

DATE: 03-11-91

CITATION: VAOPGCPREC 12-91
Vet. Aff. Op. Gen. Couns. Prec. 12-91

TEXT:

SUBJECT: Entitlement of a Reservist to Payment of Unauthorized Medical Expenses.

(This opinion, previously issued as Opinion of the General Counsel 1-64, dated May 15, 1964, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Chief Medical Director

1. This responds to your request of April 7, 1964, for an opinion whether, under the facts stated, claims for unauthorized hospital and medical expenses may be paid. Essentially, the question is whether injury adjudicated "service-connected" pursuant to 38 U.S.C. § 106(d) may be the basis for reimbursement or payment of such expenses, including those incurred on the day of the accident, where the hospital and medical services were rendered before adjudication of service connection and the award of compensation. For reasons to be stated our answer is in the affirmative.

2. The salient facts are as follows: As a member of the United States Naval Reserve, this Reservist was attached to the Naval Air Station at Seattle, Washington. He was ordered to report for inactive duty training (scheduled week-end drill) and was proceeding by automobile on January 4, 1963 to the Portland International Airport, Portland, Oregon, by the most direct route for air-lift to Seattle, Washington. At about 6:15 P.M., the automobile in which he was riding as a passenger apparently skidded on an icy road and collided with another vehicle causing him severe injuries. The air-lift from Portland to Seattle was regularly used by the reservists in the Portland area. He was taken on the same day to a private hospital for treatment, where he remained hospitalized until January 16, 1963. He continued undergoing treatment under the care of private physicians until April 2, 1963, which treatment included a further stay at a private hospital. Claims for payment of the unauthorized hospitalization and medical services furnished him over the period January 4, 1963 to April 22, 1963 have been filed. Service connection has been granted for the Reservist's injuries and the rating decision shows the degree of disability at 10 per cent effective January 5, 1963. An amended compensation award commencing that date was approved May 11, 1964. The service department has determined there is no authority under its laws to pay the medical expenses involved.

3. VA Regulation 6141(A)(1) provides for reimbursement or payment of unauthorized medical expenses for treatment of a condition shown to be service-connected by a decision of a VA adjudicatory agency where emergency and other requirements are met. Sections 610(a) and 612(a) of title 38, United States Code, provide respectively for hospital care and outpatient services for the service-connected disability of veterans, who are defined by section 101(2) of title 38 as persons who served in the active military, naval, or air service and were discharged or released therefrom under conditions other than dishonorable.

The term "service-connected" with respect to a disability means a disability incurred or aggravated in line of duty in the active military, naval, or air service (38 U.S.C. § 101(16)). Section 106(d) of title 38 provides that, for purposes of this title, an individual injured after December 31, 1956, while proceeding directly to or returning directly from active duty for training or inactive duty training, when such training is authorized or required by competent authority, shall be deemed to have been on active duty training or inactive duty training, as the case may be, at the time the injury was incurred. 38 U.S.C. § 101(24) defines "active military, naval, or air service" to include any period of active duty for training or inactive duty training during which the individual was disabled from an injury incurred or aggravated in line of duty.

4. Under the facts stated it is obvious that, even though the Reservist was not in a duty status at the time of his injury, he is to be deemed as having the same inactive duty status as he would have occupied had the injury been incurred while actually engaged in performing such duty. A primary function of section 106(d) of title 38 is to assure that members of Reserve components traveling directly to or from authorized training duty will be covered for "service-connected" veterans' benefits where they were not actually in a duty status, from a military standpoint, when injured during such travel. This is the so-called "portal-to-portal" principle which was first incorporated in Public Law 881, 84th Congress, for purposes of dependency and indemnity compensation and later broadened to include other benefits based on service-incurred disability.

5. It is also apparent that since no actual duty status had been assumed and the law merely deemed the Reservist as having such status at the time of the injury he may be regarded as having been discharged or released from such presumed duty status immediately following incurrence of the injury and therefore as having attained the requisite position as a veteran insofar as hospital or medical benefits under VA laws are concerned.

6. It appears, therefore, that the Reservist, a veteran, sustained a disability based on injury deemed to have been incurred in the active service. Unless the conclusion is affected by the fact that the adjudication of service connected and award of compensation did not occur until after the emergency hospital and medical services were rendered, the case is properly one for reimbursement or

payment of unauthorized medical expenses under the regulations, assuming other requirements therein specified are met.

7. The rule established in Op Sol 110-52 and Op Sol 178-52 under the law as it existed prior to Public Law 87-583, approved August 14, 1962, was to the effect that, as to a peacetime veteran not separated for disability, there was no authority to reimburse for medical expenses incurred in an emergency for treatment of a service-connected disability for any period prior to the date of approval of an award of disability compensation. However Op.GC 18-57 liberalized this rule by allowing such reimbursement to be authorized from the date compensation was paid even through the compensation payment was retroactive.

8. In case, C XXX (unpublished opinion of this office dated April 21, 1960), it was held that since compensation was not awarded, and could not be paid to the peacetime Reservist injured while returning from training duty until the day following the accident, reimbursement or payment for unauthorized hospital and medical services furnished the day of the accident could not be made. However, in that case reimbursement and payment was in fact authorized for hospital and medical service rendered on subsequent days for which compensation was retroactively awarded. The case arose prior to Public Law 87- 583, approved August 14, 1962, which removed the requirement that in order to qualify for hospital or medical care for a peacetime service-connected disability a veteran must have either been discharged for a disability incurred or aggravated in line of duty or be in receipt of compensation. Hence, as to a claim based on hospital and medical services rendered on or after August 14, 1962, receipt of compensation is not a basic eligibility requirement.

HELD:

9. Conclusion: Where, as in this case, an individual has not acquired the necessary duty status but is deemed, pursuant to 38 U.S.C. § 106(d), as further implemented by 101(24), to have incurred his injury in the active service, payment or reimbursement for unauthorized hospital and medical services furnished for such injury while the individual was not in a duty status may be made, provided other requirements of VA Regulations 6140, et seq., are met, without regard to the fact that adjudication of service connection occurred after the services were rendered. Where the services for such an injury were furnished on or after August 14, 1962--the date of enactment of Public Law 87-583--payment or reimbursement may be made for unauthorized hospital and medical services rendered on the day the injury was sustained, as well as subsequent days, irrespective of the fact that compensation was not payable for the times involved. By a parity of reasoning, these conclusions relate equally to situations where injuries deemed service-connected pursuant to section 106(d) are incurred while returning directly from training duty.

VETERANS ADMINISTRATION GENERAL COUNSEL
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