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CITATION: VAOPGCPREC 54-90
Vet. Aff. Op. Gen. Couns. Prec. 54-90

TEXT:

Subject: Enrollment Limitation--38 U.S.C. § 1673(a)(2)

(This opinion, previously issued as General Counsel Opinion 6-77, dated November 22, 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) May the Veterans Administration approve and pay benefits for enrollments after November 1, 1975, in courses for which valid justification, required by section 1673(a)(2) of title 38, United States Code, has not been submitted, where such enrollments occurred prior to notice to the school that its justification was invalid?

(2) If the answer to the first question is in the negative, is equitable relief under 38 U.S.C. § 210(c) available for consideration in such cases?

COMMENTS: The provisions of section 1673(a)(2), cited above, read as follows:

"1673. Disapproval of enrollment in certain courses

"(a) The Administrator shall not approve the enrollment of an eligible veteran in--
* * * * *

"(2) any sales or sales management course which does not provide specialized training within a specific vocational field, or in any other course with a vocational objective, unless the eligible veteran or the institution offering such course submits justification showing that at least one-half of the persons who completed such course over the preceding two-year period, and who are not unavailable for employment, have been employed in the occupational category for which the course was designed to provide training (but in computing the number of persons who completed such course over any such two-year period, there shall not be included the number of persons who completed such course with assistance under this title while serving on active duty)...."

VA Regulation 14252(g), which is pertinent here, reads as follows:

"14252 (21.4252). COURSES PRECLUDED

"(g) Vocational Courses--Chapters 34, 35, and 36. Enrollment in any course with a vocational objective will not be approved unless the veteran or eligible person, or the institution offering such course, establishes that at least one-half of the persons completing such course over the preceding 2-year period, excluding the number of persons who completed such course with assistance under title 38, United States Code, while serving on active duty and the number of persons who are unavailable for employment have been employed in the occupational category for which the course was designed to provide training."

DVB Circular 20-74-113, Appendix B, Change 14, issued March 5, 1976, which is also pertinent here, reads as follows:

"Whenever it is discovered that school records are not documented in the manner required to support the numbers entered in any item on VA Form 22-8723, Occupational Graduate Employment Report (Schools), then a complete audit of all courses surveyed by the school will be conducted immediately (the same day or next working day). Whenever the recomputation results in the course or courses not meeting the criteria of this appendix, the regional office will notify the school in writing that further enrollments are suspended, including any enrollment, not already processed, for a period beginning on or after November 1, 1975 (or the effective date of the approval for newly approved courses). The SAA will be notified and in addition, Central Office (223B) will be notified in accordance with paragraph 5d where a correspondence course is involved. Further, where the discrepancies appear to be willful, the case will be fully documented and referred immediately to the Station Committee on Educational Allowances in addition to taking the actions outlined in this subparagraph."

The facts in the specific case presented to us, as well as our review of files made available to us for study, show that the school involved performed surveys of its students for the purpose of showing compliance with the 50 percent employment requirement of section 1673(a)(2) of title 38. The school's report, indicating compliance, was submitted to the State approving agency in October 1975. The State approving agency, in turn, approved the report and submitted it to the Veterans Administration in November 1975, in accordance with the procedures established by DVB Circular 20-74-113, Appendix B, issued on May 12, 1975.

Based on the SAA's certification, the Veterans Administration continued to approve enrollments of veterans in the school's courses.

In early May 1976, a compliance survey was conducted at this school and it was determined, based on the findings of that survey, that the school's original employment survey report of October 1975 was invalid in that it was based upon allegedly incorrect population determinations. The school was notified by letter dated May 11, 1976, that no enrollments in the institution could be approved by the Veterans Administration on or after November 1, 1975. This date was

established based upon the date prescribed by DVB Circular 20-74- 113, Appendix B, Change 14, cited above. The school contends that benefits should be afforded all veterans enrolled in the school's courses prior to the May 11, 1976, date, or, in the alternative, that equitable relief should be granted those veterans affected by the November 1, 1975, cutoff date. It is alleged that 166 veterans are affected. An examination of the enrollment documents of these veterans shows that a large number of them (nearly one-half) signed up with the school in April 1976.

We believe from the foregoing that the following points are clear:

1. In this particular instance the school met the November 1, 1975, deadline established for the filing of its report;
2. The employment report of the school was accepted by the State approving agency as being in compliance with the law in November 1975, and the SAA so certified to the VA;
3. The Veterans Administration continued approval of the school and accepted the enrollment of veterans subsequent to the November 1, 1975, date and has paid veterans for pursuing courses of education in this particular school where their enrollments were certified to the VA and processed;
4. The error in the population base used by the school was not detected until a compliance survey was conducted in early May 1976;
5. The school was not notified of any discrepancies in its employment report until May 11, 1976; and
6. A retroactive date of November 1, 1975, has been set by the change to the DVB Circular issued in March 1976, thereby denying benefits to the approximately 166 veterans who had enrolled in the school prior to that date, but whose enrollments had not been processed to the VA by the school.

We believe that it is clear that the school involved here continued enrolling veterans in its course in reliance upon the approval of its employment compliance report by the State approving agency and the continued acceptance of the enrollment of veterans by the Veterans Administration in its course. The first notice it had that its report was not valid was May 11, 1976. We believe that to go back to November 1, 1975, as is proposed, would be violative of the due process rights of those veterans who enrolled in the school subsequent to November 1, 1975, and prior to May 11, 1976.

HELD:

The Veterans Administration has authority to pay benefits to those veterans who have eligibility and who were properly enrolled in certain sales or sales management courses or in a course with a vocational objective prior to the first date the school was put on notice that its employment justification required under 38 U.S.C. § 1673(a)(2) was invalid. Equitable relief under 38 U.S.C. § 210(c) is for consideration.

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