

Work-Related Fatality: Army Sergeant Dies due to Overwork

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I. Introduction

This incident involved a non-commissioned officer (a sergeant, hereinafter referred to as "the deceased"), aged 32, who was responsible for personnel matters in xx battalion of the 12th Infantry Division located in Inje, Gangwon Province, and passed away on November 27, 2018. The deceased died from a deadly brain stroke while staying at a military residence. The Military Accident Compensation Review Board (hereinafter referred to as "the Review Board") rejected an application by the family of the deceased for survivor pension based on the claim it was a duty-related fatality. The rationale behind this rejection was that the average excess working hours of the deceased, three months prior to the incident, were 24 hours, which fell well short of the threshold of 50 hours—the benchmark for excessive working hours that constitutes overwork. Furthermore, the Review Board determined that the stress resulting from work-related factors was a typical aspect of the job performed over an extended period and thus could not be regarded as excessive work-related stress. Specifically, the Review Board concluded that the pre-existing conditions of the deceased—hypertension and diabetes—deteriorated and led to the fatality.

In order to overturn this rejection, a thorough investigation of the factual circumstances was deemed necessary. Firstly, it was imperative to determine the accuracy of the calculation of excess working hours. Secondly, it was essential to ascertain the nature of the deceased's duties and identify any stressors associated with them. Thirdly, understanding the reasons behind the deceased's failure to adequately manage and exacerbate his medical conditions was crucial.

II. Criteria for Military Accident Compensation and Precedents on Work-Related Fatalities

1. Criteria for military accident compensation

Article 35 of the Military Accident Compensation Act stipulates that in the event of a military member's death due to duty-related causes, a survivor pension is granted to the bereaved family following review by the Review Board. Furthermore, Article 4 of the same Act defines "duty-related death" as a fatality resulting from duty-related injury or duty-related illness. The specific provisions are outlined in Annex 2 of the Enforcement Decree of the Military Accident Compensation Act. Cerebrovascular and cardiac diseases are categorized as duty-related illnesses if they are caused or aggravated by physical or mental fatigue resulting from sudden incidents during duty, significant changes in the

work environment, substantial increases in work-related burden over a short period, performance of chronic and excessive tasks, and excessive overtime work. To qualify as a duty-related illness as prescribed by the aforementioned laws, a substantial causal relationship between the performance of duties and the illness must exist.

Based on these principles, the Ministry of National Defense's Military Accident Compensation Review Board employs the "work-related burden" criteria, evaluating work-related relevance through three aspects: ① Occurrence of sudden and unpredictable events related to work within 24 hours prior to the onset of symptoms, ② Increase in the amount or duration of work within one week of onset by at least 30 percent compared to the average over the previous 12 weeks (excluding the week of onset), and ③ Objective confirmation of sustained, excessive physical or mental burden continuously for at least three months prior to onset. In regard to ③, this Review Board employs a standard of over 50 hours of monthly overtime work on average for the preceding three months to assess work-related relevance.¹

2. Precedents on criteria for recognizing duty-related accidents

(1) The term "duty-related illness" in the criteria for recognizing an incident as duty-related as established by Article 3(2-2) and Article 61(1) of the Public Officials Pension Act, pertains to illnesses arising from the execution of official duties by a civil servant. A causal relationship must exist between the performance of official duties and the illness, and it is the responsibility of the asserting party to provide evidence of this causal connection. However, the causal relationship need not be strictly proven in purely medical or natural scientific terms; it should be considered substantiated if a reasonable causal connection is acknowledged from a normative² standpoint.³

(2) Regarding the criteria for payment of survivor compensation specified in Article 61(1) of the Public Officials Pension Act, a duty-related illness refers to an illness incurred by a civil servant during the execution of official duties. A causal relationship must exist between the civil servant's official duties and the illness. Even if the primary cause of the illness is not directly related to the official duties, if job-related strain or other factors contribute to the onset of the illness alongside its primary cause, a causal relationship should be recognized. Furthermore, illnesses stemming from excessive strain include cases where pre-existing conditions or basic illnesses, which would usually allow normal work performance, deteriorate significantly faster than usual due to the excessive

¹ Military Accident Compensation Review Commission 2022-11.

² Wikipedia Dictionary: The term "normative," derived from the English word "Normative," generally refers to something associated with standards that are assessable and standardized.

³ Supreme Court ruling on June 28, 2018, 2017doo53941.

demands of the duties. When determining whether an illness qualifies as duty-related, the presence of a reasonable causal relationship between the duty and the fatality should be assessed based on the health and physical condition of the relevant civil servant, rather than a general average perspective.⁴

III. Factual Circumstances⁵ and Reasons for Rejection

1. Regarding work-related stress

The deceased enlisted as an Army private on April 11, 2006, and was commissioned as a sergeant on December 22 of the same year. Subsequently, the deceased performed duties in the 12th Infantry Division, including mine detection operations, until March 9, 2018, when the deceased commenced duty as a personnel manager in the unit related to this incident.

The deceased was responsible for 28 different types of tasks, including duties related to non-commissioned officers, military administration, personnel management, and allowance administration. Notably, the deceased had to follow a procedure that involved identifying personnel and reporting to the commanding officer regarding requests for weekday outings submitted after working hours. This made it practically difficult for the deceased to finish work by the designated end time of 17:30 due to the nature of the tasks. The tasks the deceased handled were often associated with overtime due to frequent evening work, which led to such duties being avoided by unit sergeants and officers.

The Review Board determined that it was difficult to acknowledge that the tasks the deceased performed for an extended period induced excessive work-related stress compared to routine tasks or exceeded normal levels of working hours and content.

2. Calculation of overtime hours

In cases of overtime work in this unit, individuals would make a computerized application, which the section chief would approve. Subsequently, the duty commander would decide the duration of the overtime work. The final determination of overtime hours was thus made. Due to the cumbersome reporting process, instances were frequent where actual records of overtime were not properly documented. Particularly, it was customary not to document instances where individuals worked beyond the permissible limit for overtime pay (recognized working hours).

The excessive working hours of the deceased for the period from September to

⁴ Supreme Court ruling on September 6, 1996, 96noo6103.

⁵ The report from the 12th Infantry Division's investigation into this death describes the factual circumstances.

November 2018, as input into the unit's computer system, exceeding the regular working hours of 08:30 to 17:30, are summarized in the table below. The unit recognized only the hours excluding duty and training times as "overtime hours."

Division	Monthly total	Overtime work	Duty hours	Training
September	198:26	38:56	39:30	120
October	72:03	17:03	55:00	-
November	157:10	30:10	31:00	96
Total	427:39	86:09	125:30	216

In this particular unit, training and duty work were not considered as part of the overtime hours. (i) Although a maximum of 4 hours of overtime work was acknowledged for military training, when calculating work hours affected by training, the aforementioned 4 hours were already included in the calculation. Moreover, after the completion of training, considering the unit's schedule, combat rest was granted for a weekday. (ii) For duty work, it was customary to provide rest on the following day.

In practice, the recorded overtime hours included those beyond regular work hours during duty when individuals couldn't leave after duty ended. Additionally, hours outside of the 8-hour work period during training were recognized as overtime hours. Hence, the critical issue in this case revolved around whether the time spent working after duty and the waiting time during training should be considered as work hours. If the time spent working after duty and the waiting time during training are regarded as work hours, the actual accumulated overtime hours for the three months before the fatality would be 427:39, not 86:09. The Review Board concluded, "Since the total accumulated overtime hours for the three months before the onset of the illness, excluding training and duty work hours, amount to 86 hours, and it cannot be confirmed that the monthly average exceeds 50 hours, it is difficult to accept the claim of the petitioner." As the deceased's average monthly overtime work hours for the three months before his death amounted to only 24 hours, the Review Board deemed that there was no work-related cause.

3. Personal medical conditions

Before entering military service, the deceased had no pre-existing health issues. However, during his service, the deceased was diagnosed with diabetes in November 2016 and hypertension in April 2017. In July 2017, the deceased was hospitalized for around two weeks to treat his high blood pressure.

After taking on the role of personnel manager, the deceased visited the internal medicine

department of the Armed Forces Hongcheon Hospital on April 24, 2018. The military medical officer noted that the deceased's blood pressure was at a maximum of 217 mmHg and a minimum of 138 mmHg. Comparing this with 2017, it was determined that the condition had worsened, and the military medical officer advised hospitalization.

The Review Board concluded, "It is difficult to attribute the onset of deadly stroke to excessive work-related stress and overwork during military service, as claimed by the petitioner. Moreover, there is insufficient medical evidence to suggest that work-related stress and overwork contributed to the onset of deadly stroke or exacerbated it beyond natural progression, leading to the fatality."

IV. Judgment of the Administrative Court⁶

1. Work-related stress

The court determined that the deceased experienced significant stress due to the following reasons: "The deceased was assigned the role of a personnel manager in this unit. This duty, involving frequent overtime, was avoided by other sergeants and military officers. The deceased received requests from the battalion commander and the chief sergeant officer of this unit to take on this role. Although these requests might not have been coercive in nature, it seems that from the standpoint of the deceased, who was a subordinate, it would have been difficult to refuse them. The duties of the personnel manager included reporting to the commanding officer about soldiers transferring into the unit or individuals leaving on weekdays, among 28 different types of tasks. Given the nature of these tasks, it was virtually impossible to leave work at the designated end time (17:30) and overtime became inevitable. Since assuming the role of a personnel manager, the deceased had to dedicate a substantial amount of time to evening work, coupled with irregular work hours due to duty shifts and training. It is likely that the deceased experienced significant physical and mental stress, accompanied by fatigue, while performing these official duties."

The battalion commander, who was the deceased's superior, fervently requested in court, "Considering promotions and other factors for the deceased, I asked him to take on the role of a personnel manager. The deceased accepted this request. Subsequently, the deceased diligently fulfilled these duties. Apart from the days on duty, the deceased was always present in the office. Even after performing duty shifts, the deceased often continued working with an exhausted appearance, despite the necessity of taking rest the next day."

⁶ Seoul Administrative Court ruling on July 11, 2023, 2022goohap79350: Cancellation of Decision Denying Payment of Survivor's Pension for Line of Duty Death

2. Calculation of overtime hours

The court acknowledged the inclusion of training and duty hours as overtime for the following reasons: "In the case of the deceased, if we consider not only the recorded overtime hours but also training and duty hours included in overtime, the total non-scheduled work hours in the three months prior to the deceased's passing amount to 427 hours and 39 minutes. This translates to an average of 142 hours per month. In the case of duty hours and training hours, it appears that an additional day off was granted following duty shifts or training, and therefore, these hours were not accounted for as overtime. From this perspective, the defendant asserts that when excluding duty hours and training hours, the deceased's overtime hours fall within the realm of an average of around 24 hours of overtime per month, making it difficult to conclude the presence of 'work-related burden.' However, in the case of the deceased, it seems that only overtime not exceeding recognized working hours was documented, implying that more overtime was worked than reported. Considering that instances of performing regular work on the day following duty shifts were not uncommon for the deceased and that the majority of duty hours could reasonably be evaluated as overtime due to the physical toll of overnight duty, it is challenging to fully embrace the defendant's argument."

3. Personal medical conditions

Reviewing the medical records from April 2017 to March 15, 2018, prior to the deceased assuming the personnel manager duties, reveals a total of 19 hospital visits, including hospitalizations. However, subsequent to the deceased undertaking the role of personnel manager, only four medical visits are documented. Despite a medical recommendation for hospitalization received from a military official on April 24, 2018, it is noteworthy that the remote location of this unit in the forefront of Gangwon Province meant that it lacked specialized facilities for treating conditions such as hypertension and diabetes. As previously examined, given the excessive workload endured by the deceased and the nature of his role as a personnel manager requiring ongoing commitment, it appears that he was often unable to promptly seek medical attention.

4. Court ruling

Considering the legal principles and factual circumstances comprehensively, the administrative court asserted that a significant causal relationship between the deceased's duties and his passing was plausible. The court stated: "The prolonged periods of overtime, overwork, and stress experienced by the deceased might have potentially

compromised his immune system by inhibiting lymphocyte production, leading to a weakening of his immune response. Based on the deceased's military service history as explored earlier, which involved duties such as mine detection within the Inje frontline unit of the 12th Division for over a span of 12 years since enlistment, the deceased diligently fulfilled his military obligations. Engaging in frequent overtime and duty assignments spanning extended periods of time became commonplace for the deceased following his assumption of personnel manager responsibilities within this unit. Moreover, considering the untimely passing of the deceased at the relatively young age of 32, when coupled with the burdensome workload mentioned earlier, it is highly plausible that the strenuous tasks the deceased undertook as a private in this case could have acted as precipitating or exacerbating factors of the ailment. Viewed solely from the perspective of job-related and independently arising individual risk factors, it becomes difficult to consider that the illness in question naturally emerged and led to the deceased's passing. Ultimately, it is reasonable to speculate that the cumulative physical and mental stress encountered during the course of performing official duties, in conjunction with pre-existing risk factors, triggered or exacerbated the condition that led to the deceased's demise."

V. Implications

The process through which the case of the overwork-related fatality of a sergeant in the Army was recognized as a work-related accident has revealed several important implications. Firstly, it is evident that servicemen are still not effectively covered by the provisions of the Labor Standards Act. The fact that the weekly maximum limit of 12 hours of overtime stipulated by the Act is exceeded, and that only the hours reflected in payment are recognized as overtime, highlights this issue. Furthermore, due to the arduous process of applying for overtime, cases of overtime tend to go unreported.

Secondly, proper recognition of duty assignments and training periods is lacking. While a rest day is allowed following a duty assignment, continuous duty beyond that day is not recognized as overtime due to unit conditions. Training periods are recognized only for the standard working hours of the day and an additional 4 hours, despite the fact that these periods involve a 24-hour standby, effectively making the entire duration count as working hours.

Thirdly, it is evident that medical support for servicemen is inadequate. The deceased in this case, having been stationed at the frontline, experienced a worsening of hypertension and diabetes due to inadequate treatment, ultimately leading to his death. The fragile working conditions for servicemen and the inability to properly uphold the

Labor Standards Act led to the unfortunate death of a 32-year-old due to a deadly stroke resulting from pre-existing hypertension.

Despite 70 years having passed since the end of the Korean War, servicemen in South Korea continue to maintain a military culture akin to wartime, which prevents them from receiving the protections of the Labor Standards Act. As individuals entrusted with the critical responsibility of safeguarding the nation and its citizens' lives at the forefront, servicemen should rightfully take pride in their roles and be respected by society. Regrettably, however, servicemen in our country often face demands of sacrifice for the nation without proper adherence to the Labor Standards Act, while consistently operating under a tense state similar to wartime. This incident serves as an opportunity to advocate for the proper application of the Labor Standards Act to improve the work environment and quality of life for servicemen in their professional lives.