

DATE: 07-18-90

CITATION: VAOPGCPREC 38-90
Vet. Aff. Op. Gen. Couns. Prec. 38-90

TEXT:

Subject: Liability of a Training Establishment for Overpayments

(This opinion, previously issued as General Counsel Opinion 12-74, dated March 20, 1974, 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:

Whether a training establishment may be held liable for an overpayment to a veteran engaged in an approved on-job training program where the employer continued certifying the veteran as being engaged in his approved training program when, in actuality, the veteran had been switched to another program not approved for GI training.

COMMENTS:

A body repair shop was providing the veteran concerned with on- the-job training. Some time after the veteran started his job training, he and another employee had a series of disagreements. The proprietor obtained another similar job for the veteran who moved a few days later to another body shop which was not approved as a GI training establishment. The first employer continued certifying the veteran as being engaged in his training program as through he had continued training at the first shop. A compliance check subsequently disclosed the termination of the training program.

The matter was submitted to the FBI by the Chief Attorney of jurisdiction. Thereafter, the Department of Justice advised that the matter had been brought to the attention of the United States Attorney, and that the case had been investigated, but that the United States declined prosecution. This disposed of the criminal aspects of the matter and leaves for disposition the question of the possible civil liability of the training establishment.

Section 1785 of title 38, United States Code, on which civil liability of a training institution is predicated, reads as follows:

"s 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.)

Briefly tracing the history of the point at issue, Public Law 346, 78th Congress, which governed the World War II GI Bill readjustment program, defined educational or training institutions to include what we know as on-the-job training (Section 400, Part VIII (11)). Public Law, 550, 82d Congress, which governed the Korean conflict GI Bill readjustment program, with respect to the matter of overpayments (Section 266), refers to both educational institutions and training establishments. Public Law 89-358, which governs the current GI Bill readjustment program, and includes the current provisions of section 1785, became effective June 1, 1966. With the exception of one minor change, the present language of section 1785 is identical with that enacted in Public Law 89-358.

At the time Public Law 89-358 was enacted, the Congress did not provide authority for the pursuit of on-job and apprentice training programs. This authority was added by Public Law 90-77, approved August 31, 1967. Section 1683(c), which was added to title 38 by that law, defined "program of other on-job training" as having the same meaning as "program of education." Subsection (a) provided that on-the-job training was "... subject to the conditions and limitations of this chapter with respect to educational assistance." Public Law 92-540, reenacted these provisions as section 1787, retaining the same language, and extending the programs to include chapter 35 beneficiaries, and placing the overall program in chapter 36 of title 38.

The pertinent provisions of VA Regulation 14200, read as follows:

"14200 (§ 21.4200). DEFINITIONS

"(A) School, Educational Institution, Institution

"(1) For chapter 34 these terms mean any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college normal school, professional school,

university, or scientific or technical institution, or other institution furnishing education for adults. It also includes training establishments as defined in subparagraph (C).

"(C) Training Establishment. The term means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C or any agency of the Federal Government authorized to supervise such training."

Thus, by regulation, a training establishment is defined as being equatable to an educational institution, school, or institution.

Section 1787(a) of title 38 provides that an eligible veteran "shall be paid a training assistance allowance as prescribed by subsection (b) of this section while pursuing a full-time.... program of other on-job training approved under provisions of section 1777 of this title...." At the time the here involved veteran was engaged upon his program at the first employer's shop, he was pursuing an approved on-job training program. However, when he was transferred to the second employer's shop, which was not approved as an on-job training establishment, he was not pursuing a program authorized by law. Further, the first employer continued to certify the veteran as being continuously enrolled in his on-job training program. Manifestly, the first employer (1) failed to report discontinuance of the course at his establishment; and (2) falsely certified the veteran's continued enrollment in his program. In reliance thereon, the veteran was paid a training assistance allowance to which he was not entitled since he was, in fact, pursuing his program of on-job training at a non-approved establishment.

VA Regulation 14006, relating to false or misleading statements, reads, in part, as follows:

"14006 (§ 21.4006). FALSE OR MISLEADING STATEMENTS

"(A) Except as provided in this paragraph payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the veteran or eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States.

"(2) Where the falsity of a certification or claim is discovered after payment has been released an overpayment will be set up for only that portion of the claim to which the claimant was not entitled." It would appear from the available

information that the amount of the overpayment is \$440.80.

VA Regulation 5214, relating to collection of overpayments of educational benefits, reads as follows:

"5214 (§ 13.214). EDUCATIONAL BENEFITS

"(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 or 14204, excessive absences from a course, or discontinuance or interruptions 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."

HELD:

(1) Under VA Regulation 14200, a training establishment is considered by definition to be the same as a school or educational institution; (2) premised on the provisions of section 1785 of title 38, United States Code, a training establishment may be held liable for overpayments resulting from failure of the training establishment to report termination of a veteran in an approved on-job training program and for false certifications made to the VA; (3) in view of the provisions of VA Regulation 14009, an overpayment may be declared against the training establishment; (4) based on the provisions of VA Regulation 5214, and since the United States Attorney has declined criminal prosecution, procedures may be undertaken to collect the overpayment; (5) the liability of the training establishment for repayment of the unauthorized training assistance allowance is independent of the liability of the veteran; and (6) any amount collected from the training establishment shall be reimbursed if the overpayment is recovered from the veteran.

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