

Date: June 7, 1995

VAOPGCPREC 16-95

From: General Counsel (021)

Subj: School Supplement for VA Work-Study Students

To: Director, Veterans Assistance Service (27)

QUESTION PRESENTED:

May the recipient of a VA work-study allowance under 38 U.S.C. § 3485, who is assigned by VA to perform work-study services at a university, be paid by the university the difference between the amount payable by VA and the amount which the university otherwise pays to work-study students performing similar services?

COMMENTS:

1. Sections 3485, 3034, 3104, 3241, and 3537 of title 38, United States Code, and section 16136 of title 10, United States Code, provide authority for VA to pay an additional educational assistance allowance to veterans, reservists, and eligible persons participating in the educational and vocational rehabilitation programs administered by VA in return for the individuals' performance of certain services on behalf of the Department. Under this program, VA assigns individuals to universities and colleges to assist in the preparation and processing of papers and other documents related to VA benefit payments to students at the institution.
2. While engaged in the work-study activities, the individual is paid a work-study allowance by VA in an amount fixed by statute and regulations. Essentially, the hourly rate of payment is the same as the Federal minimum wage. However, if the minimum wage under the law of the State in which the institution is located is higher, VA is authorized to pay that rate, at its discretion. (38 U.S.C. § 3485(a)(2))
3. Apparently, some institutions have students not in receipt of a VA work-study allowance who are performing similar services for the institution under some other program and who are paid at a rate higher than that paid by VA. Such institutions propose to pay VA work-study students the difference between the applicable VA rate and the rate paid to non-VA students under other work-study programs. The issue presented is whether that action may be barred by law.
4. The inquiry is not specific as to whether the payments proposed would be made under other Federal programs, such as the Department of Education work-study program, or from the funds of the university or college. The issue is not entirely unique, however. In an unpublished opinion dated November 25, 1985

(copy attached), this office held that, since a VA work-study student does not occupy a "position," the individual does not violate the Dual Compensation Act when receiving both a work-study allowance and salary funds from part-time Federal appointments for the same hours of work. We also held in a later unpublished opinion, dated August 21, 1987 (copy attached), that no statutory provisions expressly bar an individual from receiving payment under both a VA work-study program and another federally funded work-study program.

5. Nevertheless, as we noted in the former opinion mentioned above, receipt of dual benefits for the same work performed is precluded by the terms of the VA work-study agreement each participating student executes. Further, in the latter opinion, we pointed out that the criteria for eligibility for a work-study allowance includes the requirement that the student shall be found in need of such benefits. A person in receipt of another Federal benefit for performance of the same duties would not likely be found in need of a duplicative VA program payment (hence, the basis for the "other source" preclusion in paragraph 2 of VA's standard "Student Work-Study Agreement," VA Form 20-8692).

6. No cause appears for altering our earlier opinions. In short, we find that the pertinent work-study statutes administered by VA do not expressly prevent a school from offering additional payment to a student receiving a VA work-study allowance for the same work performed. (We offer no opinion on whether funding of such additional payment under a program administered by another Federal agency may be authorized or proscribed by law or regulation governing that program.) We also find, however, that a VA work-study student's acceptance of any such additional funds would breach the standard VA work-study agreement and subject the student to appropriate administrative action, to include termination of assistance.

7. As previously mentioned, VA is authorized to deny, based on lack of need, giving a work-study contract to a student who receives or accepts assistance for the same work from another source. The Department has implemented this authority by the preclusionary terms in its standard work-study program agreement. Nevertheless, when a student's access to the other source of assistance is significantly limited in terms of duration or amount (e.g., the other source payment is restricted to the amount, if any, by which it exceeds the amounts payable under VA's program), you may decide that, in the circumstances of the individual case, the student still has need of a VA work-study allowance. In such event, you may modify the contract terms, accordingly.

HELD:

1. The statutes governing the VA work-study program do not expressly bar the student from receiving work-study payments from both VA and other sources, public or private, for performance of the same work. However, the availability of such other payments has a direct bearing on the individual's need for the additional educational assistance afforded under the VA work-study program. The Department has determined that assistance from another source for performing the same work-study activities vitiates the student's need for the supplemental educational assistance provided by VA's work-study program. Accordingly, VA, in the judicious administration of limited Federal resources, has included terms in its standard student work-study agreement prohibiting receipt or acceptance of such "other source" payments.

2. Nevertheless, that contractual preclusion represents a rebuttable presumption of lack of need for the benefit. Thus, the standard work-study agreement terms restricting "other source" payments may be modified, should VA find it meritorious to do so in the individual case. This may be an option in the case cited if you conclude that receipt of the differential amount does not materially affect the individual's need for a VA work-study allowance.

Mary Lou Keener

VADIGOP
Vet. Aff. Digested Opinion, 1985 WL 260601 (D.V.A.)

11-25-85

0 WORK STUDY PROGRAM

Director VA M C Fayetteville, N.C.

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HELD: Veteran College Work Study students do not occupy a 'position' under section 5531 of Title 5, United States Code. For this reason, such students do not violate the Dual Compensation Act when receiving both work study funds and salary funds from part time appointments for the same hours of work. However, this situation would be a violation of the Veterans-Student Work-Study Agreement, in which the student agrees not to receive compensation from any other source for the same hours of work performed under the agreement.

Request for Advisory Opinion on Veterans College Work-Study Students

1. This is in response to your request for an opinion on whether the employment of certain Veteran College Work Study (VCWS) students is in violation of dual compensation restrictions. A matching of employment records and VCWS records indicated that several individuals were given excepted part time (VRA) appointments during the same time frame in which they were enrolled in the Work-Study program. Further, at least two individuals were converted to full-time positions while enrolled in the work-study program. For the reasons stated below, we find no violation of the Dual Compensation Act.

2. Section 5533(a) of title 5, United States Code, the codification of the Act, provides, 'an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday thru Saturday).'

3. The term 'position' is defined under the Act at section 5531 of the same title as 'a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States . . . or in the government of the District of Columbia.'

4. The authority for the work-study program is contained in 38 U.S.C. s 1685. Under this section, veteran-students, who are pursuing full-time programs of education or training under chapters 31 and 34 of title 38 are paid an additional educational assistance allowance, referred to as work-study allowance, in exchange for their agreement to perform services for a period aggregating 250 hours per semester or other enrollment period. Paragraph (d) of this section expressly states that: 'While performing the services authorized by this section, veteran-students shall be deemed employees of the United States for the purposes of the benefits of chapter 81 of title 5 but not for the purposes of laws administered by the Office of Personnel Management.'

5. Therefore, a VCWS student does not occupy a 'position' under the Dual Compensation Act (P.L. 88-448). The additional part-time or full-time employment in which the VCWS student is engaged during the same time period would be the sole position to be considered under the Dual Compensation Act. In conclusion, because 'more than one position' is not the case, the Act does not apply.

6. Though it is not objectionable under the Act, a situation where a VCWS student is being paid from both salary funds and benefit funds for the same hours of work is precluded by execution of VA Form 20-8692, Veteran- Student Work-Study Agreement. Paragraph 2 of the agreement states, 'It is further understood that while performing such services I . . . (b) will not receive compensation from any other source for the same hours of work performed

under the agreement'. The agreement was amended in 1977 to include this provision, in order to eliminate a similar situation involving duplicate payments. See our opinion, dated March 21, 1977. This agreement is signed by the veteran-student and accepted by the work-study coordinator, at which time it becomes effective. Because the Veterans Administration may terminate the agreement for cause, the VCWS student jeopardizes his work-study benefits in the situations which you describe. The student could become subject to a recovery action for a debt due the United States, created by an advance payment made for services the student failed to perform in accordance with the terms of the agreement. See paragraph 4.

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VETERANS ADMINISTRATION GENERAL COUNSEL
VADIGOP, Vet. Aff. Digested Opinion, 1985 WL 260601 (D.V.A.)
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VADIGOP

Vet. Aff. Digested Opinion, 1987 WL 346020 (D.V.A.)

8-21-87

5-2 P.L. 92-540 WORK-STUDY

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HELD: Statutory criteria for determining eligibility do not specifically bar payment of an allowance to an individual in receipt of funds from other federally funded work programs. Nothing in the pertinent statute, the legislative history, nor the terms of the work-study agreement itself which would prohibit VA payment of a work-study allowance under such circumstances.

Dual Payment of VA Work-Study and College Work Program Benefits

1. You have asked for our opinion as to the following two questions:

a. Is dual compensation under more than one Federal college work program prohibited?

b. If your response is in the affirmative, would the facts in the case result in a VA overpayment or should we simply refer our information to the Department of Education?

2. Under the terms of 38 U.S.C. s 1685, the chapter 34 provision authorizing work-study allowance for veterans, which provisions are also applicable to certain other VA educational assistance programs administered by the VA (chapters 30, 31, 32 and 35), the individual may only be accorded an allowance under certain limited circumstances enumerated therein. Upon review, we note that the statutory criteria for determining eligibility do not specifically bar payment of an allowance to an individual in receipt of funds from other federally funded work programs. (See attached G.C. opinion of March 18, 1987.) Moreover, we find no expression of congressional intent concerning this issue in the legislative history of section 1685.

3. Thus, in response to your first question, although we find it dubious that the Congress actually considered the legislative result presented by the instant case and, if it had, would have intended to allow duplicate payment of Federal assistance for performance of the same services, we find nothing in the pertinent statute, the legislative history, nor the terms of the work-study agreement itself which would prohibit VA payment of a work-study allowance under such circumstances.

4. We wish to point out, nevertheless, that, if a student seeks to engage in VA related activities for which a VA work-study allowance is legally payable, and, as your Cleveland Office notes in the case at hand, is in receipt of a work program allowance funded by another Federal agency, two considerations arise. First, under subsection (c) of section 1685, a VA work-study allowance is payable only to students in 'need' of such supplemental assistance. Therefore, if assistance is granted a student under a different Federal program, this could suggest that the requisite need may not be present for the student to also qualify for a VA work-study allowance. If 'need' is not clearly established in such a situation, your staff would have authority not to approve a VA workstudy allowance. Apparently, that is not the situation in the instant case, however.

5. The second consideration is whether, given that need for both benefits can be demonstrated, the laws governing the non-VA program bar receipt of those benefits to a student. For that determination, we would have to defer to the affected agency. Consequently, we suggest that any dual payment case be referred to such agency for review.

6. In view of our negative response to your first question, we need not respond to the second question. However, we would point out that, if the facts demonstrate that the VA work study allowance was obtained in a case in which the student misrepresented his or her need in order to qualify for such allowance, you may create an overpayment to the student's VA account.

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VADIGOP, Vet. Aff. Digested Opinion, 1987 WL 346020 (D.V.A.)
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