

DECISION

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

FILE: B-216466**DATE:** November 14, 1984**MATTER OF:** Major Jean-Francois J. Romey, USAR**DIGEST:**

1. Orders of an Army reservist who agreed to perform inactive duty training and active duty without pay, may not be amended to retroactively place the member in a pay status if the intent was clearly that his orders were for duty in a nonpay status. The general rule is that only when orders are incomplete or ambiguous or when a provision is omitted through error or inadvertence, may they be amended retroactively to increase the liability of the Government.
2. Assurances by superior officers to an Army reservist that if funds became available he would be paid for duty, when orders are to the contrary, are not a basis for allowing a claim for pay since, absent specific authority, the United States is not liable for the erroneous advice given by its officers, agents, or employees even though given in the performance of their official duties.

Major Jean-Francois J. Romey, USAR, requests reconsideration of our Claims Group's April 17, 1984 denial of his claim for pay and allowances for service he performed during the period of March 6 to August 4, 1982. We find that he is not entitled to the pay he claims.

BACKGROUND

During the period in question, March 6 through August 4, 1982, Major Romey (then Captain Romey), served at Headquarters, Sixth U.S. Army, as Reserve mobilization planning officer for a project known as MOBEX 82. Prior to his beginning this period of duty, the Army informed Major Romey that funds were not available to pay him. The offer was made to Major Romey to begin his tour of duty without pay, for an accumulation of retirement points only. It appears from the record that he was also told that if

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funds became available later, an attempt would be made to put him on an active duty with pay status. Apparently, he was also advised that in that event an attempt also would be made to pay him for the duty he had performed without pay.

On March 5, 1982, Major Romey signed an application for active duty training indicating that he was willing to perform active duty as mobilization planning officer for retirement points only without pay or allowances. Although the period of duty he was to perform was contemplated to be about 179 days, he actually performed the duty under a series of succeeding orders. The first 60 days were covered by two orders, each authorizing him to perform 30 days of inactive duty training. The remainder of the service appears to have been performed as active duty. All of the orders clearly indicate that the service was to be without pay.

When funds later became available, the Army amended Major Romey's orders to place him in pay status beginning in early August 1982. His organization also attempted to modify prior orders to show that Major Romey had been in a pay status to allow him to be paid for the period March 6 through August 4, 1982.

The Finance and Accounting Officer, however, denied payment of backpay for the period covered by Major Romey's orders which specifically stated that duty was to be performed without pay. Our Claims Group also denied the claim noting that Major Romey performed the duty without pay, as authorized by 10 U.S.C. § 683 and 10 U.S.C. § 4541, under orders specifically providing that the duty was without pay, and with full cognizance of the fact that immediate payment could not be made.

ANALYSIS

A Reserve member may be ordered to active duty or other duty without pay with his consent. 10 U.S.C. § 683(a) (1982). The Secretary of the Army is authorized to accept the gratuitous services of officers of the Army Reserve. 10 U.S.C. § 4541 (1982) (formerly 31 U.S.C. § 666 (1976)). The Army may not, however, order a reservist to perform duty without pay without his consent.

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The record shows that Major Romey submitted a signed application for active duty as mobilization planning officer which specifically stated that the duty was to be without pay. While the first 60 days were performed in the highly unusual status (for such a long period) of inactive duty, he responded to and continued to serve under those orders and under subsequent active duty orders issued pursuant to that application which specified that the duty would be without pay.

We do not dispute Major Romey's assertions that he was advised that once funds became available, he would be paid. In fact, once funds did become available, Major Romey was placed in a pay status. However, it is clear that he recognized that funds were not available when he accepted the duty and the risk that funds would be delayed or perhaps might not become available.

As to the attempt to amend Major Romey's orders retroactively to show that he had been in a pay status for the period March 6 through August 4, 1982, it has long been our view that, except where orders are incomplete or ambiguous or when some provision previously determined and definitely intended in a particular case has been omitted through error or inadvertence in preparing them, orders may not be amended retroactively to increase or decrease the liability of the Government. See Warrant Officer John W. Snapp, 63 Comp. Gen. 4 (1983); B-169435, June 16, 1970; B-160194, January 18, 1967; and 24 Comp. Gen. 439 (1944).

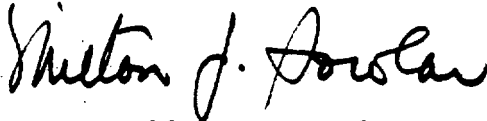
While it appears that the Army intended to attempt to obtain funding for the project and to have Major Romey paid for his service, there is nothing to indicate that any provisions concerning pay status were omitted from his orders through error or inadvertence, nor are they incomplete or ambiguous. To the contrary since no funds were available when Major Romey performed the duty, to have placed him in pay status and obligated funds for his pay may have been a violation of the Anti-Deficiency Act. See 31 U.S.C. § 1341 (1982) (formerly 31 U.S.C. § 665(a) (1976)). Therefore, placing Major Romey in a nonpay status was what was intended by the Army in those orders, and they may not now be amended retroactively to show that

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Major Romey had been in a pay status. Such a change would constitute a change of material fact which would be a matter for consideration by the Army Board for Correction of Military Records under 10 U.S.C. § 1552.

In addition, while Major Romey may have been led to believe that he would be entitled to pay for his duty, if funds later became available, it is well settled that in the absence of specific authority, the United States is not liable for the erroneous advice given by its officers, agents or employees even though given in the performance of their official duties. See Petty Officer John R. Blaylock, 60 Comp. Gen. 257, 260 (1981), and cases cited therein; and Schweiber v. Hansen, 450 U.S. 785 (1981). Accordingly, our Claims Group's disallowance of Major Romey's claim is sustained.

It has also come to our attention, in reviewing the file in this matter, that Major Romey apparently participated in inactive duty training assemblies during five 2-day periods during the period in question. During 60 days of this period his orders indicated that he was in an inactive duty for training without pay status. During the remainder, he was in an active duty without pay status. It appears that he was paid inactive duty training pay for the drill periods, but it is not clear whether he also received retirement points for that training in addition to the points he received for the same days for his other duty. We are bringing this matter to the attention of the Department of the Army for their review in view of the inconsistency between his nonpay status orders and his receipt of pay for drills, and the inherent conflict in serving in an inactive duty status while on active duty. Compare 50 Comp. Gen. 868, 871 (1971), concerning National Guard members in a similar situation.

for 
Comptroller General
of the United States