

DOCUMENT RESUME

02910 - [A2073144]

[Army Member's Claim for Expenses for Surgery Performed in Civilian Hospital]. B-188418. July 19, 1977. 3 pp.

Decision re: Gerald M. Watson, Jr.; by Paul G. Deabling (for Elmer B. Staats, Comptroller General).

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

Contact: Office of the General Counsel: Military Personnel.

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

Organization Concerned: Department of the Army.

Authority: B-105887 (1976). B-141468 (1960). B-150746 (1963). B-146262 (1961). Army Regulation 40-3, ch. 17-7.

A former Army member appealed a settlement of a claim for reimbursement for alleged emergency surgery performed by a civilian doctor at a civilian hospital. GAO would not question agency determination that surgery was not of emergency nature, and claimant did not present evidence to the contrary.
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DECISION



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

FILE: B-188418

DATE: July 19, 1977

MATTER OF: Gerald M. Watson, Jr.

DIGEST: Army member's claim for reimbursement for medical expenses for surgery performed in a civilian hospital by a civilian surgeon may not be allowed since Army determined that no emergency existed which administrative determination this Office will not question without evidence showing determination to be clearly erroneous, and such evidence has not been presented.

This action is in response to a letter dated November 8, 1976, from Mr. Gerald M. Watson, Jr., a former member of the United States Army, concerning his claim for reimbursement of medical expenses incurred in connection with a hemorrhoidectomy performed in a civilian hospital by a civilian surgeon, which in effect, constitutes an appeal from a settlement by the Claims Division of this Office dated October 14, 1976.

While an enlisted member of the U.S. Army stationed at Fort Bragg, North Carolina, the member apparently consulted his family physician in Danville, Virginia, on October 3, 1974, because of a hemorrhoid condition. The member asserts that he was advised by the physician to see a doctor at Fort Bragg. It is reported that the member's military medical record contains an entry for October 8, 1974, indicating that he did seek such medical assistance. That record indicates that hemorrhoids had been present for approximately 6 months; however, the member asserts that he did not see an Army physician at that time but was given some ointment by an enlisted medical specialist and returned to duty.

The following weekend, October 12, 1974, the member returned to his home, apparently on a weekend pass, and while there he reports that hemorrhoids began

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bleeding with bowel movement. He contacted his family physician who instructed him to be admitted to the local hospital where a hemorrhoidectomy was performed by the local physician. The member was released from the hospital on October 18, 1974, incurring hospital charges of \$504.25 and physician's charges of \$150 for surgery performed on October 12, 1974. Charges of \$5 each for two office calls on October 3, 1974, and October 4, 1974, were also incurred by the member.

The medical records, both civilian and military, were reviewed by the medical professional staff of the U.S. Army Health Services Command. From these records it was determined by the Army that the stated condition of hemorrhoids in this case was not an indication for emergency surgery. A signed letter in the file from the attending civilian physician states that the member's condition "was an emergency and therefore necessary to have surgery." There is no indication from the information in the record that the member was ever examined by an Army physician for the hemorrhoid condition either before or after the surgery.

Regulations concerning medical services for the Army are contained in Army Regulations 40-3, September 17, 1973, chapter 17 of which provides for care from civilian sources.

Section 17-7 of these regulations provides that personnel entitled to medical care at Army expense will not obtain such care from civilian agencies at Army expense without obtaining prior authorization from the designated approving authority. One exception to that rule is provided in subsection (2)(a) of section 17-7 which authorizes medical care without prior authorization in emergencies when the urgency of the situation does not permit the obtaining of such prior authorization.

The history of medical entitlement for members of the Armed Forces indicates that it was intended that adequate medical care should be provided to military personnel while on active duty by military medical personnel and in military hospitals. However, if a military member became ill

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or was injured while on leave or while away from his permanent duty station where no military medical professionals or Government hospitals are available, the military service should pay for the cost of emergency civilian medical care. See B-185887, October 15, 1976; B-141468, February 24, 1960; B-150746, February 11, 1963; and B-146262, August 8, 1961.

In the present case, the only matter in dispute appears to be whether the surgery and hospital treatment of the member for a hemorrhoidectomy was an emergency for which the Army should pay or whether the operation could have been delayed so as to permit the treatment to be obtained from the military. In that connection it is noted that the administrative report on this case indicates that required medical services were available at Fort Bragg and that, therefore, civilian treatment, except for emergency care, would not have been authorized even if a request had been made in advance.

The Department of the Army has established certain criteria in connection with accepted surgical practices as an indication of the need for emergency surgery. An administrative determination was made that the member's physical condition did not warrant emergency surgery. We ordinarily do not question an administrative determination in such matters in the absence of evidence showing such determination to be clearly in error or arbitrary and capricious. In the present case, there is no showing of an emergency other than a brief statement by the attending civilian physician. This statement, in our opinion, is insufficient to overcome the determination of the Army that an emergency did not exist nor is it sufficient to show that the Army's determination was clearly in error.

Accordingly, based on the record before us, the action by our Claims Division is correct and is sustained.


For the Comptroller General
of the United States