DATE: 07-18-90

CITATION: VAOPGCPREC 36-90
Vet. Aff. Op. Gen. Couns. Prec. 36-90

TEXT:

Subject: Limitations on Educational Assistance Under 38 U.S.C. § 1781

(This opinion, previously issued as General Counsel Opinion 11-73, dated August 16, 1973, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

QUESTIONS PRESENTED:

(a) Whether veterans in internships or residency training programs at a Veterans Administration Hospital or under the supervision of such hospital personnel are barred by section 1781 of title 38, United States Code, from receiving educational assistance allowances; and (b) whether veterans, who are federal employees in apprenticeship or other programs conducted by government installations, are barred by section 1781 of title 38 from receiving educational assistance allowances.

COMMENTS: Section 1781 of title 38, United States Code, reads as follows:

"§ 1781. Limitations on educational assistance

"No educational assistance allowance granted under chapter 34, 35, or 36 of this title shall be paid to any eligible person (1) who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health, Education, and Welfare in the case of the Public Health Service); or (2) who is attending a course of education or training paid for under the Government Employees' Training Act and whose full salary is being paid to him while so training." (Emphasis supplied.)

It is clear under the second limitation that in order for the payment of VA educational assistance allowance to be barred, three conditions must be met: (a) The individual must be attending a course of education or training; (b) the course must be paid for under the Government Employees' Training Act; and (c) it must be shown that the individual's full salary is being paid to him while so training. Turning first to the question of the payment of educational benefits to interns or residents training at Veterans Administration hospitals or under the supervision of such hospital personnel, we have long since held that such training programs do not come within the purview of the Government Employees' Training Act. In an

opinion dated December 29, 1958, and released to the then Director, Education Service, DM & S, we pointed out that the residency program was first authorized by section 14 of Public Law 293, 79th Congress; that section 14 was subsequently amended to include an internship program; that the authority was continued in section 1414(b), Public Law 85-56; and that it was restated in section 4114(b) of title 38, United States Code. This opinion further stated:

"The residency and intern training programs are separate and apart from training programs authorized by section 13(b)(1) and (2), Public Law 293, 79th Congress, which authorize education and training of the employees described therein. This section did not contain any reference to 'residencies' or 'internships.' Any residency or intern training authorized pursuant to the Public Law 293, 79th Congress, would therefore be authorized pursuant to the provisions of section 14(b) and not section 13(b)(1) and (2), thereof.

"The authority for training in section 13(b)(1) and (2) was carried forward in sections 1413(b)(1) and (2) of Public Law 85-56. These provisions, however, were specifically repealed by section 21(b)(7) of Public Law 85-507. Significantly, section 14(b) was not repealed by Public Law 85-507. The legislative history of 85-507 does not indicate that the residency and intern programs (section 14(b)) were ever discussed in the hearings, reports or debates on the proposals which were finally enacted as Public Law 85-507. This would indicate that it was not contemplated that the residency and intern training programs, being distinct from the training programs of Department of Medicine and Surgery, would come within the purview of the 'Government Employees Training Act.'

"It must be concluded that the authority for the residency and intern training programs is not affected by the enactment of 85-507."

The authority of the Administrator to conduct training for interns and residents is still contained in section 4114(b) of title 38. This authority to conduct such training without reference to the Government Employees' Training Act (Public Law 85-507) was subsequently affirmed by this office in an opinion dated June 5, 1969, directed to the Chief Medical Director.

It remains our view that the internship and residency programs do not come within the purview of the Government Employees' Training Act and therefore do not come within the scope of the second limitation set forth in section 1781.

To reach a determination as to the effect of the current law on the payment of VA benefits for pursuit of apprenticeship and other on-job training programs, it is necessary to examine the legislative history of the proposal which was finally enacted into the present law. Apprenticeship and other on- job training programs have been approved for training benefit purposes by the Veterans Administration for many years and under all of the three GI Bills. Section 251 of the Korean conflict GI Bill (Public Law 550, 82d Congress) provided for such training.

Further, although such training was not originally provided in the current GI Bill, as originally enacted by Public Law 89-358, these programs were added by Public Law 90-77, enacted August 31, 1967.

The former limitation on nonduplication of benefits, set out in section 1781 of title 38, as added by section 3(b) of Public Law 89-358, reads as follows:

"§1781. Nonduplication of benefits

"No educational assistance allowance or special training allowance shall be paid on behalf of any eligible person or veteran under chapter 34 or 35 of this title for any period during which such person or veteran is enrolled in and pursuing a program of education or course paid for by the United States under any provision of law other than such chapters, where the payment of an allowance would constitute a duplication of benefits paid from the Federal treasury to the eligible person or veteran or to his parent or guardian in his behalf."

This section was patterned after section 232(h) of the Korean GI Bill and identified as section 1632(h) at the time the GI Bill was codified into title 38.

VA Regulation 14025, promulgated to implement Public Law 89-358, stated:

"14025 (§21.4025). NONDUPLICATION--FEDERAL PROGRAMS

"(A) General. Neither educational assistance allowance nor special training allowance may be authorized for any period during which the veteran or eligible person is enrolled in and pursuing a course of education or training paid for by the United States in whole or in part under any other provision of law, where the educational assistance would constitute a duplication of benefits from the Federal Treasury. This includes the receipt of a stipend paid under a grant or fellowship or receipt of a payment as a trainee or student under any program administered by another Federal agency if the stipend or payment is to provide an allowance for living expenses or tuition and is paid from the Federal Treasury to the veteran or eligible person or to his parent or guardian in his behalf."

This regulation also included a list of the programs barred and the programs not barred under the statute. Including among the programs not barred was:

"(4) Participating in an on-the-job training program in a governmental establishment, such as a Navy Yard."

Thus, even under the broader provisions of section 1781, as originally enacted by Public Law 89-358, such on-the-job training programs were held not to be barred.

In a VA report, "Duplication of Benefits: A Study of the Problems Involving the Bar Against the Payment of Educational Assistance under Two or More Federal Programs as is Contained in Section 1781, Title 38, U.S. Code, in Conjunction with Hearings on HR 6808, 91st Congress," dated April 23, 1969, prepared at the request of the House Committee on Veterans' Affairs, the following pertinent points are set forth:

"In order that there would be no pyramiding of benefits for any person or persons, the first GI bill for veterans of World War II contained a provision that a veteran enrolled in and pursuing a program of education under any other program paid for out of funds from the Federal Treasury would not be entitled to receive veterans educational assistance. A similar provision was contained in the Korean Conflict GI Bill and appears as section 1781, title 38, U.S. Code for the Cold War GI Bill.

"Through the years, certain federal educational programs have been held to be not subject to the duplication of benefits bar. These exceptions have evolved through legislation, opinions of the Solicitor General, and decisions made by the Administrator of Veterans Affairs. Among the prominent programs not barred were Fulbright Fellowships, Land Grant College programs, vocational training under the Smith-Hughes Act and ROTC training where tuition was not paid for out of Federal Funds.

* *

"The bar against duplication of benefits was partially lifted by the Congress indirectly by provisions in PL 90-574, the Health Services and Facilities Amendments of 1968, and in PL 90-575, The Higher Education Amendments of 1968, which specifically exempted almost all of the educational assistance programs carried out through the Public Health Service and a large percentage of the Office of Education Programs from the provisions of Section 1781, title 38, U.S. Code. Although the programs so exempted were not enumerated, the language of those two Acts extended the exemption to any program covered by any act amended by the two acts. Since PL 90-575 amended the Higher Education Act, the National Defense Education Act and Economic Opportunity Act, which operate a majority of DHEW programs, such programs are exempt.

* * * * * *

"<u>Veterans under current laws are not barred however from participating in VA OJT programs and receiving the educational assistance benefits their service has earned for them</u>. Over 38,000 veterans are currently engaged in either VA OJT or apprenticeship training programs and receive VA benefits. Such programs generally last between one and two years and provide substantial training for permanent skilled employment. Directors of State approving agencies for on-the-job and apprenticeship training programs predict marked expansion of these substantial training and employment opportunities ..." (Emphasis supplied.)

Two legislative proposals, the mentioned H.R. 6808 and H.R. 6798 (section 4),

were introduced in the House of Representatives in the first session of the 91st Congress incorporating language which, with the exception of one modifying word, was identical to that which eventually became law in the enactment of Public Law 91-219 on March 26, 1970. The House Committee on Veterans' Affairs approved H.R. 6808, which included other program changes, as well as the modification of section 1781. This measure was passed by the House on May 19, 1969. The House Committee subsequently approved H.R. 11959, another measure which dealt only with education rate changes, and this bill was also passed by the House on August 4, 1969. The Senate Committee on Veterans' Affairs subsequently approved H.R. 11959 after merging within its provisions certain of the features of H.R. 6808, including the 1781 amendment. In its report of March 25, 1969, to the House Committee on H.R. 6808, the VA stated with reference to the duplication provisions that:

"Under current law, the Veterans' Administration is barred from granting educational assistance allowances under chapters 34 or 35 of title 38 or special training allowances under chapter 35 to any veteran or eligible person during any period in which such person is enrolled in and pursuing a program of education or course paid for by the United States under any provision of law where the payment of such an allowance would constitute a duplication of benefits paid from the Federal Treasury. This provision goes back to the Korean GI bill. At that time there were only a relatively few Federal Educational Assistance programs outside the GI bill and no serious problems developed under the earlier programs. However, since that time many Federal educational programs have been enacted which provide great variety in the level of Government support.

"Most recently, provisions were enacted in Public Law 90-574 (relating to Public Health Service Act grants) and Public Law 90-575 (Higher Education Amendments of 1968) specifically exempting awards, loans, and grants made to students under those laws from the nonduplication prohibition contained in section 1781 of title 38.

"There is attached to the section-by-section analysis of the bill which accompanies this report a copy of Veteran' Administration Regulation 14025. While this regulation is not exhaustive, it does identify the major programs where duplication payments are currently barred by section 1781 of title 38, as well as certain other programs with respect to which it has been determined that the nonduplication bar is not applicable.

"Under the language proposed in the subject bill, the duplication bar would be limited to cases of persons on active duty with the Armed Forces or the Public Health Service whose education and training costs are being paid by the Federal Government, and cases of civilian Federal employees receiving education or training under the Government Employees' Training Act and being paid their full salary during that period. In all other cases, the educational assistance allowance would be paid by the Veterans' Administration to an eligible veteran or

eligible person, whether or not he was a recipient of any other Federal educational grant. (Entitlement to an educational grant under many of the other Federal programs is predicted upon the recipient meeting various needs tests and, presumably, the amount of the allowance from the Veterans' Administration would be considered in determining the amount of the grant.)" (Emphasis supplied.)

The House Committee on Veterans' Affairs, in its report on H.R. 6808 (House Report 91-243, at page 5), commented on this section, as follows:

"In the 90th Congress, section 504 of Public Law 90-574, which provided that an individual having a public health service grant and also being eligible for educational assistance provided, by the Veterans' Administration, could enjoy both such grants. Similar provisions were included in section 506 of Public Law 90-575 which contained amendments to the Higher Educational Act of 1965. Section 5 provides a liberalization of the limitations role on receiving educational assistance by providing that an eligible veteran may receive educational assistance under chapters 34 and 35 of title 38, and in addition receive any other grants for which he may be eligible under other programs operated by the Federal Government except in two instances:

"One, when he is on active duty pursuing a course of education which is paid for by the Armed Forces or by the Department of Health, Education, and Welfare, in the case of Public Health Service; or

"Two, who is attending a course of education or training paid for under the Government Employees' Training Act and whose full salary is being paid to him while so training.

"Because of this liberalization, section 504 of Public Law 90-475 and section 506 of Public Law 90-574 are repealed." (Emphasis supplied.)

During the debate on H.R. 6808 on the House Floor on May 19, 1969, the following statements were made by members of the House Committee concerning this provision:

"Mr. BROWN of California: ... this bill makes only one change of major significance in title 38 relating to veterans' benefits. This has to do with the provision concerning duplication of benefits.

"The major purpose of the bill is to permit a veteran to receive his educational assistance allowance from the Veterans' Administration and also any other grant or scholarship for which he may be eligible under another program. The only exception will be Federal employees and members of the armed services who

are under full salary and have their tuition paid by their department."

"Mr. HALPERN. The other major provision of H.R. 6808 concerns a limitation which applies to both the veterans' and the war orphans' and widows' programs. Under this provision an individual who is getting educational assistance under any other Federal program cannot receive the veterans' educational benefits to which he would otherwise be entitled. On the surface this seems like a good idea: indeed, that is undoubtedly why it is now in the law. However, this effectively excludes a number of veterans from federally funded fellowships or manpower training programs unless they ‘re willing to forego VA benefits. Thus, instead of having Federal programs working to complement each other we have them working at cross purposes. H.R. 6808 repeals this broad restriction against receiving veterans' educational benefits simultaneously with payments, however insignificant, under another Federal program. However, H.R. 6808 also recognizes that it would be wasteful and uncalled for to provide veterans' allowances to people drawing a salary as full-time Federal employees--either in the military or in the civil service--when the Federal agency employing them is also paying the full cost of their education. As a result, this type of duplication of Federal payments is specifically forbidden by the bill."

"Mr. TEAGUE of California. Since many Federal grants are based upon financial need, the amount of the Veterans' Administration training allowance would be considered in determining the amount of the grant. Dual receipt of GI bill benefits and other Federal educational programs are currently permitted in some cases. This bill will permit all Federal educational programs to be treated in the same manner."

"Mr. SAYLOR. First, the bill proposes to eliminate the prohibition against a so-called duplication of benefits. Existing law states that no educational assistance allowance under the GI bill shall be paid for any period during which a veteran is enrolled in and pursuing a program of education or course paid for by the United States under any other provision of law. Because of this language of the law, an Atomic Energy Commission fellowship, a National Science Foundation Fellowship, participation in the U.S. Maritime Commission training program, and educational assistance under the Manpower Development and Training Act would serve to deny a veteran the benefits of the GI bill that he has earned by virtue of his military service. Inasmuch as qualifying criteria for these Federal programs differ considerably from the eligibility criteria for entitlement to the GI bill, it is unjust and inequitable to deprive a veteran who is fortunate enough to receive a fellowship in addition to earning entitlement under the GI bill from receiving the benefits of both programs. I believe the correction of this inequity is long overdue." (See Congressional Record, May 19, 1969, p. 12928-12929.)

The Senate Labor and Public Welfare Committee, in reporting H.R. 11959, 91st Congress (a comprehensive GI bill amendments measure) to the Senate (Senate Report 91-487), had the following to say concerning the duplication section of the

bill:

"Chapter 36 of title 38, United States Code, would be amended by deleting section 1781 and inserting new language. Under present law, the Veterans' Administration is barred from granting educational assistance allowances or special training allowances to any veteran or eligible person under chapters 34 or 35 during any period in which such person is enrolled in and pursuing a program of education or course paid for by the United States under any provision of law where the payment of such an allowance would constitute a duplication of benefits paid from the Federal Treasury. The effect of this bar was substantially modified in the enactment in 1968 of Public Law 90-574 (relating to Public Health Service Act grants) and Public Law 90-575 (Higher Education Amendments of 1968). Any payments made under these acts were specifically exempted from the bar imposed by section 1781.

"Under the language proposed here, the duplication bar would be limited to cases of persons on active duty with the Armed Forces or the Public Health Service whose education or training costs are being paid by the Federal Government, and cases of persons receiving education or training under the Government Employees' Training Act and being paid their full salary during that period."

In the Senate debate on H.R. 11959, on October 23, 1969, Senator Alan Cranston, Chairman of the Subcommittee on Veterans' Affairs of the Senate Labor and Public Welfare Committee, noted:

"Finally, title II of the reported bill also includes a number of noncontroversial, relatively minor measures included in H.R. 11959 and H.R. 6808 as passed by the other body. These include programs for a new high school study definition; for expediting first allowance checks for veterans in below-college-level courses; to liberalize commencing dates of dependents' GI bill eligibility; and to eliminate most of the remaining bars to duplication of benefits." (See Congressional Record of October 23, 1969, p. 31343.)

From the foregoing history, two facts emerge as to the Congressional intent. First, the Congress viewed section 1781, as amended, as limiting the bar to receipt of GI bill educational benefits to only those eligible persons who have the cost of such training paid for or absorbed by the employing agency and who are receiving their regular pay while they are training or learning without being engaged in any concurrent productive work efforts. Second, in liberalizing the prior provisions of law, there was no intention to bar types of training courses, such as on-job and apprentice training, which were previously allowed and were any outside education was merely an adjunct.

HELD:

(1) The authority of the Administrator to conduct training for interns and residents is contained in section 4114(b) of title 38. Such training does not come within the purview of the Government Employees' Training Act, and it therefore is not within the scope of the limitation of section 1781 of title 38.

(2) Apprentice and other on-job training are not within the scope of the limitation of section 1781.

(3) We recognize that Federal agencies may conduct training programs, other than those involving substantial productive labor, under specific statutory authority as distinguished from those conducted under general provision of the Government Employees' Training Act. Such agencies are in a better position than the Veterans Administration to make at least the initial determination as to whether or not their programs come under the Government Employees' Training Act. The Administrator would have the legal authority to promulgate regulations under which such determinations, absent unusual circumstances, may be accepted. Whether such an approach should be adopted is, of course, for administrative determination.

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