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DECISION



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

29907

FILE: B-215512

DATE: December 3, 1984

MATTER OF: Technical Sergeant Robert E.
Campbell, Jr., MeANG

DIGEST:

National Guard members are entitled by law to pay and allowances and other benefits when called to active duty and disabled by injury "while so employed." They are ineligible for these benefits, however, based on injuries sustained when engaged in civilian pursuits and when no longer "employed" in a military capacity following their release from military control on the last day of an active duty period. Hence, an Air National Guard sergeant may not be allowed pay and allowances for an injury he sustained while engaged in private civilian employment subsequent to his release from military duty and control earlier the same day, notwithstanding that he was in a "standby" status subject to a possible recall to duty during the remainder of that day.

We have been asked to decide whether Technical Sergeant Robert E. Campbell, Jr., MeANG, is entitled to military Reserve pay and allowances and other related benefits as the result of an injury he sustained while in a National Guard "standby" status on July 8, 1983.^{1/} In light of the facts presented and the applicable provisions of law, we conclude that he is not entitled to those benefits.

Background

Sergeant Campbell is a member of the 101st Consolidated Aircraft Maintenance Squadron, a unit of the Maine Air National Guard located at Bangor International Airport which

1/ This action is in response to a request for a decision received from the Chief of the National Guard Bureau's Office of Legal Advisor.

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operates as an element of the Strategic Air Command (SAC) when in Federal service. In June 1983 written orders were published calling Sergeant Campbell and other unit members to active Federal service "in support of SAC Alert" for several short tours of duty in July, including the days of Thursday and Friday, July 7 and 8, 1983.^{2/}

The records before us indicate that on the morning of Thursday, July 7, Sergeant Campbell was required to report for duty at 7 o'clock at Bangor International Airport. His duty tour lasted 24 hours, until 7 o'clock on the morning of Friday, July 8. At that time he was released from duty, but he remained in a "standby" or "back-up" status for the remainder of the day. While in that status he was subject to a possible recall to duty, and he was required to remain in the community area and furnish his unit with a telephone number through which he could be reached. Apparently, for several years it has been a standard requirement that this National Guard unit's members stay in a "standby" status for the remainder of a day in which they complete short tours of active duty, so that they may be recalled to assist their replacements on duty at the airport in the event of unexpected aircraft maintenance needs, snow removal problems, illness, etc. Nevertheless, unit members in a "standby" status may return to their homes in the Bangor area, and they are also at liberty to engage in private employment and otherwise pursue matters related solely to their own personal civilian interests. Sergeant Campbell's unit did not recall him to duty at the airport from a "standby" status on Friday, July 8, following the completion of his scheduled duty tour at 7 o'clock that morning. At approximately 2 o'clock that afternoon he was injured in a work accident while engaged in private employment in the city of Brewer, Maine, to the east of Bangor.

The question presented is whether Sergeant Campbell is lawfully entitled to military Reserve incapacitation pay and benefits on the basis of the injury he sustained in those circumstances.

^{2/} These orders were issued under the statutory authority of 10 U.S.C. § 672(d).

Analysis and Conclusion

The governing law in this case provides that members of the Air Force, other than the Regular Air Force, are entitled to the pay and allowances and to hospital benefits provided by law or regulation for members of the Regular Air Force whenever they are called or ordered to active duty or to perform inactive duty training for any period of time, and are disabled in line of duty from injury "while so employed."^{3/}

We recognize that military reservists called to active duty are entitled to full pay and allowances for each day they serve under orders. We have, however, consistently held that they may not be considered as "employed" in an active duty status, for purposes of the statutes relating to pay and allowances and benefits while incapacitated, after their actual release from duty where no travel is involved.^{4/} That is, even though they are entitled to military active duty pay for the full day of their release, they revert to their civilian status when they are released from military control, and they are no longer entitled to the benefits of the cited provisions of law for injuries sustained after their release and while engaged in their civilian pursuits.^{5/}

^{3/} See 10 U.S.C. § 8721(2) and 37 U.S.C. § 204(g)(2).

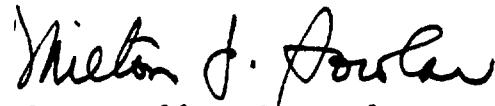
^{4/} 44 Comp. Gen. 408 (1965). See also Andrews v. United States, 4 Cl. Ct. 114, 120-124 (1983); 54 Comp. Gen. 165, 166 (1974); and 43 Comp. Gen. 412, 415 (1963).

^{5/} 44 Comp. Gen. at 410. In cases where travel is involved, reservists injured when traveling following their release from duty on a day of ordered active duty are considered to have incurred a disability while "employed" in a military capacity if, and only if, the injury occurred during direct return travel to their residence upon completion of the tour of duty. 58 Comp. Gen. 232, 234 (1979); Rule 1 (note 1), Table 8-2-4, Department of Defense Military Pay and Allowances Entitlements Manual.

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In the present case, our view is that Sergeant Campbell was effectively released from military control when his tour of duty ended at Bangor International Airport at 7 o'clock on the morning of Friday, July 8, 1984. Although he was in a "standby" status subject to a possible recall to duty during the remainder of the day, he was not under military supervision and control but was only under a requirement to furnish his unit with a local telephone number at his residence or place of civilian employment through which he could be reached. It is our view that in the absence of an actual recall to duty he could not then have been properly considered as "employed" in a military capacity under military control within the contemplation of the cited provisions of law authorizing disability benefits for reservists injured "while so employed." The injury he sustained that afternoon was incurred while he was engaged in private civilian employment and was unrelated to military National Guard or Reserve duty, and in those circumstances we are unable to conclude that he is entitled to the military benefits at issue.

The question presented is answered accordingly.

for 
 Comptroller General
 of the United States