

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the duties of a recruiter. The Air Force recognizes that some physical restrictions were placed on her between May and September, 1980. It argues, however, that no medical opinion provided during that time period stated that she was not qualified to accept or apply for the position of recruiter. The medical restrictions placed on Sergeant Winward during that time included a temporary restriction to light duty and to wear non-military shoes (patient to be released from restriction on September 1, 1980), and a second restriction on September 4, 1980, ordering that she place no stress on her weight-bearing joints.

The first mention of any restriction on Sergeant Winward's ability to perform recruiting functions was not made until October 1, 1980, in a statement by Captain Thomas Tyler, USAFMC. The prognosis at that time was that Sergeant Winward would be unable to perform the duties of a recruiter for a 12-18 month period, though she would be able to work as an Administrative Technician. This statement was written and its restrictions initially stated 55 days after Sergeant Winward had originally applied for the recruiting tour, and several weeks after she had turned down the Mountain Home offer.

Though the letter from Captain Tyler indicates that Sergeant Winward was restricted from performing the duties of a recruiter, the restriction was dated October 1, 1980, well after both the Mountain Home offer and Sergeant Winward's response were given. Furthermore, she has at no time submitted evidence demonstrating that she was found by the Air Force to be medically unqualified for a recruiter position prior to the time she turned down the Mountain Home position. In this regard, we note that her indorsement rejecting the offer did not state medical restrictions as a reason for her declination of the tour.

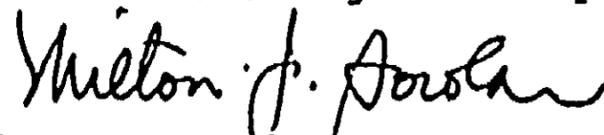
The fact remains that on August 7, 1980, Sergeant Winward did, on her own volition, apply for the job which she now maintains she was "not medically qualified to perform." Furthermore, she admits that on July 14, 1980, she also submitted a request for consideration for a recruiter position, "specifically a Recruiter

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position that may become vacant in Warner Robins, Georgia, or Robins AFB, Georgia," with a tour of duty extending from October 1, 1980, to September 30, 1984. Based on this request, it appears that Sergeant Winward felt she was physically qualified in mid-July to accept a recruiter position in Warner Robins, Georgia. Finally, it is reported that in a telephone conversation with Chief Master Sergeant Harold O'Neal on August 14, 1980, Sergeant Winward stated that she would decline a recruiting assignment to any unit other than Robins Air Force Base since her husband was stationed there.

To be entitled to readjustment pay, the member must have been released from active duty involuntarily, which means that the member must have exhibited a "positive and unconditional desire" to serve on active duty. If the request for additional active duty is conditioned or contingent upon being offered a particular type of duty, the member has not met the requirement. See Henneberger v. United States, 185 Ct. Cl. 614 (1968); Tawrie v. United States, 647 F. 2d 137 (Ct. Cl. 1981); and compare Matter of Hughes, 57 Comp. Gen. 451 (1978). The record before us shows that Sergeant Winward applied for a recruiter position, but was not willing to accept such a position, when offered, at Mountain Home. While she has asserted that her rejection of that position was based on her physical inability to perform recruiter functions, and was not a mere question of location preference, she has not provided sufficient evidence to demonstrate that to be the case. Instead, it appears that she desired a position in the Warner Robins area and was not interested in accepting one elsewhere.

Thus, the existing record does not warrant the conclusion that her release from active duty was other than voluntary, as the Air Force has determined. Accordingly, we sustain the denial of her claim for readjustment pay.

for 
Comptroller General
of the United States