

DATE: 07-18-90

CITATION: VAOPGCPREC 51-90
Vet. Aff. Op. Gen. Couns. Prec. 51-90

TEXT:

Subject: School Liability

(This, opinion, previously issued as General Counsel Opinion 10-77, dated October 29, 1976, 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:

(1) Should the Veterans Administration continue its present practice of withholding benefits from veterans and dependents reentering training, and reimburse educational institutions, where overpayments have been declared against such veterans and dependents?

(2) Should our procedure be revised, as suggested by the General Accounting Office, to provide that, where the overpayment has been collected from the school, the veteran's or dependent's indebtedness should be written off?

COMMENTS:

Section 1785 of title 38, United States Code, the statute involved here, reads as follows:

"§ 1785. Overpayments to eligible persons or veterans

"Whenever the Administrator finds that an overpayment has been made to an eligible person or veteran as the result of (1) the willful or negligent failure of an educational institution to report, as required by this chapter or chapter 34 or 35 of this title and applicable regulations, to the Veterans' Administration excessive absences from a course, or discontinuance or interruption of a course by the eligible person or veteran, or (2) false certification by an educational institution, the amount of such overpayment shall constitute a liability of such institution, and may be recovered in the same manner as any other debt due the United States. Any amount so collected shall be reimbursed if the overpayment is recovered from the eligible person or

veteran. This section shall not preclude the imposition of any civil or criminal liability under this or any other law." (Emphasis supplied.)

The pertinent portion of VA Regulation 14009, which is also for consideration here, reads as follows:

"14009 (s 21.4009). OVERPAYMENTS--WAIVER OR RECOVERY

"(A) General. The amount of an overpayment of educational assistance allowance or special training allowance on behalf of a veteran or eligible person constitutes a liability of the school if it is determined that the overpayment was made as the result of (1) willful or negligent failure of the school to report, as required by VA Regulations 14203 and 14204, excessive absences from a course, a discontinuance or interruption of a course by the veteran or eligible person, or (2) false certification by the school. If it appears that the falsity or misrepresentation was deliberate, no administrative collection may be pursued pending a determination whether the matter should be referred to the Department of Justice for possible criminal or civil action. However, the amount of the overpayment may be recovered from the school by administrative collection procedure when the false certification or misrepresentation is the consequence of an administrative error or a mistake of fact, or where it is determined that no criminal or civil action is warranted. Any amount so collected from the school will be reimbursed if the overpayment is recovered from the veteran or eligible person. This provision does not preclude the imposition of any civil or criminal liability under this or any other law." (Emphasis supplied.)

Before considering the specific issues raised, we believe it is important to look at the legislative history of the statute involved. This particular law had its origin in the World War II GI Bill in the enactment of Public Law 610, 81st Congress, on July 13, 1950.

One of the problems which arose during the administration of that program is one which is still with us today--overpayments. In a report to the Congress dated February 13, 1950, made by then President Harry S. Truman, it was stated that "The Veterans' Administration has been confronted with the problem of failure by the veteran or by the institution to notify the Veterans' Administration when the veteran has completed or interrupted his training. Such failures are one of the primary reasons for overpayments to veterans for subsistence allowance which have totaled, over the life of the Servicemen's Readjustment Act, \$199,638,013. Of this amount, recoveries and other dispositions have totaled \$159,433,867. Further, very substantial recoveries are anticipated during the current year. This still remains an important problem, however, since overpayments are continuing at

a current rate of approximately \$1,300,000 per month. In view of the continuing importance of this problem, the Veterans' Administration should be provided with a reasonable but effective method for insuring that educational institutions report to it interruptions and discontinuances of training on the part of veteran students. Such authority would contribute materially toward reducing the volume of overpayments. It should be emphasized that this need applies to all types of schools." Based on this determination, the following recommendation for legislative action was made:

"5. As a means of reducing the volume of overpayments, we recommend the enactment of legislation to assure that schools will make prompt reports to the Veterans' Administration when enrolled veterans discontinue, interrupt, or fail to attend their courses, with suitable penalties for failure to comply." (Emphasis supplied.)

As a result of this recommendation, the Congress included as section 7 in Public Law 610, 81st Congress, the following provision:

"(b) In any case where it is found that an overpayment to a veteran of subsistence allowance (which overpayment has not been recovered or waived) is proved in a hearing before the Committee on Waivers of the appropriate Veterans' Administration regional office to be the result of willful or negligent failure of the school to report, as required by applicable regulation or contract, to the Veterans' Administration unauthorized or excessive absences from a course, or discontinuance or interruption of a course by the veteran, the amount of such overpayment shall, at the discretion of the Administrator, constitute a liability of the school for such failure to report, and may be recovered by an off-set from amounts otherwise due the school or in other appropriate action: Provided, That any amount so collected shall be reimbursed if the overpayment is received from the veteran...." (Emphasis supplied.)

Of importance to the question presented here is the statement made by the House-Senate conferees on the bill (S. 2596) which was enacted as Public Law 610. In commenting on section 7, the conferees stated: "In the case of any overpayment to a veteran, the Veterans' Administration shall continue to make every reasonable effort to recover the amount of such overpayment from the veteran, and to reimburse the schools wherever possible." (Emphasis supplied.) (House Report No. 2373, 81st Congress.) Thus, it is clear that, in the original law assessing school liability, the Congress specifically intended that, where a school is determined to be liable, the Veterans Administration would be required to continue to attempt to collect

the overpayment from the veteran and reimburse the school.

The question of school liability for overpayments again arose when the Congress began considering legislation designed to provide educational benefits for veterans serving during the Korean conflict. In early drafts, the language contained in Public Law 610, supra, was included. In the introduction of H.R. 6425, on February 5, 1952, by Representative Olin E. Teague language was included which was somewhat similar to that enacted into the law (Public Law 550, 82d Congress, section 266) authorizing the Korean program. In those early drafts, as well as the language finally enacted, provisions were included which called for reimbursement of the schools where collection was made from the veteran and the school had already made payment. The language included in the Korean conflict law read as follows:

"SEC. 266. In any case where it is found by the Administrator that an overpayment has been made to a veteran as the result of (1) the willful or negligent failure of the educational institution or training establishment to report, as required by this title and applicable regulations, to the Veterans' Administration excessive absences from a course, or discontinuance or interruption of a course by the veteran or (2) false certification by the educational institution or training establishment, the amount of such overpayment shall constitute a liability of such institution or establishment, and may be recovered in the same manner as any other debt due the United States: Provided, That any amount so collected shall be reimbursed if the overpayment is recovered from the veteran. This provision shall not preclude the imposition of any civil or criminal action under this or any other statute."

The procedures for holding the veteran and/or the school liable were set forth in VA Regulation 12304. Pursuant to the provisions in the law on reimbursement of schools where the veteran makes payment, VA Regulation 12304(C)(6) read as follows:

"(6) Reimbursement to the School or Establishment. In any case where an overpayment has been recovered from the school or training establishment and the veteran subsequently repays the amount in whole or in part, the amount recovered from the veteran will be reimbursed to the school or establishment."

Thus, by law and by regulation, provision was made in the Korean conflict program, like that in the World War II program, for reimbursement to the school where the institution has made restitution to the VA and the veteran

later pays. In addition, language imposing the same liability on schools and on eligible dependents was included when the Congress enacted the War Orphans' Educational Assistance Act of 1956 (Public Law 634, 84th Congress). The Congressional reports on this legislation (House Report No. 1974 and Senate Report No. 2063, 84th Congress), in identical language, speak to repayment to the school "if the overpayment is subsequently recovered from the eligible person...." Again, when the Congress authorized the current GI Bill benefit program, it provided for assessing liability against the schools and repayment where the amount has been recouped from the veteran. It is important to note that the House Committee on Veterans' Affairs, in its report (House Report No. 1258, 89th Congress), stated (p. 7), as follows:

"The educational assistance and home loan guarantee provisions of the reported bill are patterned closely after Public Law 550, 82d Congress (the Veterans' Readjustment Assistance Act of 1952) which gave these benefits to veterans of the Korean conflict. Insofar as the provisions of the reported bill are the same as Public Law 550, it is expected that they will be administered in the same manner. In addition to patterning the bill after Public Law 550, particular care has been taken to achieve consistency between the program of educational assistance provided in the reported bill and the War Orphans' Educational Assistance program (Public Law 634, 84th Cong.) in effect under chapter 35 of title 38, United States Code."

Since the enactment of the basic law in 1966, no substantive changes pertinent to this consideration have been made in section 1785 of title 38.

From the foregoing, the following points appear clear:

1. The Congress, in enacting Public Law 610, 81st Congress, made it clear that, where an overpayment has been made to a veteran and collection has been made from the school, the Veterans Administration shall continue to make every reasonable effort to recover the amount of the overpayment from the veteran and reimburse the school wherever possible.
2. In enacting the Korean conflict program, this same position was carried forward into that program.
3. The current Vietnam era program and the War Orphans' program are patterned after the prior law and are to be administered the same unless changed by subsequent enactment.

HELD:

Based upon the legislative history of pertinent law governing the Chapter 34 and Chapter 35 educational assistance programs, the VA should continue to withhold benefits for overpayments from individuals reentering training, even though the amount of the overpayment has already been collected from the educational institution and reimburse the school pursuant to 38 U.S.C. § 1785.

To purge the veteran's or other eligible person's account would not follow the Congressional intent.

VETERANS ADMINISTRATION GENERAL COUNSEL

Vet. Aff. Op. Gen. Couns. Prec. 51-90