

March 8, 2004

In Re:

[Redacted]

Claimant

Claims Case No. 04022604

CLAIMS APPEALS BOARD DECISION

DIGEST

Determinations as to how long a medical disability continues and whether it was incurred in the line of duty are left to the exercise of sound administrative judgment of a member's service, the Department of Veterans Affairs, or the relevant agency concerned. They do not come within the purview of this Office.

DECISION

This decision responds to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 03081807, dated January 14, 2004, which determined that part of a former Army National Guard member's claim for reimbursement of medical expenses was barred by the statute of limitations and that the other part should be remanded to the Defense Finance and Accounting Service (DFAS) for consideration on the merits.

Background

The record shows that, in April 1988, the member enlisted in the Army National Guard (ARNG), a reserve component of the United States Army. In August 1988, she enrolled in the Reserve Officers Training Corps and was commissioned as a Second Lieutenant in the United States Army Reserve in May 1990. Following commissioning, she accepted an appointment in her state ARNG.

In December 1991, the member was ordered to perform active duty-special work (ADSW) in a foreign country, from January 11, 1992, through July 7, 1992. In May 1992, a medical examination conducted in that country determined that she had pelvic inflammatory disease (PID). Her ADSW ended in June 1992, and she returned to her state. The member was examined and/or treated for various medical conditions by a private physician in her state on eight occasions between June 29, 1992, and March 3, 1993. It was eventually determined that she had cervical cancer, and she obtained medical treatment for that condition from two other private physicians in her state on 19 occasions between December 14, 1992 and August 12, 1994.

The member was on active duty in another state from August 1 through 31, 1992 (31 days), and in her state from September 15, 1992, through February 3, 1993 (142 days). She deployed abroad from June 5 through 19, 1993, but the record does not show that this period was active duty as well. The member was discharged from her state ARNG and transferred to the Inactive National Guard in April 1995. She transferred to the United States Army Reserve Control Group (Reinforcement) on April 1, 1996.

The member initially sought reimbursement for her medical expenses for the period of December 14, 1992, through June 17, 1996, from the Department of Veterans Affairs (VA). Her claim was received by the VA on March 13, 1997, and acknowledged by letter dated March 18, 1997. On April 24, 1997, the VA rejected her claim on the grounds that it had not authorized outpatient care for her. By letter dated January 14, 1999, the VA reaffirmed that denial, noting that care had been available at its center in her state. ⁽¹⁾ The VA denied her requests for service-connected disability findings for human papillomavirus on December 15, 2001, and for carcinoma in situ of the exocervix (cervical cancer) on July 22, 2002.

On January 5, 2000, the member contacted the National Guard Bureau (NGB) about obtaining reimbursement for her medical expenses during the 1992-1994 period, and her claim was eventually directed to the Office of the Inspector General of her state National Guard (NG IG). By letter dated April 18, 2000, the NG IG denied her claim on the grounds that the infectious organisms that cause PID are not associated with a predisposition to cervical cancer--a decision which the member appealed by letter dated July 25, 2001. By letter dated August 23, 2001, the NG IG stated that the Deputy Chief of Staff-Personnel would consider a line of duty determination incident to reconsideration of her claim, but in a letter dated February 12, 2002, they stated that such a determination was not possible due to her current lack of military status. The member was advised to take the matter to the Army Board for the Correction of Military Records (ABCMR) and the Office of the Surgeon General, which she did.

On April 3, 2002, the member filed a CHAMPUS claim for carcinoma in situ, repeated pap tests, laser vaporization of the cervix, laproscopic examination, pain medication, pelvic pain, and PID. By letter dated June 3, 2002, the Office of the Assistant Secretary of Defense for Health Affairs (ASDHA) allowed her a total of \$1,349.50 in reimbursement for medical care for August 2000 through February 2003. Claims for other periods were disallowed as not showing TRICARE entitlement.

On May 8, 2003, the ABCMR denied the member's petition to correct her records to allow her claim, and by letter dated that same day to DFAS, she claimed reimbursement for the private medical treatments from June 29, 1992, through August 12, 1994. By letter dated June 20, 2003, DFAS denied her claim on the grounds that it was barred by the six-year statute of limitations set forth at 31 U.S.C. § 3702(b). She then appealed her claim to our Office.

In the Settlement Certificate, our Office determined that the member's claims prior to September 26, 1993 were barred from consideration by 31 U.S.C. § 3702(b). It remanded the portion of her claim from September 26, 1993 through August 12, 1994 to DFAS for their consideration. On remand, DFAS essentially concluded that they were not the appropriate agency to consider her claim. The member now appeals to this Board.

Discussion

Prior to 1996, the authority under 31 U.S.C. § 3702(a)(1) to settle claims against the United States Government involving uniformed service members' pay and allowances rested with the Comptroller General. In 1996, that authority was transferred to the Secretary of Defense under Section 202(n)(1)(B) of Public Law 104-316, 110 Stat. 3826, 3843, Oct. 19, 1996. That authority now rests with this Board by virtue of delegations to DOHA by the Deputy Secretary of Defense and the Department's General Counsel. ⁽²⁾

The aforesaid settlement authority, by its own terms, does not extend to the settlement of claims for which provisions are made under other laws. *See* 31 U.S.C. § 3702(a). Moreover, prior to 1996, when interpreting his authority to settle claims similar to this one, it was the consistent position of the Comptroller General that administrative determinations as to whether a disability was incurred in the line of duty or how long a disability continued were matters left to the

exercise of the sound administrative judgment of the members' respective services or other agencies concerned. *See* B-251025, Jan. 19, 1993; B-193386, Jun. 8, 1979; B-216578, Feb. 19, 1985; and 54 Comp. Gen. 33, 36 (1974). The Claims Appeals Board subscribes to the Comptroller General's position in this regard and has indicated it would follow it. *See* DOHA Claims Case No. 96070228 (January 27, 1997) *aff'd* Deputy General Counsel (Fiscal), July 27, 1999.

In this case, it is not necessary for us to determine whether or not the member's claim is barred by the statute of limitations set forth at 31 U.S.C. § 3702(b), because the subject matter at issue does not come within the purview of this Board. It is the member's position that she is entitled to reimbursement for her claimed medical expenses because they resulted from a service-related medical condition. She has made this claim to her service, to the ASDHA, and to the VA. These agencies have denied her claim, in whole or in part, for the reasons set forth in their determinations. She may continue to pursue her claim through whatever process is provided by those agencies, or to seek reimbursement from any other cognizable agency. However, this Board does not have authority to review the decisions of the VA, or of the ASDHA insofar as they relate to what medical treatments, etc., are covered under the CHAMPUS/TRICARE program. As explained above, the Board defers to the member's service with respect to the administrative determination that her medical situation was not service-related. *See* above citations.

Conclusion

The member's claim does not come within the purview of the Claims Appeals Board.

_____/s/
 Michael D. Hipple
 Chairman, Claims Appeals Board

_____/s/
 William S. Fields
 Member, Claims Appeals Board

_____/s/
 Jean E. Smallin
 Member, Claims Appeals Board

1. In a different but contemporaneous matter, on June 23, 1999, the VA awarded the member 30% disability due to post-traumatic stress disorder, effective March 1, 1997. The rating was increased to 50% on November 18, 2000, and to 70% on September 18, 2001.

2. *See Delegations of Decision Authorities - Waiver of Indebtedness, Advance Decision, and Claims Settlement*, dated March 5, 1999, by the Deputy Secretary of Defense and *Delegations of Decision Authorities - Waiver of Indebtedness, Advance Decision, and Claims Settlement*, dated March 17, 1999, by the General Counsel of the Department of Defense.

