

February 12, 2001

In Re:

[Redacted]

Claimant

Claims Case No. 00013101

CLAIMS APPEALS BOARD DECISION

DIGEST

An Air Force member was discharged in May 1993. In 1997 the Air Force Board for the Correction of Military Records placed the member on the retired list effective June 1, 1993. The member may be reimbursed for the amount he spent to provide health insurance for his wife between 1993 and 1997. She incurred medical expenses between December 1993 and November 1994 which were not covered by that health insurance. The member may be reimbursed for those expenses up to the amount that the Civilian Health and Medical Program of the Uniformed Services would have paid on a claim for those expenses.

DECISION

We have been asked to render a decision regarding the claim of a retired military member for reimbursement of medical expenses incurred by his wife.

Background

The member was court-martialed in 1990. His sentence included a bad-conduct discharge, which was executed in May 1993. Between December 1993 and November 1994, the member's wife incurred medical expenses which according to the record totaled \$6,874.21. The member was not entitled to military medical care at that time. However, in 1997 the Air Force Board for the Correction of Military Records directed that the member's record be corrected to indicate that he did not receive a bad-conduct discharge, but instead was retired effective June 1, 1993. He claims reimbursement for her health insurance premiums and non-reimbursed medical expenses.

Discussion

The Secretary of the Air Force, acting through the Air Force Board for the Correction of Military Records (Correction Board), may change the military record of an Air Force member to correct an error or remove an injustice. Unless procured by fraud, such a correction is final and conclusive on all officers of the United States. When a correction is

made, the member may claim the "pay, allowances, compensation, emoluments, or other pecuniary benefits..." due as a result of the correction.⁽¹⁾ See 10 U.S.C. § 1552.

The purpose of a record correction is to restore the member to the position he would have held if the error or injustice had not occurred. See 63 Comp. Gen. 385 (1984). Numerous Comptroller General decisions dealt with the financial calculations necessary to achieve that purpose. In *Lieutenant Colonel Louis D. Gaddini, AUS*, B-195558, Dec. 14, 1979, the Comptroller General discussed at length the calculation of the amounts which the Army owed to a member when the Correction Board restored him to active duty. It was uncontested that one of the benefits for which the member was to be reimbursed was medical expenses, provided that the medical expenses could be reduced to a sum certain. The Comptroller General said that medical expenses could be reimbursed, since medical care would have been provided during the period in question and since the medical expenses could be reduced to a sum certain. In *Captain Martha J. Springer, MSC, USN*, B-198166, O.M., June 6, 1980, the Comptroller General allowed reimbursement for medical insurance premiums for a dependent in a situation analogous to a records correction.

The case before us is similar to *Gaddini*, B-195558, *supra*, except that the member here was placed on the retired list rather than restored to active duty. While retirees and their dependents may be treated in military medical facilities, their care is a lower priority at those facilities than the care of active duty members and their dependents. See the table in 32 C.F.R. § 728.3(b) for Navy facilities and paragraph 1.4 of Air Force Instruction 41-115, *Authorized Health Care and Health Care Benefits in the Military Health Services System (MHSS)* (July 25, 1994) for Air Force facilities. Some facilities may not have the capacity to treat those in the retiree category of priority. In *Lord v. United States*, 2 Cl. Ct. 749 (1983), and *Ulmet v. United States*, 17 Cl. Ct. 679 (1989), the court characterized medical care for retirees and their dependents as discretionary rather than mandatory and denied reimbursement for medical expenses. In our view, the fact that the member's spouse might not have been able to obtain treatment at a military medical facility does not by itself defeat the member's claim, since the member would have been entitled to file a claim for at least partial reimbursement under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). See 10 U.S.C. § 1086. Therefore, the member is entitled to reimbursement for his wife's medical expenses to the extent that CHAMPUS would have reimbursed him.⁽²⁾ We have been informally advised by CHAMPUS authorities that the amount of the member's claim which CHAMPUS would have paid is now difficult to calculate because a list of the maximum allowable charges for individual procedures in 1993 and 1994 is no longer available. But as in *Gaddini*, B-195558, *supra*, the member's claim for medical expenses can be reduced to a sum certain, because a defined formula exists for calculating CHAMPUS's reimbursement. See *Lt. Bernard D. Smith, USCG*, B-196570, Apr. 4, 1980. If insufficient 1994 data exists to calculate a claim under CHAMPUS, the claim should be processed using available data for the year closest to 1994 for which the necessary data exists.

As in *Springer*, B-198166, *supra*, the member is entitled to reimbursement for the health insurance premiums he paid for medical coverage for his wife, since medical care or CHAMPUS coverage would have been available. With his claim, the member submitted to the Defense Finance and Accounting Service (DFAS) an affidavit that he did not receive reimbursement through that medical coverage for any of the expenses he submitted to DFAS. If he had been reimbursed for those expenses, he would not be entitled to reimbursement here. See *Kerry J. Dodge*, B-245956, Apr. 3, 1992.

Conclusion

To the extent explained above, the member's claim is allowed.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. If a member is restored to active duty by the Correction Board, the pay and allowances to which he becomes entitled pursuant to the correction is subject to offset by his civilian earnings during the period at issue. *See Lieutenant Colonel Louis D. Gaddini, AUS, B-195558, Dec. 14, 1979.* Here the member was placed on the retired list by the Correction Board and could have received both civilian earnings and military retired pay for the same period of time.

2. The difference in priority between the dependents of active duty and retired members explains why the active duty member in *Gaddini* was entitled to full reimbursement, while a retired member's reimbursement is limited to what CHAMPUS would have paid on his claim.