

summary

DECISION



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

FILE: B-219079

DATE: April 3, 1986

MATTER OF: Robert B. Bolin, M.D.

DIGEST:

Under applicable statutes and regulations Army medical officers who meet prescribed conditions of eligibility are entitled to special additional pay of \$10,000, provided that they agree in writing to remain on active duty for a 1-year period, with the stipulation that an earlier separation from service may be allowed only on grounds of hardship or in the interests of the Army. Consequently, a medical officer is liable to refund a \$10,000 payment he received under an agreement he negotiated with his commander which altered this stipulation, since the agreement did not conform to the governing provisions of statute and regulation and was therefore invalid. Entitlement to military pay is dependent upon provisions of statute and regulation, and may not be established through private negotiation.

Dr. Robert B. Bolin questions the correctness of a determination made by the Department of the Army that a 1-year service agreement he executed was invalid, and that as a result he is liable to refund an erroneous payment in the amount of \$10,000 which he received based on that agreement. In view of the facts presented, we sustain the Army's determination that Dr. Bolin is liable to refund the \$10,000 payment.

Background

Dr. Bolin is a colonel in the Army Reserve. Throughout 1984 he served on active duty at the Letterman Army Institute of Research, San Francisco, California. On June 14, 1984, he submitted a letter of resignation. He subsequently

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withdrew that letter of resignation, and on June 22 he signed a document styled as "an agreement to remain on active duty for a continuous period of one year" commencing on July 1, 1984. On the basis of this document he received a \$10,000 lump-sum payment of medical additional special pay, which is referred to by acronym as MASP.

Four months later on October 31, 1984, Dr. Bolin sent the Army Personnel Center a letter containing this statement:

"I * * * hereby tender my unqualified resignation from the Army under provisions of Chapter 3, AR 635-120 and MASP contract dated 22 June 84 to become effect[ive] 90 days from the date of this letter."

Army officials reexamined the 1-year service agreement Dr. Bolin had executed on June 22, 1984, and found that it contained a stipulation to the effect that his resignation during the period of the agreement would not be favorably considered if a 90-day notice period was not provided in writing.

Inquiry concerning the source of this stipulation produced the following explanation from Dr. Bolin's commanding officer:

"As you are aware, the medical department has had difficulty in providing physicians with research skills to staff Letterman Army Institute of Research (LAIR). Because COL Bolin's departure last summer would have been extremely awkward for LAIR and left us with no leadership in a major division (Blood Research), I modified COL Bolin's request for MASP as an inducement for him to remain on active duty for what we assumed would be 6 or 7 months. The modification removed subparagraph 'd' of the standard request which reiterates the Surgeon General's policy regarding release from the agreement to serve one year. In lieu of that statement, I inserted a notice provision which would provide us some time to recruit a replacement for COL Bolin. * * * COL Bolin has remained

on active duty the anticipated 6 months, and he now wishes to enter private practice, and has indeed made obligations to do so at the end of January 1985.

* * * * *

"37 US Code Section 302, (c)(1), provides that additional special pay will not be paid unless the officer first executes a written agreement under which the officer agrees to remain on active duty for a period of not less than 1 year. COL Bolin executed such an agreement, albeit one that was doctored by the undersigned without authority.

* * * * *

"In my opinion, it was the intent of Congress that should physicians not complete the agreed upon year, that the MASP be recovered pro rata. 37 US Code Section 302, subsection (f) provides that an officer who voluntarily terminates service on active duty before the end of the period for which payment was made, shall refund to the United States an amount which bears the same ratio to the amount paid to such officer as the unserved part of such period bears to the total period for which the payment was made. It is my opinion that this provision should apply because this was the intent of the Congress and this was his understanding when COL Bolin signed and acted in reliance upon it."

The Army separated Dr. Bolin from active duty and placed him in an inactive reserve status early in 1985 in compliance with his letter of resignation. Notwithstanding the explanation of his commanding officer, however, the following entry was included in his separation orders: "Officer entered an erroneous MASP Agreement Eff 1 Jul 84 Thru 30 Jun 85. Full recoupment of bonus funds is required * * *."

Dr. Bolin questions the correctness of the Army's determination that he is liable to refund the entire \$10,000 payment he received. He suggests that he should instead be required to repay only a pro rata portion of that payment, under the rationale advanced by his commanding officer.

Analysis and Conclusion

Section 302 of title 37, United States Code, authorizes special additional pay of \$10,000 for any 12-month period for medical officers of the armed forces who meet certain prescribed conditions of eligibility. 37 U.S.C. § 302(a)(4)(B). An eligible medical officer may not be paid the additional special pay, however, "unless the officer first executes a written agreement under which the officer agrees to remain on active duty for a period of not less than 1 year beginning on the date the officer accepts the award of such special pay." 37 U.S.C. § 302(c)(1). An officer "who voluntarily terminates service on active duty before the end of the period * * * shall refund to the United States an amount which bears the same ratio to the amount paid to such officer as the unserved part of such period bears to the total period for which the payment was made." 37 U.S.C. § 302(f).

Implementing regulations contained in paragraph 10541 of the Department of Defense Military Pay and Allowances Entitlements Manual provide that medical officers must meet the requirements of the administrative directives of the service concerned as a prerequisite to entitlement to MASP. The directives issued by the Department of the Army which were in effect in June 1984 required the inclusion of a provision in the MASP agreement stipulating that requests for resignation during the period of obligated service would not be approved except under circumstances of hardship as provided for by section IV of Army Regulation 635-100, or when considered in the best interests of the U.S. Army.^{1/}

The required provision was deleted from the agreement executed by Dr. Bolin, and in its place was substituted the other provision which, as described by his commanding officer, was intended to give him options to resign in

^{1/} Subsection 8.B and Figure 1 of DA Msg 221500Z Aug 83, as amended by DA Msg 251901Z May 84.

circumstances other than as delineated by the statutes and regulations. It is fundamental that a service member's entitlement to military pay is dependent upon terms prescribed by statute and regulation, and that common law principles applicable to employment contracts have no place in any determination regarding an entitlement to military pay.^{2/} The agreement for the special additional pay negotiated between Dr. Bolin and his commanding officer did not conform to the requirements imposed by statute and regulation, and for that reason we conclude that the agreement was invalid. Moreover, we consider that the provision of 37 U.S.C. § 302(f) relating to the retention of special pay on a pro rata basis has no effect here. Rather, this provision could apply in the case of an Army medical officer only if the officer entered into a valid special pay agreement and then separated in the manner authorized on grounds of hardship or in the interests of the Army.

As to the private understandings reached between Dr. Bolin and his commanding officer in this matter, it is well settled that in the absence of specific statutory authority the United States is not liable for the negligent or erroneous acts of its officers even though committed in the performance of their official duties, and persons receiving erroneous payments of Government funds as the result of such acts are obligated to make restitution.^{3/} Hence, we are unable to conclude that Dr. Bolin gained any rights to pay through the invalid agreement he negotiated with his commanding officer, since that officer had no authority to offer military pay in any manner other than that prescribed by the governing provisions of statute and

^{2/} See United States v. Larionoff, 431 U.S. 864, 869 (1977); Bell v. United States, 366 U.S. 393, 401 (1961); Abbott v. United States, 200 Ct. Cl. 384 (1973), cert. denied, 414 U.S. 1024 (1973); and Petty Officer John R. Blaylock, USN, 60 Comp. Gen. 257, 259-260 (1981).

^{3/} See Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); Posey v. United States, 449 F.2d 228, 234 (1971); Parker v. United States, 198 Ct. Cl. 661 (1972); and Veterinary and Optometry Officers, 56 Comp. Gen. 943 (1977).

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regulation. Further, even though Dr. Bolin may have acted in reliance on his commander's advice in this matter, this could not afford a basis for concluding that the unauthorized payment he received was proper. We consequently conclude that the \$10,000 payment Dr. Bolin received under the invalid service agreement was an erroneous payment of public funds which he is liable to refund in the full amount.

The question presented is answered accordingly.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States