

DECISION

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

PLM-4

29232

FILE: B-214534

DATE: September 5, 1984

MATTER OF: Lieutenant Commander Charles E.
Sullivan, Jr., USNR

DIGEST: A Navy Reserve officer claims pay for 2-1/2 days of accrued leave on the basis that he performed 30 days of active duty for training. However, during 13 of those days he was in a voluntary non-pay status. The regulations that implement the applicable leave statute require that a member perform 30 consecutive days of active duty while in a pay status in order to be entitled to leave. Since that regulation is reasonably consistent with the purpose and intent of the statute, it is not overly restrictive, and the member is not entitled to leave pay.

Lieutenant Commander Charles E. Sullivan, Jr., United States Naval Reserve, appeals the October 28, 1983 settlement of our Claims Group by which his claim for pay for 2-1/2 days of military leave was denied. Upon review of this case, we conclude that Commander Sullivan is not entitled to leave pay because the 30-day period of active duty upon which his claim is based was partially voluntary duty without pay so that under the applicable regulation he did not accrue leave for the 30-day period.

Background

Commander Sullivan served on active duty for training under two orders for two consecutive periods totaling 30 days. For the first 17-day period he served in a pay status from November 1 through November 17, 1981, following which he served on active duty for training without pay for the 13-day period from November 18 through November 30, 1981. Because he served on active duty for 30 consecutive days, Commander Sullivan is of the opinion that under the provisions of 10 U.S.C. § 701(a), he accrued 2-1/2 days of leave for which he was entitled to be paid, under 37 U.S.C. § 501, upon his release from active duty.

The Navy disallowed his claim for the 2-1/2 days' pay on the basis that paragraph 80206 of the Military Pay and Allowances Entitlements Manual provides that a

029920

Reserve member accrues leave at the rate of 2-1/2 days for each month when he serves on active duty "with pay" for periods of "30 consecutive days or more."

Commander Sullivan states that the military leave statute authorizes accrual of leave at the rate of 2-1/2 days for each month of "active service." 10 U.S.C. § 701(a). He argues, in effect, that the applicable definition of "active service" provided by 10 U.S.C. §§ 101(22) and 101(24) does not distinguish between duty with and without pay and that, therefore, under the statutes he accrued 2-1/2 days' leave for which he is entitled to be paid. Commander Sullivan expresses the view that, therefore, paragraph 80206 of the Pay and Allowances Manual is overly restrictive and, therefore, invalid because it requires that a Reserve member serve the minimum 30 consecutive days on active duty while in a pay status in order to be entitled to leave credit.

Analysis

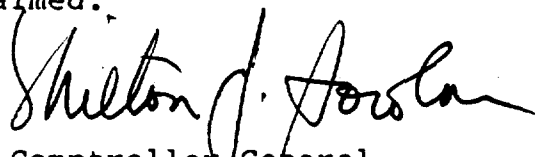
Under 10 U.S.C. § 683(a), a Reserve member may be ordered to active duty with pay and allowances or, with the member's consent, without pay. This appears to be the authority under which Commander Sullivan served the period of active duty with pay and the period without pay.

The military leave entitlement and accumulation statute, 10 U.S.C. § 701(a), provides, in part, that a member of an armed force is entitled to leave at the rate of 2-1/2 calendar days for each month of active service, with certain exceptions not relevant in this case. Under 10 U.S.C. § 704 the Secretaries of the services concerned are authorized to prescribe, for the several armed forces, leave regulations and policies that are uniform to the fullest extent practicable, and to provide for the determination of the number of calendar days of leave to which a member is entitled. The statutory authority is implemented by the services' leave regulations and the Department of Defense Military Pay and Allowances Entitlements Manual.

Paragraph 80206 of the Military Pay and Allowances Manual states in part that a Reserve member who serves

on active duty "with pay for periods of 30 consecutive days or more" accrues 2-1/2 days of leave for each month of active service. And, the Bureau of Naval Personnel Manual, paragraph 2650180, specifically provides that a lump-sum payment for unused leave upon discharge or release from active duty is not authorized for, among others, members on training duty with pay for periods of less than 30 consecutive days and for members on training duty without pay. These regulations are consistent with the Naval Military Pay Manual, article 3020160, and Department of Defense Directive 1327.5, June 29, 1974, which both indicate that leave does not accrue for periods in a non-pay status. This policy is in accord with the general rule that leave is a right, earned while present for duty, to be absent from duty without loss of pay and allowances. 38 Comp. Gen. 320, 322 (1958), and 37 U.S.C. § 502(a).

As Commander Sullivan indicates, his duty without pay was active duty as defined in 10 U.S.C. §§ 101(22) and 101(24) and is otherwise creditable service for most purposes. As is indicated above, however, the Secretaries concerned have been granted the authority under 10 U.S.C. § 704 to prescribe uniform regulations governing accumulation of leave including determining the number of days' leave to which a member is entitled. In view of that general authority and the purpose of leave (to be absent from duty with pay), the requirement that entitlement to leave credit be based on active duty performed in a pay status appears consistent with the purpose of military leave and the statutory authority of the Secretaries. Thus, we find that the requirement that active service for leave credit be performed while in a pay status is not overly restrictive. Cf. Colonel William N. Jackomis, 58 Comp. Gen. 635, 637 (1979). Because Commander Sullivan did not serve on active duty in a pay status for 30 consecutive days in November 1981, he accrued no leave and, therefore, is not entitled to leave pay as claimed.

for 
Comptroller General
of the United States