

## LINE OF DUTY

### Line of Duty for Reservist doing successive Inactive Duty Trainings

This opinion responds to your request on whether a member of the Air Reserve Component (ARC), injured between successive periods of inactive duty training (IDTs), is considered In the Line of Duty (ILOD) if their residence is within the vicinity of the training site. For reasons that follow, it is our opinion that based on the facts of this case, the injuries sustained by the member between IDTs in the vicinity of the training site are Not In the Line of Duty (NILOD).

**Background:** MSgt VP is a traditional reservist assigned to Base Y. MSgt VP was placed on active duty on 14 February 2011 through 27 August 2011 in order to cross train from the security forces career field to the F-22 platform. Prior to the start of his cross training at Base Y, MSgt VP executed a Permanent Change of Station (PCS) from Location X to Location Z. Following his cross training, MSgt VP performed his August Unit Training Assemblies (UTAs) from 1-2 September 2011 at Base Y. On Thursday, 1 September 2011, after completing the first two periods of his UTA, MSgt VP left Base Y with a group of 10-12 other motorcycle riders en-route to a sports bar in a neighboring town. During the ride, MSgt VP got ahead of the other riders, so he stopped in the median to wait. At approximately 2006 hrs, while waiting, MSgt VP's motorcycle was struck on the side of the road by a Porsche. Injuries as a result of the accident led to amputation of MSgt VP's legs, one above the knee and one below. MSgt VP was scheduled to perform another UTA the following morning at 0700 on 2 September 2011.

On 22 February 2013, AFRC/CV found MSgt VP's injuries were NILOD. As a result, MSgt VP became ineligible for compensation. On 16 May 2013, MSgt VP requested a reinvestigation of his case. On 19 June 2013, the approving authority granted MSgt VP's request for a reinvestigation of his case. On 15 August 2013, the Investigating Officer (IO) recommended a finding of ILOD. However, on 8 October 2013, the appointing authority disapproved the IO's findings and found MSgt VP "NILOD-Not Due to Own Misconduct." Additionally, on 28 October 2013, the appointing authority found that MSgt VP's injuries "existed prior to service" (EPTS) and that an LOD finding was not applicable.

AFRC/JA concurred with the appointing authority's finding that MSgt VP was "NILOD-Not Due to Own Misconduct," concluding that the provisions of 10 U.S.C. 1074a did not cover MSgt VP as he lived within the vicinity of Base Y, the site of his IDTs.

**Law/Policy:** The controlling statute for medical and dental care for members on active duty less than 30 days is 10 U.S.C. 1074a.<sup>1</sup> Section 1074a has been expanded over the years to provide greater coverage for Reserve component members who become injured or ill while performing IDTs. In 1983, Congress introduced Section 1074a, allowing medical and dental care for reservists who incurred or aggravated an injury while traveling to or from inactive duty training.<sup>2</sup>

---

<sup>1</sup> OpJAGAF 1996/68, 3 May 1996

<sup>2</sup> Department of Defense Authorization Act, 1984, Section 1012

In 1984, Congress expanded Section 1074a to include care for members who contracted diseases or become ill during IDTs.<sup>3</sup>

In 1996, Congress expanded coverage of Section 1074a to members who stayed overnight at or in the vicinity of their training site, prior to commencement of or in-between successive periods of inactive-duty training.<sup>4</sup> This expanded coverage had one caveat; the training site had to be “outside reasonable commuting distance from the member’s residence.”<sup>5</sup> This language has been widely interpreted to mean Reserve component members who live *outside* a reasonable commuting distance of the training site and subsequently become injured/ill between the end of one inactive-duty training period and the beginning of the next (i.e. overnight) are generally entitled to the benefits enumerated in Section 1074a. However, members who live *within* a reasonable commuting distance (i.e., “local”) would not be entitled to the same benefits.

In 1997, Congress directed the Department of Defense (DoD) to conduct a study “on the means of improving the provision of uniform and consistent medical and dental care to members of the Reserve Components (RCs).”<sup>6</sup> In 1999, DoD delivered its report to Congress with 14 recommendations. Of relevance to this case is “Recommendation 3.” Recommendation 3 stated:

“RC members are frequently required to remain overnight in the field in an Inactive Duty status. Consideration should be given to providing medical coverage for Reserve component members who are injured or become ill while remaining overnight at the site of inactive duty training between successive training periods, even if they reside within reasonable commuting distance. These members may be training late into the evening or performing duty early in the morning which could make commuting to and from their residence impractical. This requires new legislation.”<sup>7</sup>

In 2002, Congress, acting upon DoD’s recommendation, removed the language from Section 1074a that required members to live “outside reasonable commuting distance from the member’s residence.”<sup>8</sup> Congress’ intent in removing this language was to “add overnight health care coverage when authorized by regulations for Reserve Component members who, although they may reside within a reasonable commuting distance of their inactive duty training site, are required to remain overnight between successive drills at that training site because of mission requirements.”<sup>9</sup>

Section 1074a (a)(3) remained unchanged from 2011 to 2015, and reads as follows:

“Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before the commencement of

---

<sup>3</sup> Department of Defense Authorization Act, 1985, Section 631

<sup>4</sup> National Defense Authorization Act for Fiscal Year 1996, Section 702

<sup>5</sup> *Id.*

<sup>6</sup> DoD Report to Congress, *Means of Improving the Provision of Uniform and Consistent Medical and Dental Care to Members of the Reserve Components*, 1 Nov 1999

<sup>7</sup> *Id.*

<sup>8</sup> National Defense Authorization Act for Fiscal Year 2002, Section 513

<sup>9</sup> Congressional Record - Senate, Section 632, 29 Jun 01. *See also* Congressional Record - House, Section 515, 17 Oct 01

inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.”<sup>10</sup>

A key factor in determining if a member is in the Line of Duty (ILOD) for purposes of Section 1074a, is whether the member’s injury, illness, or disease occurred “while so employed” in inactive-duty training.<sup>11</sup> In determining this factor, we look to Comptroller General opinions for interpretation. When considering the question of “while so employed,” the Comptroller General weighs the degree of “military control” exercised over the individual at the time of the injury, illness or disease.<sup>12</sup>

The basic rule has historically been that when a reservist is ordered to perform inactive duty training, they are so employed from the time they first must report for that duty until the end of the ordered period of such duty for that day.<sup>13</sup> Unless the reservist is traveling directly from his or her place of duty to their home, when the reservist leaves the training area after training for the day and at the conclusion of his or her active duty training, for their own convenience, their IDT status is terminated.<sup>14</sup> Essentially, the member may not be considered in an active status after the time of his or her actual release from active duty. The individual reverts to civilian status the instant he or she is released from military control and is not entitled to pay and allowances, and hospital benefits in connection with an injury sustained after release and while engaged in civilian pursuits.<sup>15</sup>

AFRC/JA has opined that only reservists whose residence is outside the vicinity of the training site are covered by the “overnight rule,” and that reservists whose residence is within the vicinity of the training site are only covered while traveling to and from the training site. We disagree. As discussed above, living within the vicinity of a training site is not an automatic bar to the benefits enumerated in Section 1074a if a member becomes injured or ill. The key question to ask in cases where the member lives within the vicinity of the training site and becomes injured or ill between successive periods of IDTs is whether he or she was required to remain at the training site overnight due to mission requirements. In the case of MSgt VP, no evidence has been presented that would indicate he was required to stay at Holloman AFB overnight between his IDTs.

We therefore conclude that absent a mission requirement for MSgt VP to stay overnight at the training site between his IDTs, the appointing authority was correct in finding MSgt VP “NILOD-Not Due to Own Misconduct.”

OpJAGAF 2016/2 9 February 2016

---

<sup>10</sup> 10 U.S.C. 1074a, para (a)(3), 2015

<sup>11</sup> OpJAGAF 1996/68, 3 May 1996

<sup>12</sup> *Id.*

<sup>13</sup> 43 Comp. Gen. 412

<sup>14</sup> 54 Comp. Gen. 523

<sup>15</sup> 44 Comp. Gen. 408