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SB91

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to liability immunity of the state, its employees and agents, and members of the Alaska National Guard.

While training or on duty under federal mandate, the state national guards are performing a United States Government activity. Nevertheless, there have been occasions in which states, rather than the United States, have been exposed to tort liability for injuries or damage resulting from federally mandated guard activities.

In 1981, Congress amended 28 U.S.C. sec. 2671 by adding to the definition of "employees of the government" members of the National Guard training or on duty pursuant to federal order under 32 U.S.C. The effect of this amendment was to clarify that the United States considers the Guard as a federal function during 32 U.S.C. activities and that claims for injuries resulting from such activities could be pursued under the Federal Tort Claims Act, 28 U.S.C. sec. 2671 et seq. In spite of this change in the law, there are rare occasions when the state remedy is preferred by an injured third party who consequently will file a claim for damages in state court on the basis of state law. This bill will prevent suits of this nature, and assure that persons injured or property damaged as a result of federally mandated and controlled Guard activities will be required to seek damages from the United States Government. Existing worker's compensation coverage of guardsmen will not be affected by this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST SB 91
 Bill/Resolution No. : LL#773-87-0016
 Title: Civil Liability for National
Guard activities.
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: _____

FISCAL DETAIL
 Agency Affected: Military & Veterans Affairs
 BRU: Alaska National Guard
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill would have no known fiscal impact.

Prepared by: Richard A. Rountree
 Division: Administrative & Support Services Division
 Approved by Commissioner for MG Edward G. Pagano
 Agency: Dept. of Military & Veterans Affairs

Phone: 465-4600
 Date: 10/07/86
 Date: 10/07/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

amend
to title 28

PUBLIC LAW 97-124 [H.R. 3799]; December 29, 1981

FEDERAL TORT CLAIMS—
NATIONAL GUARD

For Legislative History of Act, see p. 2692

An Act to extend the Federal tort claims provisions of title 28, United States Code, to acts or omissions of members of the National Guard, and to provide that the remedy under these provisions shall be exclusive in medical malpractice actions involving members of the National Guard.

Federal tort
claim provisions
for National
Guard members.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2671 of title 28, United States Code, is amended—

(1) in the second paragraph, by inserting "members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32," after "naval forces of the United States,"; and

(2) in the third paragraph, by inserting "or a member of the National Guard as defined in section 101(3) of title 32" immediately after "United States".

SEC. 2. Section 1089(a) of title 10, United States Code, is amended by inserting "the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32," after "armed forces,".

Repeal.

SEC. 3. Section 334 of title 32, United States Code, and the item relating to such section in the section analysis of chapter 3 of such title, are repealed.

10 USC 1089
note.

SEC. 4. The amendments made by this Act and the repeal made by section 3 of this Act shall apply only with respect to claims arising on or after the date of the enactment of this Act.

Approved December 29, 1981.

LEGISLATIVE HISTORY—H.R. 3799 (S. 267):

HOUSE REPORT No. 97-384, Pt. 1 (Comm. on the Judiciary).
SENATE REPORT No. 97-297 accompanying S. 267 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 127 (1981):
Dec. 15, considered and passed House.
Dec. 16, considered and passed Senate, in lieu of S. 267.

LEGISLATIVE HISTORY

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FEDERAL TORT CLAIMS—NATIONAL GUARD

P.L. 97-124, see page 95 Stat. 1668

House Report (Judiciary Committee) No. 97-384,
Dec. 10, 1981 [To accompany H.R. 3799]

Cong. Record Vol. 127 (1981)

DATES OF CONSIDERATION AND PASSAGE

House December 15, 1981

Senate December 16, 1981

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 97-384

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The Commission on the Judiciary, to whom was referred the bill (H.R. 3799) to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * *

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STATEMENT

The National Guard is a reserve component of the Armed Forces. As such it has been assigned important responsibilities as a reserve force in the event it is called upon in an emergency. To assure our national defense it must continuously engage in federally prescribed training and demonstrate a high degree of readiness. To assure this, the Federal Government provides the funds to pay for training of Guard personnel and the equipment necessary for Guard operation and training. Except when federalized, the Guard is under the direct order of State Governments. For this reason, its activities have not been covered by the Tort Claims Act even though the Army and Air National Guard have similar roles in Defense planning and training as do the Army Reserve and the Air Force Reserve. This bill amends the tort claims provisions of title 28 to provide the National Guard the same coverage under the Tort Claims Act as now exists for the Armed Forces and its other reserve components.

The bill, with the subcommittee amendments, provides for the necessary amendments to title 28 to accomplish this purpose and makes the necessary amendments to the provisions concerning medical personnel in title 10. This includes the repeal of section 334 of title 32 which presently indemnifies National Guard medical personnel for liability incident to federal training activity.

FEDERAL TORT CLAIMS

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HISTORY

In the 86th Congress, the committee considered the bill H.R. 5435 which would have similarly amended the Federal tort claims provisions of title 28 to include the acts or omissions of National Guard personnel. Ultimately however, the committee adopted an amendment suggested by the Department of the Army which established administrative authority in the Department of the Army and the Air Force for the payment of claims against the National Guard arising out of Federal training. That amendment became Public Law 86-740 and is popularly known as the National Guard Claims Act, 32 U.S.C. 715. The National Guard Claims Act satisfied the major concerns raised at the time. It authorized the Federal government to assume liability for damages caused by modern military weapons in use by National Guard during federal training, and avoided treating National Guard employees as Federal employees for purposes of Federal liability. As the Committee noted, "a member of the National Guard performing training or duty authorized by title 32, United States Code, who allegedly commits a tort, is not, as a matter of law, under the command of Federal military authorities". *see* H.R. Report No. 1928, 86th Congress 2d Session at 4 (National Guard Claims Act, H.R. 5435).

In the 96th Congress, the Senate held hearings on S. 1858, a bill to extend the Federal tort claims provisions to the acts or omissions of National Guard personnel. *see*, Senate Judiciary Committee Hearings No. 96-66, 96th Congress 2d Session. The Senate subsequently passed S. 1858 on May 30, 1980. Mr. Kastenmeier introduced a bill identical to S. 1858 in the 96th Congress. That bill, H.R. 7475, was not considered by the Committee.

In the 97th Congress, the Senate Armed Services Committee adopted an amendment to S. 815, the Department of Defense Authorization for

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Fiscal 1982, which established Federal liability for damages arising out of the acts or omissions of National Guard personnel during Federal training in the same manner and to the same extent that the United States would be liable in any other action brought against the United States under the Federal tort claims provisions of title 28. The Senate passed S. 815 as amended on May 14, 1981. *see*, Senate Report 97-58, 97th Congress, 1st Session at 181 and 182 (Department of Defense Authorization for Fiscal Year 1982, S. 815). The House passed bill (H.R. 3519) did not include similar provisions, and the Senate receded to the House on the issue in conference. *see*, House Conference Report No. 97-311, 97th Congress, 1st Session at 132 (Department of Defense Authorization for Fiscal Year 1982, S. 815). On July 23, 1981 the Senate Judiciary Subcommittee on Agency Administration held hearings on the National Guard tort provisions of S. 815, and on S. 267, a bill identical to S. 1858.

On June 4, 1981, Mr. Kastenmeier introduced H.R. 3799 for himself and Mr. Montgomery. The bill was referred jointly to the Committees on the Judiciary and Armed Services. On October 13, 1981 and October 29, 1981 the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee held hearings on H.R. 3799. On October 29, the subcommittee considered and adopted an

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amendment in the nature of a substitute for H.R. 3799, and favorably recommended the bill, as amended to the Full Judiciary Committee. The Judiciary Committee reported H.R. 3799 as amended to the House by unanimous voice vote on December 8, 1981.

By letter dated November 3, 1981 to Honorable Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, the Honorable Melvin Price, Chairman of the House Armed Services Committee indicated the support of the Armed Services Committee for the action of the subcommittee. The letter further expressed the intent of the Armed Services Committee not to hold hearings on the subject, and to support the bill as reported by the Judiciary Committee on the floor. The complete text of the letter is reprinted in the appendix.

FINDINGS AND CONCLUSIONS

Testimony and materials supplied to the subcommittee in the course of the hearings indicate that there is substantial risk of personal liability by National Guard personnel engaged in Federal training activity. National Guard representatives from every state except Arkansas and West Virginia reported to the National Guard Association on litigation against National Guard personnel in their states since 1960. The information supplied to the subcommittee by the National Guard Association indicates that there are 956 known instances of claims against National Guard personnel since 1960. Of those, less than 10 percent or 94 claims were actionable against the Federal Government under the current Federal tort claims provisions of title 28. In only 339, or 35 percent of the cases, were claimants reported to have filed a claim under the National Guard Claims Act. A total of 859 or 89.85 percent of reported claims involved motor vehicles. While information is not complete for the entire reporting period, all 48 reporting states included data for 1975 to present. During that period, 360 claims were reported to have been settled for an aggregate sum of

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\$914,536.02. Available information from those states reporting indicates that since 1960, a total of 431 claims have been settled for an aggregated amount of \$1,165,961.25.

Information supplied by the Army Claims Service indicates that between 1977 and October 1981, approximately 1,689 claims involving Army National Guard personnel have been filed under the National Guard Claims Act, and have been settled for the approximate aggregate amount of \$2,807,239. Motor vehicle claims accounted for 89 percent of Army National Guard claims reported by the Army Claims Service from 1977 to October 1981. The Air Force Claims Service reports a total of 651 claims involving Air National Guard personnel from 1973 to October 1981. Of those 462 have been settled for an aggregated \$3,397,555. The Air Force does not have a category for motor vehicle claims.

Though incomplete, the statistical information before the committee indicates that a substantial number of claims arise every year as a result of Federally prescribed National Guard training and that the preponderance of these claims involve motor vehicles. Moreover, as the information from the National Guard Association indicates, the individual National Guard member is subject to personal liability for damages arising out of Federal training activity.

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The subcommittee also received testimony on the organizational structure and the role of the National Guard. The Department of Justice pointed out in its testimony in opposition to H.R. 3799 that Article I, Section 8, Clause 16 of the Constitution reserves to states the power to appoint officers of the militia and the authority to train the militia according to the discipline prescribed by Congress. Because the Federal government does not command the National Guard during Federal training, the Department of Justice points out that there is no basis for the vicarious liability of the Federal Government for the acts or omissions of National Guard personnel during that training. However, as was pointed out in testimony before the Subcommittee, the primary role of the modern National Guard is to provide a well trained and integral reserve force for our nation's defense, and the Federal Government does exercise a great deal of control over the Federal training activities of the National Guard.

The same Department of Defense regulations that govern Army and Air Force Reserve training activities govern the Federal training activities of the National Guard. Army and Air Force officers are assigned to each state National Guard organization. They conduct inspections, monitor and assist in training activities and approve promotion of National Guard personnel. In addition, they coordinate National Guard training with the needs of the Army and Air Force. The Federal government not only prescribes the duration and type of National Guard training, it pays National Guard personnel for Federal training, it provides workman's compensation to National Guard personnel for injuries sustained during Federal training and it provides the equipment used by National Guard personnel during training. Thus, while actual command during Federal training activities is maintained by the states as a matter of law, as a matter of policy, it is appropriate that the Federal liability for damages arising out of the acts or omissions of National Guard personnel during Federal

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training be equivalent to Federal liability for the acts or omissions of Air Force and Army Reserve personnel which arise out of their identical training.

The bill, as amended by the subcommittee, merely amends the definition of the phrases "employee of the government" and "acting within the scope of his office or employment" as they are used in the tort claims provisions of title 28 to include National Guard personnel engaged in Federal training. It is the interest of the committee that coverage under these provisions be the same for National Guard personnel as it is for members of the Army and Air Force Reserves, *see*, 43 Comp. Gen. 412, B-148324 (1963) (inactive duty training extends from the time of first muster until the end of scheduled inactive duty training for the day and does not include travel to and from home and headquarters). This decision of the Comptroller General is reprinted in the appendix below. It is well settled that claims for injuries to servicemen that "arise out of or are in the course of activity incident to service" may not be brought under the Federal Tort Claims provision of title 28, *see*, *Feres v. United States*, 340 U.S. 135, 71 S.Ct. 153, 95 L.Ed. 152 (1950). It is the intent of the Committee that the rule of the *Feres* case apply to the acts or omissions of National Guard personnel.

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The amendments made by this bill to the Tort claims provisions of title 28, and specifically to the definitions contained in section 2671 of that title, only concern the application of the Federal tort claims provisions of that title. They do not change or modify the application of any other laws governing federal employees such as the Ethics in Government Act of 1978, as amended.¹

SECTION-BY-SECTION ANALYSIS

Section 1 amends the definition of "Employees of the Government" and the definition of "Acting within the scope of his office or employment" in section 2671 of title 28, United States Code, to extend the scope of the Federal tort claims provisions of that title to members of the National Guard while engaged in Federal training or duty.

Section 2 amends section 1089 of title 10, United States Code, which creates an exclusive remedy against the United States in civil actions arising out of medical malpractice by certain federal employees to include actions arising out of medical malpractice by National Guard medical personnel while engaged in Federal training.

Section 3 repeals section 334 of title 32, United States Code, relating to payment of malpractice liability of National Guard medical personnel.

Section 4 provides that the amendments and the repeal made by the bill shall apply prospectively.

CONCLUSION

In light of the consideration and circumstances discussed in this report, it is recommended that the bill, as amended, be considered favorably.

¹ Public Law 95-521, 92 Stat. 1824, as amended by Public Law 96-19, 93 Stat. 37-44 and Public Law 98-28, 93 Stat. 76.

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STATEMENTS UNDER CLAUSE 2(1)(3)(A), CLAUSE 2(1)(3)(B), CLAUSE 2(1)(2)(B), CLAUSE 2(1)(3)(D), CLAUSE 2(1)(4), AND CLAUSE 2(1)(3)(C) OF RULE XI AND CLAUSE 7(a)(1) OF RULE XIII OF THE HOUSE OF REPRESENTATIVES

COST (RULE XIII (7)(a)(1))

The Congressional Budget Office in its letter of December 10, 1981 advised the Committee that it is expected that passage of this legislation will result in additional outlays of \$681,000 in Fiscal Year 82, \$721,000 in Fiscal Year 83, \$757,000 in Fiscal Year 84, \$792,000 in Fiscal Year 85, and \$823,000 in Fiscal Year 86. This estimate is based on figures provided by the United States Army and Air Force claims service as well as information from the states of New York and California.

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OVERSIGHT STATEMENT (RULE XI 2(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility in accordance with rule VI(b) of the Rules of the Committee on the Judiciary with reference to the subject of tort claims. That subcommittee has recommended the amendments provided in this bill, and the Committee joins in recommending the changes made.

(RULE XI 2(1)(3)(B))

Enactment of the bill would not create any additional cost for the Government pursuant to rule XIII(7)(a)(1). The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by clause 2(1)(3)(B) of rule XI.

COMMITTEE VOTE (RULE XI 2(1)(2)(B))

On December 8, 1981, the full Committee on the Judiciary approved the bill, H.R. 3799, by voice vote.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS (RULE XI 2(1)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House Rule XI.

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INFLATIONARY IMPACT (RULE XI 2(1)(4))

In compliance with clause 2(1)(4) of House rule XI, it is stated that this legislation will have no inflationary impact on prices and costs on the operation of the national economy.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

**U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 10, 1981.**

**Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, U.S. House of Representatives,
Washington, D.C.**

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 3799, a bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes, as ordered reported on December 8, 1981.

Should the Committee so desire, we would be pleased to provide further detail on the attached cost estimate.

Sincerely,

**RAYMOND C. SCHEPPACH,
(For Alice M. Rivlin, Director).**

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CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

DECEMBER 10, 1981.

1. Bill number: H.R. 3799.
2. Bill title: A bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary on December 8, 1981.
4. Bill purpose: The bill establishes that the United States shall have exclusive jurisdiction on claims resulting from National Guard training activities including injury or loss of property, or personal injury or death.
The United States shall also be exclusive in providing remedy to claims for damages for personal injury and death caused by any medical personnel of the armed forces and the National Guard while acting within the scope of his duties or employment.
5. Cost estimate:

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Estimated authorization levels:

Fiscal year:	Amount
1982	\$681,000
1983	721,000
1984	757,000
1985	792,000
1986	823,000

Estimated outlays:

Fiscal year:	Amount
1982	681,000
1983	721,000
1984	757,000
1985	792,000
1986	823,000

The costs of this bill fall within function 050.

6. Basis of estimate: Neither the Department of Defense, the National Guard Bureau, nor the states themselves have extensive data on National Guard related claims which would be affected by this bill. The major contributing factors to this problem are the various state remedies and procedures available to investigate and process National Guard claims. Because of these limitations, CBO is basing this estimate on the weighted average of total claims paid for three years to National Guard personnel in data provided by California and New York, two states with large National Guard forces.

Four states currently have an arrangement with the United States Army to share the amounts of claims paid equally. Approximately 11.7 percent of all National Guardsmen live in states with such an arrangement. For these states it is assumed that one half of the claims to be paid would be an additional cost to the U.S. government.

The remaining 88.3 percent of National Guardsmen live in states where the federal government has no liability for National Guard claims. For these states the adoption of this bill would shift the costs of all awarded claims applicable under the Federal tort claims provision from the states to the federal government.

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7. Estimate comparison : None.
8. Previous CBO estimate: CBO provided an estimate on S. 267, ordered reported on December 8, 1981. H.R. 3799 is similar to S. 267, and the cost estimates are identical.
9. Estimate prepared by: Thomas D. Phillips.
10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

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APPENDIX I

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., November 3, 1981.

Hon. PETER W. RODINO, Jr.,
*Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to H.R. 3799, a bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities. I understand that the Subcommittee on Administrative Law and Governmental Relations, chaired by Mr. Danielson, has favorably reported that bill to the full committee, and I wish to offer my support and that of the committee for its enactment.

As you will recall, the provisions of H.R. 3799 were included in S. 815, the Senate version of the fiscal year 1982 Defense authorization legislation, but not in the House amendment. We recognized immediately the jurisdictional problem involved and were successful in having the Senate recede to the House during the conference on S. 815. In that conference we noted that your committee would take early action on H.R. 3799 as indicated by Chairman Danielson, and we sincerely appreciate your leadership and that of Mr. Danielson in bringing the bill before the Judiciary Committee.

Because of the obviously thorough manner in which the Subcommittee on Administrative Law and Governmental Relations has acted on H.R. 3799, we do not plan to hold hearings on the subject although the bill was referred to this committee as well. Accordingly, I would appreciate it if you would include this letter in your record as an endorsement of the legislation and an indication of our support when the bill reaches the floor.

Mr. Chairman, may we again express our appreciation to you and Chairman Danielson for the expeditious handling of H.R. 3799 and for your cooperation with us in our successful efforts concerning the tort claims provisions in the conference on S. 815.

With best regards,
Sincerely,

MELVIN PRICE, *Chairman.*

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APPENDIX II

43 Comp. Gen. 412 (1963)

[B-148324]

Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injury Within Scope of Duties

In view of the fact that the court refrained from formulating a rule for general application in *Meister v. United States*, Ct. Cl. No. 54-62, decided July 12, 1963, in which it held that a reservist ordered to perform inactive duty at a training center who while proceeding to the drill hall to report for inspection and duty slipped and fractured his ankle was "within the scope of his assigned duties when he slipped" and, therefore, within the purview of 10 U.S.C. 6148(a), and entitled to the disability benefits prescribed by that section, the *Meister* case should not be used as a precedent for favorable administrative action in similar cases, and any claim involving facts which might be viewed as coming within the purview of the *Meister* case should be forwarded to the United States General Accounting Office for direct settlement.

Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injury Within Scope of Duties

When a reservist ordered to inactive duty training suffers a physical injury during a scheduled lunch break, or while during a lull in his duties he engages in some independent activity, he is deemed to have received the injury while engaged in the inactive duty training drill within the purview of 10 U.S.C. 6148(a), and therefore, is entitled to the disability benefits prescribed by that section, the reservist having been ordered to perform inactive duty training is employed from the time he first musters in for that duty until the end of the ordered period of such duty for that day.

Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injured While Traveling

Where for the mutual convenience of a naval reservist and the Government, he is permitted to utilize Government transportation as a permissive traveler to and from a training center before or after a period of inactive duty training, the reservist while so traveling is not "employed" in inactive duty training within the meaning of 10 U.S.C. 6148(a), prescribing disability and death benefits, the travel pursuant to paragraph 8002(2) of the Joint Travel Regulations, whether accomplished by private or Government conveyance, not being part of the inactive duty training is outside the contempla-

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tion of 10 U.S.C. 6148, and the reservist, therefore, is not entitled to the disability benefits provided by section 6148(a), and permission to travel by Government transportation to the drill station during a part of the period assigned for the

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performance of the drill would not increase the rights of the reservist.

To the Secretary of the Navy, October 25, 1963:

By letter dated September 4, 1963, the Under Secretary of the Navy requested decision on various questions concerning the effect of the decision of the Court of Claims in the case of *Meister v. United States*, Ct. Cl. No. 54-62, decided July 12, 1963, on the application of 10 U.S.C. 6148(a) to certain cases involving injuries suffered by members of the United States Naval Reserve who have been ordered to perform inactive duty training. The request for decision was assigned No. SS-N-720 by the Military Pay and Allowance Committee, Department of Defense.

Meister had been ordered by his executive officer to be at the training center no later than 7:20 p.m., on March 8, 1961. After he had parked his car at the curb, entered the training center compound and while proceeding toward the drill hall to report for inspection and duty, he slipped and fractured his ankle. The court held that the plaintiff was "within the scope of his assigned duties when he slipped" and therefore he was held to be within the purview of 10 U.S.C. 6148(a). Doubt is expressed as to the scope of the rule announced in the *Meister* case and it is stated that guidelines as to the authorized application of the *Meister* rule would be extremely helpful. The following facts of two cases are recited as illustrative of the types of cases in which question has arisen as to the applicability of 10 U.S.C. 6148(a).

In the first case, Joseph Patrick Volpe, SA, USNR-R, was ordered to perform inactive duty training at the United States Naval Reserve Training Center, McKeesport, Pennsylvania, during the week end of April 20-21, 1963. On April 21, 1963, he participated in the scheduled morning drill which was from 8 a.m. to 12 noon. A lunch break was scheduled from 12 to 1:15 p.m., and the afternoon drill session was scheduled to extend from 1:15 p.m., until 4:30 p.m. At approximately 12:50 p.m., during the scheduled lunch break, he fell while playing basketball on the grounds of the training center and sprained his hand.

In the second case, Charles A. Scott, AME3, USNR-R, was ordered to perform 2 days of inactive duty training on February 16 and 17, 1963, at the United States Naval Air Station, Alameda, California. On February 16, 1963, he reported for training at 8 a.m. From approximately 1:30 p.m., until 2 p.m., he participated with his squadron in launching a scheduled anti-submarine warfare helicopter flight. Upon completion of the launching, Scott and three other men from his squadron proceeded to the station's gymnasium to play handball while awaiting the return of the flight squadron. At approximately 2:30 p.m., while playing handball, Scott sustained a fracture of his right thumb.

The submission poses for decision the following questions:

(a) May a reservist who has been ordered to perform inactive duty training and who sustains an injury after he has reached his training center but before he has actually

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mustered for duty, as illustrated by the *Meister* case, be deemed to have received his injury while engaged in an in-

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active duty training drill within the purview of 10 USC 6148(a)?

(b) May a reservist who has reported to his training center for inactive duty (and has actually mustered) and incurs an injury during a scheduled break in training drills, as illustrated by the Volpe case, be deemed to have received his injury while engaged in an inactive duty training drill within the purview of 10 USC 6148(a)?

(c) May a reservist who has reported to his training center for inactive duty and sustains an injury during the period of a scheduled training drill but as the direct result of some independent activity that is not part of his training duties, as illustrated by the Scott case, be deemed to have received his injury while engaged in an inactive duty training drill within purview of 10 USC 6148(a)?

(d) If the answer to question (a), above, is in the affirmative, would the answer be the same in a case containing factual elements such as those in the case of the U.S. Marine Corps Sergeant discussed in 38 Comp. Gen. 841?

(e) May a reservist who suffers a disabling injury while being transported (no reimbursement involved) by Government air, land or water transportation incident to the performance of ordered or authorized inactive duty training, to or from such duty, prior to muster or following the termination of such period of duty, be deemed to have received his injury while engaged in an inactive duty training drill within the purview of 10 USC 6148(a)?

(f) If the answer to question (e), above, is in the negative, would the answer be the same if the travel was authorized to be performed and was performed during the period of time assigned for the performance of the drill?

(g) If the answer to question (e), above, is in the affirmative, would the answer be the same if the reservist were to incur a disabling injury while performing travel to or from the place of performance of inactive duty training by a means other than Government air, land or water transportation, with the express authorization of his commanding officer?

Before answering the specific questions, we consider it necessary to say that we do not agree with the court's conclusion in the *Meister* case. The decision in that case is inconsistent with our view of section 1 of the act of June 20, 1949, Ch. 225, 63 Stat. 201 (now 10 U.S.C. 6148(a)) as expressed in 38 Comp. Gen. 841, that Congress intended to provide coverage for injuries suffered by inactive duty trainees only while actually performing inactive duty training. The court stated that it would not attempt to "lay down a rule of general application" and it is clear that the court limited its decision to the particular facts involved in that case. The court did not indicate the degree of physical proximity "between the employee and employer" required in such cases and it is not clear from the court's opinion what action it might take in a similar case in which some of the facts present in the *Meister*

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case are missing. While we did not recommend further action in the *Meister* case to the Department of Justice since, as a practical matter,

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we doubted that any useful purpose would be served by further proceedings, it is our view that a similar case based on facts a little more favorable to the Government should be vigorously defended.

In view of the fact that the court refrained from formulating a rule for general application in the *Meinter* case, it should not be used as a precedent for favorable administrative action in any similar case. Any claim involving facts which might be viewed as coming within the purview of that case should be forwarded to this Office for direct settlement. Question (a) is answered accordingly and question (d) requires no answer.

When a reservist is ordered to inactive duty training in situations similar to the *Volpe* and *Scott* cases, the period of training extends from the time the man is first mustered in until the end of his scheduled inactive duty training on that day. It cannot be said that during a scheduled lunch break (*Volpe* case) or a time when no actual duty is being performed during a drill (*Scott* case) the man reverts to his normal civilian status so as to be outside the protection of 10 U.S.C. 6148(a) during those times. In neither of the cases described had the men been released from military control at the time the injuries were sustained. While it may not be concluded that a reservist is employed on inactive duty for the entire day on which a drill or drills are performed, it is our view that, when a reservist is ordered to perform inactive training, he is so employed from the time he first musters in for that duty until the end of the ordered period of such duty for that day. Questions (b) and (c) are answered in the affirmative.

It is assumed that questions (e) through (g) are limited to situations which may raise in connection with drills or other scheduled inactive duty training at the member's Reserve component unit headquarters. Paragraph 6002(2) of the Joint Travel Regulations provides that a member is not entitled to travel or transportation allowances for any inactive duty training at the city or town in which the headquarters of his Reserve component unit is located, including travel between his home and the headquarters of his Reserve unit. Tours of inactive duty training are for scheduled periods of time and, where such duty is to be performed at the headquarters of the member's Reserve unit, do not include travel to and from his home and headquarters. Such travel, no matter whether it is accomplished by private or Government conveyance, is not a part of the inactive duty training and is outside the contemplation of 10 U.S.C. 6148. See in this connection 38 U.S.C. 106(d). It is our view that if Congress had intended to extend the benefits of 10 U.S.C. 6148 to cover a reservist while traveling in connection with inactive duty training at the location of his Reserve component unit headquarters, it doubtless would have used appropriate language to make that intention clear. Thus, where a reservist was injured while proceeding to his home 65 miles away as the driver of a Government truck after completion of a period of inactive duty training, we concluded that in the absence of a showing that such truck driving activity was a prescribed part of his inactive duty training as a reservist, he was not entitled to the benefits

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of 10 U.S.C. 3687 and 3721 which contain language similar to that found in 10 U.S.C. 6148. Accordingly, where for the mutual con-

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venience of the member and the Government, a member is permitted to utilize Government transportation as a permissive passenger in traveling to or from his training center before or after a period of inactive duty training, he is not "employed" in inactive duty training within the meaning of 10 U.S.C. 6148(a) while so traveling. Question (e) is answered in the negative and question (g) requires no answer.

It is our view that the granting of permission to travel by Government transportation to the drill station during a part of the period assigned for the performance of such drill would not increase the rights of the reservist in question (e) in any way. See 32 Comp. Gen. 554, answer to question 1. Accordingly, question (f) is answered in the affirmative.

cer so detailed may accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable in the President's discretion, without prejudicing his rank and without vacating his regular appointment.

(b) The Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. Aug. 10, 1956, c. 1041, 70A Stat. 604.

Historical and Revision Notes

Revised Section	Source (U. S. Code)	positive provisions relating to the assignment or detail of retired officers to that duty are covered by section 3504 (a) or 5704(a) of title 10. The words "of the active list", in 32:63, are omitted for the same reason. The words "so detailed" are substituted for the words "detailed under section 68 of this title", in 32:69. The words "relative or lineal", in 32:69, are omitted as surplusage.
315 (a)	32:63 (less 2d sentence) 32:69	
315 (b)	32:63 (2d sentence)	
Source (Statutes at Large)		
June 3, 1916, ch. 134, § 100, 39 Stat. 205.		
Explanatory Notes		
In subsection (a), 32:63 (last sentence) is omitted as surplusage, since		

Cross References

National Guard Bureau, assignment of regular or reserve officers of Army or Air Force, see sections 3541 and 5541 of Title 10, Armed Forces.

Reserve components, detail of members of regular and reserve components to assist, see section 715 of Title 10.

§ 316. Detail of members of Army National Guard for rifle instruction of civilians

The President may detail officers and noncommissioned officers of the Army National Guard to duty as instructors at rifle ranges for the training of civilians in the use of military arms. Aug. 10, 1956, c. 1041, 70A Stat. 605.

Historical and Revision Notes

Revised Section	Source (U. S. Code)	Explanatory Notes
316	32:183	The word "civilians" is substituted for the word "citizenry". The word "capable" is omitted as surplusage.
Source (Statutes at Large)		
June 3, 1916, ch. 134, § 113 (3d sentence), 39 Stat. 211.		

Notes of Decisions

1. Fines

Under McClain's Code, Iowa, § 1572, providing that the discipline of the state national guard shall conform to the regulations for the government of the army of the United States, except as otherwise provided; and section 1585, providing that every soldier absent without leave from encampment shall be fined two dollars for each day of absence,

suit for the collection of the fines to be brought in the name of the state for the uses of his company—the fine is not to be imposed by a militia officer, but by the court before which the action is brought; and the soldier may prove before the court that he had a sufficient excuse for not attending encampment. *State v. Ryan*, 1897, 69 N.W. 1123, 101 Iowa 18.

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within seven consecutive days of the same calendar month.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

(1) the number of members present equals or exceeds the minimum number prescribed by the President;

(2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill. Aug. 10, 1956, c. 1041, 70A Stat. 610.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
502 (a)	32:02 (1st sentence, less proviso)
502 (b)	32:02 (proviso of 1st sentence)
502 (c)	32:02 (last sentence, less 1st, 2d, and 3d provisos)
502 (d)	32:02 (1st proviso of last sentence)
502 (e)	32:02 (2d and 3d provisos of last sentence)

Source (Statutes at Large)

June 3, 1916, ch. 134, § 92; restated June 3, 1924, ch. 244, § 2; restated Oct. 14, 1940, ch. 873, § 2, 54 Stat. 1135; Mar. 25, 1948, ch. 157, § 5(a), 62 Stat. 90.

Explanatory Notes

In subsection (a), the words "including target practice" and "such company, troop, battery, or detachment shall have been . . . from participation in any part thereof" are omitted as surplusage.

In subsections (a) and (b), the word "troop" is omitted as obsolete.

In subsection (b), the words "parts of those organizations" are substituted for the words "subdivisions or parts thereof". The words "but in the latter case", "of subdivisions or groups", "comprehend", and "the time limit of" are omitted as surplusage.

In subsection (c), the word "member" is substituted for the words "officer, warrant officer, or enlisted man". The words "series of formations" are substituted for the words "separate consecutive formations announced". The words "regardless of the number of formations that he attends during the series" are substituted for the words "even though he may have attended more than one of the formations". The words "sum", "actual military", and "of time" are omitted as surplusage. 32:02 (4th proviso of last sentence) is omitted as superseded by section 651 of title 10. 32:02 (last proviso of last sentence) is omitted as superseded by section 501(b) of the Career Compensation Act of 1940, 53 Stat. 826 (37 U.S.C. 301(b)).

In subsection (d), the word "members" is substituted for the words "officers and enlisted men". The words "for which a member is credited" are substituted for the words "participated in by each officer and enlisted man at each assembly at which he shall be credited as having been present". The words "for duty at such assembly", "actual", and "character of" are omitted as surplusage.

In subsection (e), the word "member" is substituted for the words "officer or enlisted man". The words "Air Corps . . . assigned to an Air Corps unit thereof, or . . . an officer or enlisted man of the Medical Department of the said National Guard regularly attached to an Air Corps unit of the National Guard by appropriate authority" are omitted, since the revised subsection applies only to members who perform flights under competent orders and who are thereby prevented from attending a regular drill.

Cross References

Appropriations for pay, disbursement and accounting, see section 695a of Title 31, Money and Finance.

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3680 and 8680 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time) section 101(23) of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active Title 37, Pay and Allowances.

Rank, commissioned officers on active duty, see 38 Armed Forces.

Training duty compensation of members of National Guard on active Title 37, Pay and Allowances.

§ 503. Participation in field exercises

(a) Under such regulations as the Pre Secretary of the Army and the Secretary of the Army may provide for the participation in encampments, maneuvers, outdoor target exercises for field or coast-defense instruction in conjunction with the Army or the Air Force

(b) Amounts necessary for the pay, subsistence and other proper expenses of any part of State or Territory, Puerto Rico, the Canal Zone, or Columbia participating in an exercise are to be set aside from funds allocated to it for coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being notified in writing beginning with the date of leaving military service and the date of return, as determined in advance, receive a payment passes to the credit of the disallowance. 1956, c. 1041, 70A Stat. 610.

Historical and Revision Notes

Revised Section	Source (U. S. Code)	In subsection
503 (a)	32:03 (1st 50 words)	necessary
503 (b)	32:03 (less 1st 50 words)	"such part"
503 (c)	32:153	necessary:

Source (Statutes at Large)

June 3, 1916, ch. 134, §§ 91 (less last 43 words after semicolon), 98, 39 Stat. 206, 207.

Explanatory Notes

In subsection (a), the words "the whole or any part" and "any part of" are omitted as surplusage. The word "Army" is substituted for the words "Regular Army", since the Army is the category that participates in the exercises, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

an exercise substituted for the words "participate in" or other target practice. In subsection (b), the words "such part" are substituted for the words "such part of" or other portion of the exercise. In subsection (c), the words "necessary" are substituted for the words "necessary" or other

Inactive duty training, duty (other than full-time duty) under this section as, see section 101(23) of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 232(d) of Title 37, Pay and Allowances.

Rank, commissioned officers on active duty, see sections 3571 and 3571 of Title 10, Armed Forces.

Training duty compensation of members of National Guard, see section 301 of Title 37, Pay and Allowances.

§ 503. Participation in field exercises

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, outdoor target practice, or other exercises for field or coast-defense instruction, independently of or in conjunction with the Army or the Air Force, or both.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia participating in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field or coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being mustered, be paid for the period beginning with the date of leaving home and ending with the date of return, as determined in advance. If otherwise correct, such a payment passes to the credit of the disbursing officer. Aug. 10, 1956, c. 1041, 70A Stat. 610.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
503 (a)	32:63 (1st 56 words)
503 (b)	32:63 (less 1st 56 words)
503 (c)	32:153

Source (Statutes at Large)

June 3, 1916, ch. 131, §§ 91 (less last 43 words after semicolon), 98, 39 Stat. 206, 207.

Explanatory Notes

In subsection (a), the words "the whole or any part" and "any part of" are omitted as surplusage. The word "Army" is substituted for the words "Regular Army", since the Army is the category that participates in the exercises, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsection (b), the words "Amounts necessary" are substituted for the words "such portion of said funds as may be necessary". The words "participating in an exercise under subsection (a)" are substituted for the words "as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction". The words "allocated to it from appropriations for field or coast-defense instruction" are substituted for the words "appropriated for that purpose and allocated to any State, Territory, or the District of Columbia".

In subsection (c), the words "Members of the National Guard participating in an exercise under subsection (a)" are substituted for the words "When any portion of the National Guard shall participate in encampments, maneuvers, or other exercises, including outdoor tar-

get practice, for field or coast-defense "rendezvous", "both dates inclusive", instruction, under the provisions of this and "making the same" are omitted as title". The words "duly", "at any time", surplusage.

Cross References

- Compensation for disablement during training, see section 318 of this title.
Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.
Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 3686 of Title 10, Armed Forces.
Death gratuity, see section 321 of this title.
Death incident to service under this section, headstones for unmarked graves, see section 279a of Title 24, Hospitals, Asylums, and Cemeteries.
Hospitalization, when Secretary may require, see section 320 of this title.
Inactive duty training, duty (other than full-time duty) under this section as, see section 101(23) of Title 38, Veterans' Benefits.
Pay grades of National Guard personnel on active duty, see section 232(d) of Title 37, Pay and Allowances.
Rank, commissioned officers on active duty, see sections 3571 and 3571 of Title 10, Armed Forces.

Notes of Decisions

- Generally 1
Employee of state 4
Land grant fares 2
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to land grant fares. Northern Pac. Ry. Co. v. U. S., 1926, 61 Ct.Cl. 733. See, also, Oregon-Washington R. R. & Navigation Co. v. U. S., 1925, 60 Ct.Cl. 453.

3. Training as service

An enlisted member of the National Guard when called for training by Governor through order of Adjutant General under former section 63 of this title was, during his period of service in service of the state. Lind v. Nebraska National Guard, 1914, 12 N.W.2d 652, 144 Neb. 122, 150 A.L.R. 1449.

4. Employee of state

A member of Nebraska National Guard, during his period of service, was not an "employee" of state or any agency created by it within meaning of Workmen's Compensation Law, Comp.St.1929, § 48-101, Comp.St.1929 and Supp.1941, § 55-101 et seq., since member when on duty was engaged in performance of the duty which citizen owes to sovereign. Lind v. Nebraska National Guard, 1914, 12 N.W.2d 652, 144 Neb. 122, 150 A.L.R. 1449.

§ 504. National Guard schools and small arms competitions

(a) Under such regulations as the President may prescribe, the Secretary of the Army may provide for assemblies of members of the Army National Guard—

- (1) to attend schools conducted by commissioned officers of the Regular Army detailed by the Secretary; or

(2) to participate in small arms comp. Similarly, the Secretary of the Air Force may provide for assemblies of members of the Air National Guard—

- (1) to attend schools conducted by the Regular Air Force detailed by the Secretary; or
(2) to participate in small arms competitions.
(b) Assemblies under subsection (a) for the National Guard of a State or Territory, Puerto Rico or the District of Columbia may be held inside or outside the District of Columbia, Act. 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision

Table with columns: Section, Source (U. S. Code), and Source (Statutes at Large). It lists changes to sections 503 and 504, including the addition of subsection (b) and the deletion of the word 'and'.

Explanatory Notes

In subsection (a), the word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "of the State, Territory, Puerto Rico, or the District of Columbia" are substituted for the words "of the State, Territory, or the District of Columbia".

Cross References

- Compensation for disablement during training, see section 318 of this title.
Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.
Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 3686 of Title 10, Armed Forces.
Death gratuity, see section 321 of this title.
Death incident to service under this section, headstones for unmarked graves, see section 279a of Title 24, Hospitals, Asylums, and Cemeteries.
Hospitalization, when Secretary may require, see section 320 of this title.
Inactive duty training, duty (other than full-time duty) under this section as, see section 101(23) of Title 38, Veterans' Benefits.
Pay grades of National Guard personnel on active duty, see section 232(d) of Title 37, Pay and Allowances.
Rank, commissioned officers on active duty, see sections 3571 and 3571 of Title 10, Armed Forces.

§ 505. Army and Air Force schools

Under such regulations as the President may prescribe, the Secretary of the Army may provide for assemblies of members of the Army National Guard of a State or Territory, Puerto Rico, or the Canal Zone, or of the command of the District of Columbia, the

(2) to participate in small arms competitions.

Similarly, the Secretary of the Air Force may provide for assemblies of members of the Air National Guard—

(1) to attend schools conducted by commissioned officers of the Regular Air Force detailed by the Secretary; or

(2) to participate in small arms competition.

(b) Assemblies under subsection (a) for members of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia may be held inside or outside its boundaries. Aug. 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
301 (a)	32:64 (1st sentence)
301 (b)	32:64 (less 1st sentence)

Source (Statutes at Large)

June 3, 1916, ch. 134, § 97 (less last sentence); restated May 28, 1926, ch. 417, § 2 (less last sentence), 44 Stat. 674.

Explanatory Notes

In subsection (a), the word "members" is substituted for the words "officers, warrant officers, and enlisted men". The

words "for the purpose" and "for that purpose" are omitted as surplusage.

In subsection (b), the words "Assemblies under subsection (a)" are substituted for the words "such assemblages". The words "for members of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia . . . inside or outside of its boundaries" are substituted for the words "either within or without the State, Territory, or District of Columbia, to which the members of the National Guard designated to attend them shall belong".

Cross References

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 3686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Death incident to service under this section, headstones for unmarked graves, see section 279a of Title 21, Hospitals, Asylums, and Cemeteries.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101(23) of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 332(d) of Title 27, Pay and Allowances.

Rank, commissioned officers on active duty, see sections 3571 and 3571 of Title 10, Armed Forces.

§ 505. Army and Air Force schools and field exercises

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State or Territory, Puerto Rico, or the Canal Zone, or of the commanding general of the National Guard of the District of Columbia, the Secretary of the Army

may authorize a limited number of members of its Army National Guard to—

(1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercise.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

(1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise. Aug. 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision Notes

Revised Section 605	Source (U. S. Code) § 2:45
Source (Statutes at Large)	
June 3, 1910, ch. 134, § 10 (1st 133 words); restated Sept. 22, 1922, ch. 423, § 5 (1st 129 words); restated May 28, 1926, ch. 417, § 3 (1st 133 words), 44 Stat. 674.	

Explanatory Notes

The words "branch of the Army corresponding" are substituted for the words "same arm, corps, or department", to conform to sections 3063 and 3061 of title

10. In the second sentence, the words "organization of the Air Force corresponding" are substituted for the words "same arm, corps, or department", since the Air Force is not organized by statute into branches, arms, corps or departments. The word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "service school" are substituted for the words "military-service school of the United States". Reference to the United States Air Force Academy is inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

Cross References

Compensation for disablement during training, see section 318 of this title.
Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as member of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8086 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Death Incident (service under this section, headstones for unmarked graves, see section 279a of Title 24, Hospitals, Asylums and Cemeteries.

Hospitalization, when Secretary may require, see section 320 of this title.

... duty training, duty (other than full-time duty) ... of Title 28, Veterans' Benefits. ... grades of National Guard personnel on active duty, ... and Allowances. ... commissioned officers on active duty, see section: ... Forces.

§ 506. Assignment and detail of members of Regular Air Force for instruction of the National Guard

(a) The President shall assign for instruction of the National Guard such members of the Regular Army or Air Force as he considers necessary.

(b) The Secretary of the Army may detail members of the Regular Army to attend an encampment, maneuver, field or coast-defense instruction of the Army. Similarly, the Secretary of the Air Force may detail members of the Regular Air Force to attend exercises for instruction of the Air National Guard. Members of the Regular Army or Air Force so instructed by the Secretary concerned, or as requested by the commanding officer of the National Guard to which they are assigned, shall be paid the same pay and allowances as members of the National Guard to which they are assigned. Aug. 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision Notes

Revised Section 506	Source (U. S. Code) § 2:60	of 2d par., 160, June 3, 1910, E.
Source (Statutes at Large)		
June 3, 1910, ch. 134, § 81 (1st sentence of 2d par., less 1st 7 words); added June 4, 1920, ch. 227, subch. I, § 44 (1st sentence, less 1st 6 words); restated Sept. 22, 1922, ch. 423, § 4 (1st sentence, less 1st 6 words); restated Feb. 28, 1925, ch. 371, § 3 (6th sentence, less 1st 6 words); restated June 15, 1933, ch. 87, § 10 (1st sentence		

Cross References

Pay grades of National Guard personnel on active duty, see section 3063 and Allowances.

§ 507. Instruction in firing; supply of ammunition for instruction in firing and for use in the field

Ammunition for instruction in firing and for use in the field shall be furnished, in such amounts as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, to members of the National Guard to which they are assigned, for use in the field.

"(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the pay-

ment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises."

§ 335. Repealed. Pub.L. 98-525, Title IV, § 414(b)(2)(A), Oct. 19, 1984, 98 Stat. 2519]

Section, added Pub.L. 98-94, Title V, § 504(e)(1), Sept. 24, 1983, 97 Stat. 632, related to status of certain members performing full-time duty. See section 101(19) of this title.

CHAPTER 5—TRAINING

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 30 consecutive days.

[See main volume for text of (c) to (e)]

(f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

(1) without his consent, but with the pay and allowances provided by law; or
(2) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a). Duty without pay shall be considered for all purposes as if it were duty with pay.

(As amended Oct. 3, 1964, Pub.L. 88-621, § 1(1), 78 Stat. 999; Dec. 1, 1967, Pub.L. 90-168, § 4, 81 Stat. 526; Nov. 17, 1971, Pub.L. 92-156, Title III, § 303(b), 85 Stat. 425.)

1971 Amendment. Subsec. (a). Pub.L. 92-156 inserted exception to training requirements where member served on active duty for one year or more if the training period falls during last one hundred and twenty days of required membership in National Guard.

1967 Amendment. Subsec. (b). Pub.L. 90-168 substituted 30 consecutive days for seven consecutive days of the same calendar month as the time within which all parts of the unit must be included in a series of formations in order to be credited as an assembly for drill and instruction.

1964 Amendment. Subsec. (f). Pub.L. 88-621 added subsec. (f).

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-168 effective on the first day of the first calendar month following the date of Pub.L. 90-168, which was approved Oct. 3, 1967, see section 7 of Pub.L. 90-168,

set out as a note under section 136 of Title 10, Armed Forces.

Legislative History: For legislative history and purpose of Pub.L. 88-621, see 1964 U.S. Code Cong. and Adm. News, p. 3800. See, also, Pub.L. 90-168, 1967 U.S. Code Cong. and Adm. News, p. 2033.

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Reemployment benefits, inactive duty training performed by member of National Guard under this section considered inactive duty training, see section 454(g)(5) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Federal employees—

Status as, see § 1995.

Suits against individuals, see § 2002 et seq.

Code of Federal Regulations

Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Participation in Reserve training programs, criteria and requirements for, see 32 CFR 101.1 et seq.

§ 503. Participation in field exercises

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Notes of Decisions

Construction with other laws 1/2
Employees of federal government 5

1/2. Construction with other laws

For purpose of civil immunity for liability of national guardsman, there is no distinction between personnel ordered to active duty by the governor or personnel ordered to duty by the adjutant general with approval of governor or by federal authority; all of these statutes are part of

§ 504. National Guard schools and small arms competition

(a) Under regulations to be prescribed by the Secretary of the Air Force, as the case may be, members of the

(1) attend schools conducted by the Army or the Air Force;
(2) conduct or attend schools conducted by the National Guard;
(3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of a State or territory, Puerto Rico, the Canal Zone, or the District of Columbia, shall be held inside or outside its boundaries.

(As amended Oct. 3, 1964, Pub.L. 88-621, § 1(2), 78 Stat. 999.)

1964 Amendment. Pub.L. 88-621 substituted provisions authorizing the Secretaries of the Army and of the Air Force and provisions authorizing

Library References
Militia 2-14.
C.J.S. Militia § 1

Note

1. Military service
Inactive training of the Army National Guard comes within 2732 of Title 10 so Guard members fed damaged while on this section may be Title 10. 1960, 40

the same act which giving effect of meaning to Johnson v. State, L 1977, 564 P.2d 714.

5. Employees of federal government
In action for injury while attending the National Guard in training conditions and in accord State Governor and federal service and exclusive control of the review were government acting suit against the federal Tort Claims Act. Title 28. Gross F.Supp. 766.

Fact that annual Guard is funded a does not strip guard participating in training actually carried out under authority of nationally and statutorily and statutory of training the Com., Dept. of Military Affairs. 866, 78 Pa.Cmwlth.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Suits against individuals, see § 2002 et seq.

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Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Participation in Reserve training programs, criteria and requirements for, see 32 CFR 101.1 et seq.

Library References

Militia ☞ 14.

C.J.S. Militia § 19.

Notes of Decisions

1. Military service

Inactive training duty performed by members of the Army National Guard and Air National Guard comes within the term "service" in section 2732 of Title 10 so that claims of Air National Guard members for personal property lost or damaged while on training or other duty under this section may be settled under section 2732 of Title 10. 1960, 40 Comp.Gen. 31.

§ 503. Participation in field exercises

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 5, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Status as, see § 1995.

Suits against individuals, see § 2002 et seq.

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Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Notes of Decisions

Construction with other laws 1/2
Employees of federal government 5

1/2. Construction with other laws

For purpose of civil immunity for liability of national guardsman, there is no distinction between personnel ordered to active duty by the governor or personnel ordered to duty by the adjutant general with approval of governor or by federal authority; all of these statutes are part of

the same act which must be construed together giving effect of manifest legislative intent and giving meaning to each provision if possible. Johnson v. State, By and Through Nat. Guard, 1977, 564 P.2d 714, 29 Or.App. 477.

5. Employees of federal government

In action for injuries sustained by tripping over a rope while attending an open house review of the National Guard where the unit was participating in training under the National Guard regulations and in accordance with the directive of the State Governor and the unit was not in active federal service and the place of accident was under exclusive control of the unit, persons engaged in the review were not employees of the federal government acting within scope of their employment so as to authorize the plaintiff to maintain a suit against the federal government under Federal Tort Claims Act, sections 1346, 2671 et seq. of Title 28. Gross v. U.S., D.C.N.Y.1959, 177 F.Supp. 760.

Fact that annual encampment of state National Guard is funded and mandated by federal law does not strip guardsman of his state status while participating in training, in that encampment is actually carried out by state military personnel under authority of the governor who is constitutionally and statutorily charged with the obligation of training the guardsmen. Greenwood v. Com., Dept. of Military Affairs, 1983, 468 A 2d 866, 78 Pa.Cmwlth. 480.

§ 504. National Guard schools and small arms competitions

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

- (1) attend schools conducted by the Army or the Air Force, as appropriate;
- (2) conduct or attend schools conducted by the National Guard; or
- (3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico, the Canal Zone, or the District of Columbia may be held inside or outside its boundaries.

(As amended Oct. 3, 1964, Pub.L. 88-621, § 1(2), 78 Stat. 2991)

1964 Amendment, Pub.L. 88-621 substituted provisions authorizing the Secretaries of the Army and of the Air Force to issue regulations, for provisions authorizing the President to issue regu-

lations, and provided that members of the National Guard may conduct or attend schools conducted by the National Guard.

Legislative History: For legislative history and purpose of Pub.L. 88-621, see 1964 U.S. Code Cong. and Adm. News, p. 3800.

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or

to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Status as, see § 1995.

Suits against individuals, see § 2002 et seq.

Code of Federal Regulations

Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

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C.J.S. Militia § 19.

(1) receipt and account for all funds and property of possession of the National Guard for which he is proper
(2) make returns and reports concerning those funds required by the Secretary concerned.

[(3) Redesignated (2)]

(c) When he ceases to hold that assignment, a property and his status as an officer of the National Guard.

(d) The Secretaries shall prescribe a maximum grade, functions and responsibilities of the office, but not above, and fiscal officer of the United States for the National Territory, Puerto Rico, the Canal Zone, and the District of

(e) The Secretary of the Army and the Secretary of the joint regulations necessary to carry out subsections (a)-(d).

(f) A property and fiscal officer may intrust money to a Guard to make disbursements as his agent. Both the officer intrusted, and the property and disbursing officer intrusting pecuniarily responsible for that money to the United States subject, for misconduct as an agent, to the liabilities and penalties in like cases for the property and fiscal officer for whom he

[(g) Redesignated (f)]

(As amended June 6, 1972, Pub.L. 92-310, Title II, § 207, 86 Stat. 95-79, Title VIII, § 804(b), 91 Stat. 333; Dec. 12, 1980, Pub.L. 96-513 2937.)

1980 Amendment. Subsec. (b). Pub.L. 96-513 redesignated former cls. (2) and (3) as (1) and (2), respectively.

1977 Amendment. Subsec. (d). Pub.L. 95-79, § 804(b)(1), (2), redesignated former subsec. (c) as (J). Former subsec. (d), which authorized inspections at least once a year by Inspectors General of the departments concerned, was struck out.

Subsec. (e). Pub.L. 95-79, § 804(b)(2), (3), redesignated former subsec. (f) as (e) and, as so redesignated substituted "(d)" for "(e)". Former subsec. (e) was redesignated as (u).

Subsec. (f), (g). Pub.L. 95-79, § 804(b)(2), redesignated former subsecs. (f) and (g) as (e) and (f), respectively.

1972 Amendment. Subsec. (b)(1). Pub.L. 92-310 repealed provisions which related to the bond required of property and fiscal officers.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub.L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

Legislative History. For legislative history and purpose of Pub.L. 92-310, see 1972 U.S. Code Cong. and Adm. News, p. 2364. See, also, Pub.L. 95-79, 1977 U.S. Code Cong. and Adm. News, p. 537; Pub.L. 96-513, 1980 U.S. Code Cong. and Adm. News, p. 6333.

Notes of Decisions

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§ 505. Army and Air Force schools and field exercises

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Federal employees—

Status as, see § 1995.

Suits against individuals, see § 2002 et seq.

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Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Notes of Decisions

1. Military service

Inactive training duty performed by members of the Army National Guard and Air National Guard comes within the term "service" in section 2732 of Title 10 so that claims of Air National Guard members for personal property lost or damaged while on training or other duty under this section may be settled under section 2732 of Title 10. 1960, 40 Comp.Gen. 31.

§ 506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard

under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

Sec.

709. Technicians: employment, use, status.
710. Accountability for property issued to the National Guard.
715. Property loss; personal injury or death: activities under certain sections of this title.

1985 Amendment. Pub.L. 99-224, § 3(b), Dec. 18, 1985, 99 Stat. 1742, substituted "and" for "other than" in item 716.

1980 Amendment. Pub.L. 96-328, § 1(b)(2), Aug. 8, 1980, 94 Stat. 1027, substituted in item 710 "Accountability for property issued to the National Guard" for "Reports of survey".

1972 Amendment. Pub.L. 92-453, § 2(2), Oct. 1, 1972, 86 Stat. 759, added item 716.

Sec.

716. Claims for overpayment of pay and allowances, and travel and transportation allowances.

1968 Amendment. Pub.L. 90-486, § 2(2), Aug. 13, 1968, 82 Stat. 756, substituted in item 709 "Technicians: employment, use, status" for "caretakers and clerks."

1960 Amendment. Pub.L. 86-740, § 1(2), Sept. 13, 1960, 74 Stat. 879, added item 715.

708. Property and fiscal officers

[See main volume for text of (a)]

(b) Each property and fiscal officer shall—

2. Notice and hearing

State governor he nominate, not appointed serve as United States but even if there was no power in government appointment, officer subject to preside removal by himself, and it did not require regulations implementing and hearing requirements. D.C. Ark. 1984, 584 F.

3. Judicial review

Judicial review of involving removal of a from position of United officer was warranted removal without notice applicable military regulations severe consequences of in nature of duty assigned subject from position Shaw v. Gwatney, D 1357.

4. Equitable relief

Grant of reinstatement considered "equitable relief" for district court that national guard denied his right to pay the officer initially as which was denied, and frequently sought only the pay, and no compensation. Gwatney, D.C. Ark. 1984.