CITATION: VAOPGCPREC 20-89
Vet. Aff. Op. Gen. Couns. Prec. 20-89

DATE: 12-27-89

TEXT:

Request for legal opinion--proper interpretation of 38 U.S.C. § 1781(a)

QUESTION PRESENTED:

Does the bar to duplication of benefits found in section 1781(a)(2) apply if the veteran is attending school during nonwork hours?

COMMENTS:

1. The question arose in the context of a veteran who is a Federal civilian employee working full time as a computer specialist for the Army and receiving full-time salary therefor. During nonduty hours, he attended law school, a field of study apparently unrelated to his duties as a Federal employee, and the expenses of such training were paid by his agency under authority of chapter 41 of title 5, United States Code, commonly known as the Government Employees Training Act (GETA). It later was discovered that the individual also had claimed and was paid VA education benefits under chapter 34 of title 38, United States Code, for pursuit of the same training.

2. To answer the question presented, we must determine what limitation on the distribution of education benefits Congress intended to impose by the language it used in enacting 38 U.S.C. §1781(a)(2), which reads as follows:

(a) No educational assistance allowance granted under chapter 30, 34, 35, or 36 of this title or 106 or 107 of title 10, or subsistence allowance granted under chapter 31 of this title shall be paid to any eligible person.... (2) who is attending a course of education or training paid for under chapter 41 of title 5 and whose full salary is being paid to such person while so training. (Emphasis added.)

3. In construing the section 1781(a)(2) reference to payment of full salary "while so training," we find that the language used could be read as applying only to those cases in which the individual received training during hours of the day normally allocated for his agency's work. On the other hand, it also could be interpreted as applying to any period from the beginning to the end of the training course during which full salary is paid to the individual without respect to which hours were devoted to training and which devoted to regular full-time work duties.

4. In an attempt to resolve this ambiguity of meaning, we reviewed the legislative and administrative history surrounding section 1781 and its predecessors. We found that statutes dating to the World War II GI Bill contained far broader restrictions than now exist, generally barring VA education benefits where this would result in receipt of funding from more than one Federal source or program based upon the individual's enrollment and pursuit of training or school attendance.

5. The original Post-Korean Conflict GI Bill version of section 1781, enacted by section 3(b) of Public Law 89-358 (March 3, 1966), was patterned after the broad nonduplication concept embodied in the Korean GI Bill provision (section 232(h) of Public Law 89-550). It read 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.

6. Certain limited exceptions to the application of this provision were carved out over the years by legislation and administrative interpretation. For the most part, these involved payments under Federal programs which were not deemed duplicative either because they were provided for too general a purpose, lost their identity through commingling with non-Federal funds, or were considered compensation for services performed.

7. Subsequently, during the 90th Congress, exemptions from the VA benefits duplication bar were substantially expanded by legislation. The enactment of Public Law 90-574 (relating to the Public Health Services Act) and Public Law 90-575 (Higher Education Amendments of 1968) exempted any payments to individuals under those acts from the section 1781 preclusion. FN1 These additional exemptions implicated numerous Federal educational assistance programs which previously had been covered by the duplication bar. Many of such programs were characterized by having a needs test requirement for entitlement. Thus, it was expected that they would take into consideration the recipient's eligibility for VA benefits so that wasteful duplication of assistance would be prevented.

8. Eventually, the haphazard implementation of the duplication bar, resulting from the multiplicity of programs either expressly exempted by legislation or variously exempted or subjected to the bar by administrative decision, provoked congressional action to simplify and eliminate perceived inequities in its application.

9. Congress, with the enactment of Public Law 91-219, effective March 26, 1970, radically altered the scope of the benefits duplication bar, limiting it to only the current

two categories: (a) training of active duty military personnel at the expense of the Armed Forces or Public Health Service, and (b) training paid for under the law governing training of Federal civilian employees when the individual's full Federal salary is paid "while so training." Thus, in effect, any case falling within the scope of these two categories would, a fortiori, be duplicative.

10. Although substantial legislative history accompanied the considerable alteration in the structure and scope of the section 1781 nonduplication provision, as mentioned above, unfortunately, we find it of little assistance here. The evolution of the provision to its current formulation reveals no consistent or progressive conceptual approach followed by Congress other than a general intent that the current provision simplify and eliminate past inequities in the duplication bar's application. No light is shed upon the parameters of the limitation Congress intended to impose in section 1781(a)(2) by making reference to payment of full salary to an individual "while so training."

11. Absent more specific enlightment from the extrinsic sources discussed, we believe the most reasonable interpretation of the section 1781(a)(2) language, that which best accords with Congress' intent to limit the scope of the benefits duplication bar in an equitable manner, is that it was meant to preclude payment of VA education benefits to an individual for training paid for under GETA and pursued during normal duty hours (i.e., in lieu of regular work duties, including hours of authorized personal leave) for which the individual also would receive his or her full salary.

12. Conversely, and in answer to the specific question posed, persons training on their own nonduty time at government expense under GETA, who are working full-time and who are being paid full salary based upon time expended in performance of that work, are not barred by section 1781(a)(2) from receiving VA education benefits. In such case, full salary would not be considered as "being paid to such person while so training."

HELD:

Section 1781(a)(2) of title 38, United States Code, does not bar receipt of VA education assistance by a veteran paid salary as a full-time civilian employee of the Federal Government and whose training is also paid for under chapter 41 of title 5, United States Code, so long as the training is received during periods of the day other than those for which the salary is paid.

1 See, the ruling of the Comptroller General, 48 Comp.Gen.5 (1968), which provoked these statutory changes.

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