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Vet. Aff. Op. Gen. Couns. Prec. 16-90

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TEXT:

Active-Duty Service Eligibility for the Work-Study Allowance Program

Question Presented:

May an individual serving on active duty in the Armed Forces participate in the work-study program under 38 U.S.C. § 1685?

Comments:

1. The inquiry is cast in the context of the amendments made by sections 405 and 406 of Public Law 101-237, effective May 1, 1990. The basic purpose of these two amendments was to add the work-study program authorized under section 1685 to the panoply of benefits accorded certain eligible persons and individuals under the educational assistance programs authorized by chapter 35, title 38, United States Code, and chapter 106, title 10, United States Code.

2. As currently worded, 38 U.S.C. § 1685(b) reads in pertinent part as follows:

Notwithstanding any other provision of law, the Secretary shall utilize, in connection with the activities specified in subsection (a)(1) of this section, the services of individuals who are pursuing programs of rehabilitation, education, or training under chapter 30, 31, 32 or 34 of this title or chapter 106 of title 10, at a rate equal to at least three- quarters of that required of a full-time student. (Emphasis added.)

3. The inquiry is not specific as to which of the VA-administered programs enumerated in the revised section 1685(b) it is directed. However, we can eliminate the chapter 34 program (terminated December 31, 1989), the chapter 106 program (no active duty servicemembers eligible), and the chapter 31 program (only certain hospitalized servicemembers eligible). This leaves only chapters 30 and 32 for consideration.

4. Section 1641(a)(1) of title 38, United States Code, specifically states that, with regard to the chapter 32 program, section 1685 applies "with respect to individuals who are pursuing programs of education while serving on active duty." Thus, even if the specific intent of Congress in enacting the Public Law 101-237 amendments to section 1685(b), as discussed above, was not to

expand the scope of eligible persons to include servicemembers, section 1641(a)(1) already explicitly provided as much and governs.

5. We are left with the need to determine the applicability of the work-study program to servicemembers entitled to basic educational assistance under chapter 30. The chapter 30 program, like the chapter 34 program which introduced the work-study benefit, provides basic educational assistance for both veterans and certain persons serving on active duty. (Compare 38 U.S.C. §§ 1411(a)(3)(B) and 1416 for chapter 30 with 38 U.S.C. § 1652(a)(2) for chapter 34.) Furthermore, 38 U.S.C. § 1434(a), which governs chapter 30 administration, specifically incorporates section 1685, plainly reflecting congressional intent that the work-study program operate under chapter 30 in the same manner as under chapter 34.

6. With regard to the chapter 34 program, we note that, at least as far back as the November 1981 advisory of the Eastern Region Field Director included with your inquiry, a de facto VA policy apparently operated to exclude active-duty personnel from chapter 34 work-study eligibility. Assuming, for the sake of discussion, that the policy was legally justified under the law governing chapter 34, it would follow that the exclusion of servicepersons from chapter 34 work study would apply equally to the chapter 30 program by virtue of the incorporation of section 1685 into chapter 30. However, notwithstanding what may have been the past justification for applying such an exclusion to the chapter 30 program, the policy is no longer supportable under current provisions of law.

7. We note that the administrative determination that servicepersons were not eligible for chapter 34 work study relied on the fact that section 1685 only used the term veteran (and certain forms thereof) which, as defined by 38 U.S.C. § 101(2), does not embrace persons on active duty. However, that essential fact no longer exists since, as a result of the amendments enacted by Public Law 101-237, such terminology no longer appears in section 1685.

8. As previously mentioned and as the relevant legislative history indicates, Public Law 101-237 expressly made two new categories of persons eligible for VA work study, chapter 35 dependents and chapter 106 reservists, neither of whom are on active duty. That law also amended section 1685 to replace the terms "veteran-students" and "veteran" with "individuals" and "individual," respectively. Thus, one could conclude that these amendments are linked, and that the use of the term "individual" arguably reflects nothing more than an intent to conform existing terminology to the expansion of work-study benefits to two programs which do not apply to servicemembers at all.

9. However, another reasonable conclusion is that Congress, by changing the terminology, had the broader purpose of making work study uniformly available to all otherwise eligible individuals, including servicepersons, training under the

expanded listing of education benefit programs. This construction would avoid the seemingly anomalous result that individuals with no prior active-duty service would be entitled to VA work-study program assistance whereas active duty servicemembers training under chapter 30 would not. Further, as noted in paragraph 4 above, Congress extended the work-study program to servicemembers training under chapter 32 and it would be illogical to assume that Congress intended to extend work-study benefits to servicemembers under one program and not the other.

10. While each of the two constructions discussed above appears reasonable, we believe the latter best accords with the broad statutory language used in section 1685 and the overall liberalizing nature of the Public Law 101-237 amendments to the work-study program. Certainly, had Congress intended to deny work-study assistance to chapter 30 "servicemembers" (a category clearly falling within the literal scope of the statutory term "individuals"), it could have easily chosen a different approach. For example, it could simply have inserted "(other than those on active duty)" after the reference to "chapter 30" when it made the Public Law 101-237 changes to section 1685(b).

11. Consequently, we find that chapter 30 participants currently serving on active duty may, if otherwise eligible, receive VA work-study assistance. We note that this should not have significant program impact since, even at the more liberal three-quarter time minimum training level required by Public Law 101-237, an individual on full-time military duty would be unlikely to be able to attend school and still have sufficient remaining time to perform work-study duties. Therefore, as a practical matter, few servicepersons would be likely to seek or would be found in financial need of work study.

Held:

Section 1685, title 38, United States Code, providing a work-study allowance for persons eligible to receive benefits under chapter 30 of title 38, United States Code, is not limited to persons discharged or released from active duty, but is available for otherwise qualified servicemembers pursuing training under that chapter.

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