

DOCUMENT RESUME

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[Payment for Physicians' Time]. B-114817. September 8, 1977. 4 pp.

Decision re: Railroad Retirement Board; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Central Personnel Management (805).

Authority: Railroad Unemployment Insurance Act, as amended (45 U.S.C. 362(n)). Railroad Retirement Act. B-174221 (1971). 42 Comp. Gen. 498. 70 C.F.S., Physicians and Surgeons, sec. 68.

The Railroad Retirement Board requested an opinion as to whether it may pay the fees of physicians for the time they reserved for medical examinations scheduled by the Board but which were not conducted due to the failure of the examinees to report. The arrangements between the Board and the physicians provided for payment by the Board for medical examinations actually performed so the Board did not compensate the physicians for the lost time. However, the Board may arrange in advance to pay physicians on a reservation-of-time basis.
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DECISION



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

FILE: B-114817

DATE: SEP 8 1977

**MATTER OF: Railroad Retirement Board - Payment for
Physicians' Time**

**DIGEST: Where arrangements between Railroad
Retirement Board and physicians con-
template payment by Board for medical
examinations actually performed, Board
cannot compensate physicians for lost
time due to failure of examinees to keep
appointments scheduled by Board. 42
Comp. Gen. 498. However, Board may
arrange in advance to pay physicians on
reservation-of-time basis. B-174231,
November 15, 1971.**

The Railroad Retirement Board has requested our opinion on whether it may pay the fees of three physicians, two psychiatrists, and an orthopedic specialist, for the time they reserved for medical examinations scheduled by the Board but which were not conducted because of the failure of the examinees to report.

The three physicians in question have requested payments of \$20, \$50, and \$22.50, which represented the fees promised to them by the Board in return for their examination and filing of reports on applicants for disability annuities under the Railroad Retirement Act. However, as noted above, no examinations were performed because of the applicants' failure to keep their appointments.

The facts presented here are closely related to our decision in 42 Comp. Gen. 498 (1963) where we observed:

"* * * The contract in its essence was a promise by the Government to pay the professional fee (offer) upon the rendition of its professional services on behalf of the Post Office employee. Since the professional services were not rendered it follows that the contract contemplated did not materialize. There has been offered no evidence that there was any agreement to pay the fee on the

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basis of the reservation of time, i. e., whether or not the employee kept the appointment and the professional services were rendered, and none will be inferred."

A physician is entitled to recover for his services in the same manner as any other person who performs services for another. The employment of a physician, without express agreement as to compensation, raises an implied agreement by the person employing him to pay him the reasonable value of his services, within a reasonable time after they are rendered. 70 C. J. S., Physicians and Surgeons, § 88. However, we find no court cases concerning the right of a physician, in the absence of an express agreement, to collect compensation on the basis of the reservation of his time. Accordingly, we conclude that our 1963 decision remains controlling.

The record indicates that the performance of the physicians in conducting examinations and filing reports on the applicants for disability annuities under the Railroad Retirement Act, was a condition precedent to the payment of fees by the Board. We fail to find an obligation on the part of the Railroad Retirement Board to pay for the professional time of the three physicians under the terms of the express agreement which provided for fees for the physicians in return for their examination and filing of reports on applicants for disability annuities under the Railroad Retirement Act. Since there is no indication of a contractual undertaking by the Railroad Retirement Board for the payment of the physicians' fees on the basis of time reserved, there is no legal basis for compensation in accordance with the facts submitted here.

In the event we answered the first question in the negative, the Board asks whether it may contract with a physician solely for the availability of his time rather than for the actual performance of a medical examination.

Our decision to the Civil Service Commission in B-174221, November 15, 1971, held that a psychiatrist's fee for reserved time was properly payable where the arrangement between the doctor and the Commission contemplated payment on this basis. We distinguished the holding in 42 Comp. Gen. 498, supra, as follows:

"* * * Doctor Smith's letter of March 16, clearly states his policy of accepting appointments on a reservation-of-time basis. The

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Commission, in appointing the applicant as its agent to arrange for 'a definite appointment' directly with Dr. Smith, and in acquiescing to the terms set forth by Dr. Smith in the March 15 letter, is obligated under the terms of the contract, as evidenced in the correspondence, for payment of the reserved time since the applicant failed to keep the appointment or cancel it within a reasonable time."

We think the 1971 decision covers the Board's second question. The Board's authority to authorize medical examinations for applicants for benefits under the Railroad Retirement Act is set forth in § 12(a) of the Railroad Unemployment Insurance Act, as amended, 45 U.S.C. § 352(a)(1970), which states in part:

"The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for carrying the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness benefits under this chapter and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to section 06 of Title 5. In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination for execution of such statement." (Emphasis added.)

In view of the statutory authority for the Board to compensate doctors, hospitals, clinics, or other persons on a reasonable basis,

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a contract by the Board with a physician for his reserved time would seem appropriate. However, there must be evidence of advance agreement for payment on that basis.

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Deputy Comptroller General
of the United States