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Vet. Aff. Op. Gen. Couns. Prec. 43-90

TEXT:

Subject: Work-Study Program--Proper Utilization and Supervision of Veteran-Students

(This opinion, previously issued as General Counsel Opinion 18-75, dated June 20, 1975, 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 veteran-students properly be assigned to work for any organization which is engaged in rendering services to veterans and dependents?

(2) If so, what would constitute proper supervision by a VA employee as required by subsection (a)(1) of section 1685? Would indirect supervision as outlined by Veterans Assistance Service meet the intent of the law?

(3) Is it appropriate to assign veteran-students to work in the Veterans Cost of Instruction (VCI) Outreach Program rather than in paperwork processing at educational institutions (subsection (a)(2) of section 1685)?

COMMENTS:

Since the questions raised pertain to work-study supervision, and this requirement, by law, relates only to outreach work, our opinion goes only to that aspect of the work-study program. The pertinent portion of section 1685 of title 38, United States Code, dealing with these questions, reads as follows:

"1685. Veteran-student services

"(a) Veteran-students utilized under the authority of subsection (b) of this section shall be paid an additional educational assistance allowance (hereafter referred to as 'work-study allowance'). Such work-study allowance shall be paid in the amount of \$625 in return for such veteran-student's agreement to perform services, during or between periods of enrollment, aggregating two hundred and fifty hours during a semester or other applicable enrollment period, required in connection with (1) the outreach services program under subchapter IV of chapter 3 of this title as carried out under the supervision of a Veterans'

Administration employee, (2) the preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Veterans' Administration, (3) the provision of hospital and domiciliary care and medical treatment under chapter 17 of this title, or (4) any other activity of the Veterans' Administration as the Administrator shall determine appropriate...." (Emphasis supplied)

First, it is necessary to examine the legislative history of this program. The veteran-student work-study program had its genesis in S. 3657, 91st Congress, a bill introduced by Senator Alan Cranston (D-Calif.), and others. In this proposal, there were provisions whereby the veteran would assist in connection with the processing of educational applications and other documents that the schools and the veterans and eligible persons filed with the VA, or would perform services in connection with the outreach services program under subchapter IV of chapter 3 of title 38. In the reported version of S. 3657, the work-study program was substantially expanded over that proposed in the original measure. It should be noted that, in the reported version of this measure, the preparation and processing provision was listed as item (1) and outreach as item (2). In current law, these two segments have been reversed so that outreach is listed as the first segment. With this exception, there has been no change made in the language of items (1), (2), (3), or (4) in current law, as contrasted to the Senate-reported version of S. 3657, except for the addition of the words, "as carried out under the supervision of a Veterans' Administration employee," added to current item (1).

In reporting S. 3657 (Senate Report 91-1231), the Senate Committee on Veterans' Affairs made the following points (pp. 15-16):

"One key aspect of the work-study program would be veterans performing outreach services under subchapter IV of chapter 3 of title 38 also enacted in P.L. 91-219. Using GS-12's or 13's to 'pound the pavement' in search of educationally disadvantaged veterans is highly questionable on a cost-effectiveness basis. But this provision would make it possible and very economical for the VA to improve substantially its existing program of contact and outreach...."

"It should also be noted that several witnesses at the hearings referred to the desirability of permitting the VA to contract with colleges and universities (under its general contract authority in section 213 of title 38) to supervise veteran work-study trainees in carrying out outreach activities in a particular locale. The committee strongly endorses this idea, which would be particularly useful if applied in areas where there is no Veterans' Administration Regional Office or Veterans' Assistance Center." (Emphasis supplied)

S. 3657 was passed by the Senate on September 25, 1970, but it was not

approved by the House.

The work-study proposal reappeared in S. 2161, 92d Congress. It was in S. 2161, as reported, that the items on processing of documents and outreach were reversed. In its report on this bill (Senate Report 92-988 (p. 36)), the Senate Committee on Veterans' Affairs again stated it believed it was imperative that a more effective outreach program be carried out, and again stated GS-12's and GS-13's should be replaced by veteran-students in "pounding the pavements." S. 2161 was passed by the Senate on August 3, 1972, after its provisions were substituted for those of H.R. 12828, a measure previously passed by the House.

It should be noted that the House-passed bill contained, in lieu of the comprehensive Senate-approved program, a section which gave the Administrator authority to hire intermittent employees to carry out various tasks for the VA. There was no formal conference between the House and the Senate on H.R. 12828, as amended. Instead, differences between the House and Senate versions were worked out between the two respective Committees.

The first indication of any intention to place a limitation on the outreach program was made in a proposed draft substitute submitted to this office for review by the Staff of the House Committee on Veterans' Affairs in late September 1972. This draft contained the language, later enacted into law, requiring that the outreach work performed under section 1685 be carried out under "the supervision of a Veterans' Administration employee...." With certain exceptions, not pertinent in this opinion, the House substitute draft was virtually identical with the provision finally enacted into law.

An examination of the House debate on the compromise House-Senate version of H.R. 12828 fails to shed any light on the supervision requirement. However, Chairman Hartke of the Senate Committee on Veterans' Affairs, during his discussion of the compromise bill (Congressional Record, October 13, 1972, page S17925), stated, in part, as follows:

"As rewritten in the compromise version, an eligible veteran is limited to a maximum payment of \$250 for 100 hours of work. In order to insure that there be an effective outreach program the Senate has agreed at the insistence of the House to insure that any veteran engaged in outreach service under this section shall do so under the supervision of a Veterans' Administration employee."
(Emphasis supplied)

In addition to the statement of Chairman Hartke, Senator Cranston, one of the principal architects of the work-study program and a co-sponsor of the omnibus bill, made the following comments during the debate (Congressional Record, October 13, 1972, page S 17933):

"The work which such a veteran-student would carry out is essentially the same as that provided for in the Senate amendment, except that for outreach services.

the student has to be under the supervision of a VA employee." (Emphasis supplied)

This compromise version of H.R. 12828 was enacted into law on October 24, 1972 (Public Law 92-540).

The Senate Committee on Veterans' Affairs, in its report (Senate Report 93- 907, page 73) on S. 2784, a bill which later became Public Law 93-508, expressed concern that there had been little use of work-study students to perform hospital-related work and to perform outreach services under subchapter IV of chapter 3.

Although this bill did not modify the supervision statement in the law here under consideration, the report did state:

"This low percentage is inconsistent with the emphasis placed by Congress in section 1685 on outreach activities. Accordingly, the Committee expects a much larger percentage of work-study veterans activities to be devoted to outreach activities particularly now that veteran's representatives scheduled to be stationed on campus (provided for by section 217 of the reported bill) will be available to supervise such outreach efforts." (Emphasis supplied)

At the time S. 2784 was debated in the Senate on June 19, 1974, Senator Cranston, in speaking about the work-study program changes had the following to say (Congressional Record, June 19, 1974, page S 11040):

"We see this program as a major way for the VA to improve and expand outreach efforts, pursuant to the new direction and authorities made by other amendments in the committee bill, especially on college campuses under the supervision of the new veteran representatives provided for in section 217 of the reported bill, and also strongly believe that the program, as indicated in the provisions of the present law itself, should be directed far more to providing work-study veterans to carry out certain functions in connection with the VA medical program--a statutory function which has been virtually totally overlooked by the Veterans' Administration in its implementation of the present program." (Emphasis supplied)

A review of the legislative history of this measure--through rejection of the Senate version by the House; the filing of the first conference report; its adoption by the Senate, but rejection by the House on a point of order; and the filing of a conference report and its acceptance by both bodies of the Congress--discloses nothing further to provide light on this question except restatement on two occasions by Senator Cranston of virtually the same statement made at the time S. 2784 was being debated. Following its veto by the President, the Congress enacted the measure into law on December 3, 1974.

Based on the preceding legislative history, it seems amply clear that any outreach performed by work-study students must be under the supervision of a

VA employee, which includes a Vet-Rep. We believe that this can be readily ascertained from the fact that, in enacting the program in 1972, the Senate Committee urged that outreach be conducted through contracts with educational institutions whereby the institutions would supervise this work. The House clearly rejected this approach and insisted, instead, that any outreach services must be under the supervision of a VA employee. We believe that the Senate recognized this control when, in enacting other changes to the work- study program in Public Law 93-508, it stated in the Committee report that outreach at the campuses would increase, now that outreach work could be performed at such institutions under the supervision of the Vet-Rep.

Thus, in answer to questions (1) and (2), work-study students may not work for any organization just because that organization is engaged in rendering services to veterans and dependents. The work-study student performing outreach services must work for the VA and be subject to the direct supervision of a VA employee. There must be a clearly defined employer-employee relationship. Proper supervision can be demonstrated by having the work being performed by the work-study student controlled by a VA employee. It cannot be controlled by someone other than a VA employee. This does not contemplate merely keeping time records or providing other similar indirect services. We do not mean to imply that the work-study student must necessarily be in the same room with a VA employee. However, the hours of work and the quality and nature of the work must be under the supervision of a VA employee. In our view, indirect supervision does not meet the requirements of the law.

Turning to question (3), we would first point out that it is apparent from the legislative history cited above that it was the intent of Congress that more outreach work be done on the college campuses. It is equally apparent that any such outreach work must be done under the direct supervision of a VA employee (including a Vet-Rep). Thus, we are of the view that work-study students may be assigned to assist in outreach services in the Veterans Cost of Instruction (VCI) program. This, however, may only be done subject to certain restrictions, including the following:

- (a) The work must be under the supervision of a VA employee, such as a Vet-Rep, not the VCI staff.
- (b) It must be clearly understood that work-study students are to be utilized only to supplement, not to be counted as a part of, the VCI staff, since that program is subject to the specific requirements of the Higher Education Act of 1965, as amended.
- (c) Work-study students may not be utilized to perform work now being done by any regular VA employee, such as a Veterans Benefits Counselor.

HELD:

(1) Under 38 U.S.C. § 1685, work-study students must work for the VA and may not work for an organization just because that organization renders services to veterans and dependents.

(2) The hours of work and the quality and nature of the work must be under the direct supervision and control of a VA employee.

(3) Subject to certain restrictions, work-study students may be assigned to assist in outreach services in the VCI program.

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