

DATE: 07-17-90

CITATION: VAOPGCPREC 33-90
Vet. Aff. Op. Gen. Couns. Prec. 33-90

TEXT:

Subject: Education Loan

(This opinion, previously issued as General Counsel Opinion 2-79, dated April 18, 1977, 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.)

QUESTION PRESENTED:

Is it proper to authorize an education loan to a veteran who, at the time of application, is permanently and totally disabled if all requirements of section 1798(c) of title 38, United States Code, are met and can such a loan subsequently be written off under section 1798(e)(2) of title 38 because of the borrower's permanent and total disability which existed at the time the loan was made?

COMMENTS: Section 1798(c) of title 38, United States Code, reads as follows:

"(c) An eligible veteran or person shall be entitled to a loan under this subchapter if such veteran or person--

"(1) is in attendance at an educational institution on at least a half- time basis and (A) is enrolled in a course leading to a standard college degree, or (B) is enrolled in a course, the completion of which requires six months or longer, leading to an identified and predetermined professional or vocational objective;

"(2) has sought and is unable to obtain a loan, in the full amount needed by such veteran or person, as determined under subsection (b) of this section, under a student loan program insured pursuant to the provisions of part B of title IV of the Higher Education Act of 1965, as amended, or any successor authority; and

"(3) enters into an agreement with the Administrator meeting the requirements of subsection (d) of this section.

"No loan shall be made under this subchapter to an eligible veteran or person pursuing a program of correspondence, flight, apprentice or other on-job or PREP training."

Section 1798(e)(2), which is also pertinent here, reads as follows:

"(e)(2) If a veteran or person who has received a loan under this section dies or becomes permanently and totally disabled, then the Administrator shall discharge the veteran's or person's liability on such loan by repaying the amount owed on such loan." (Emphasis Supplied)

The specific factual situation in this case shows that the veteran served on active duty during World War II and again from 1950 until late in 1956. On January 3, 1966, the veteran was rated permanently and totally disabled effective October 12, 1965, and has remained so since that time. An educational loan was made to the veteran in the amount of \$600 in December 1975. It would appear that the veteran became subject to the repayment provisions of section 1798(d) of title 38, since he was sent a notice that repayment would commence on February 25, 1977.

HELD:

In determining eligibility for an educational loan to a veteran who is permanently and totally disabled at the time of application we find that, if the individual meets the criteria of 38 U.S.C. § 1798(c), that individual is entitled to a loan and we fail to find any restriction in that section on making an educational loan to a veteran who happens at the time to be rated permanently and totally disabled.

However, the provisions of section 1798, which permit the Administrator to discharge a veteran's educational debt where he has received a loan and dies or "becomes" permanently and totally disabled, make clear from the statutory language that this provision is to have prospective effect. We believe that, in view of the prospective effect of the language of the statute, namely the word "becomes," it must be interpreted as applying to anyone who "becomes" permanently and totally disabled after the making of the loan to such individual and not to an individual permanently and totally disabled at the time the loan is made. Thus, the granting of a loan to an individual already permanently and totally disabled would not authorize the Administrator to subsequently write the loan off on that basis.

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