

Department of
Veterans Affairs

Memorandum

Date: June 16, 2000

VAOPGCPREC 7-2000

From: General Counsel (021)

Subject: XXXXXXXXXXXXXXXXXXXXXXXX

To: Chairman, Board of Veterans Appeals (01)

ISSUES:

(a) Is pursuit of a degree from a foreign school for a "Medical Doctor (M.D.)" program always to be considered as evidence of pursuit of "a program of education in a course of instruction beyond the baccalaureate degree level" for purposes of 10 U.S.C. § 16131(c)(1), as provided for training received prior to November 29, 1993?

(b) If not, what are the guidelines for determining whether a program of education is to be considered undergraduate training or graduate training for purposes of that section?

DISCUSSION:

1. The facts presented show that a reservist seeks payment of benefits under the Montgomery GI Bill - Selective Reserve (MGIB) (chapter 106, title 10, United States Code; currently chapter 1606 of that title) for courses completed from August 1991 to November 1993 at an institution located in Mexico. He was pursuing a "Medical Doctor" program. The original certification of enrollment denoted the training as "graduate or advanced professional degree," but subsequently submitted documents describe the training as undergraduate. At the time of his initial enrollment in the Mexican institution, he already had been awarded a bachelor's, master's, and Ph.D. degree from American institutions.

2. As originally enacted in 1984 by Public Law 98-525, the Montgomery GI Bill Selective Reserve program provided that the reservist must be in pursuit of courses at an institution of higher learning and must not have "completed a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study." 10 U.S.C. § 2131(c)(1) (currently, § 16131(c)(1)). VA interpreted this provision as barring benefits for pursuit of graduate level training prior to November 29, 1993. 38 C.F.R. § 21.7620(d) (1998).

3. On September 30, 1990, Public Law 101-189 amended the above requirement to extend the type of training for which benefits may be authorized to include "any program of education that is an approved program of education for purposes of chapter 30 [title 38, United States Code] other than a program of education in a course of instruction beyond the baccalaureate degree level." Legislative history concerning this change in language suggests Congress intended to broaden the availability of benefits to include vocational-technical training programs, as a recruiting incentive for the enlisted ranks. See H. R. No. 121, 101st Cong., 1st Sess. 281 (1989).

4. Under the plain language of the revised statute, an individual, such as the subject veteran, would no longer be barred, by virtue of already having received a baccalaureate degree, from pursuing vocational-technical training or even another baccalaureate degree. However, the veteran still would be barred from pursuing his course of M.D. training at the Mexican institution if that training may be reasonably characterized as being beyond the baccalaureate

degree level. The legislative history of the revision offers no explanation of Congress's intent concerning that characterization.

5. The claimant argues that his medical degree program qualifies for chapter 1606 benefits on either of two bases. First, unlike most United States medical schools, foreign medical schools, such as his, do not necessarily require a bachelor's degree as a prerequisite for admission to their M.D. degree programs. In such cases, therefore, the M.D. course of instruction cannot be considered beyond the bachelor's degree level. Second, he contends that an M.D. degree is considered a first professional degree. By definition, therefore, it is not graduate training and so must be considered undergraduate or baccalaureate-level training. Your question, to the contrary, asks whether such M.D. training always must be considered beyond the baccalaureate degree level.

6. Chapter 1606 does not define "baccalaureate degree level," nor does the legislative history provide any insight as to Congress' intent in using the term. Considering the wide-spread usage of the phrase "baccalaureate degree", we expected to find a generally recognized, clearly circumscribed legal or functional definition of the term. Having determined the meaning of that term, we would be able to readily determine which forms of training or instruction were "beyond that level." However, we now conclude that there is no apparent consensus of authority on such criteria, particularly, vis-à-vis whether M.D. degree studies are at or beyond the "baccalaureate degree level."

7. Our review of other United States Code, annotated, provisions governing the Armed Forces, as well as Code provisions covering Education, revealed wide use of the term "baccalaureate" in various contexts; e.g., 10 U.S.C.A. § 2101(3) (defining the term "advanced training" for ROTC students as that beyond the baccalaureate level); 20 U.S.C.A. § 2371(a)(3)(E) (defining a "tech-prep program" as one among other qualifiers that leads to an associate or baccalaureate degree); 20 U.S.C.A. § 1002(a)(3)(B) (defining limitations based on a course of study or enrollment at an institution of higher learning awarding an associate or baccalaureate degree). Interestingly, however, none of such statutory provisions (or the pertinent implementing regulations) actually defines the term.

8. Our review of common legal reference sources, such as Words and Phrases; Corpus Juris Secundum; or American Jurisprudence 2d., likewise, revealed no established legal usage for the term at issue, and Black's Law Dictionary (6th ed.1990) does not define it. However, the term "baccalaureate" does appear in Black's definition of the term "bachelor" (i.e., "One who has taken the first undergraduate degree (baccalaureate) in a college or university."). *Id.* at 138.

9. Webster's Third New International Dictionary (unabridged) 157 (1976) does the reverse of Black's; it defines "baccalaureate" as "the degree of bachelor conferred by universities and colleges." The same source defines the term "bachelor" as "a person who has received what is [usually] the first or lowest degree conferred by a college or university or by some professional schools (--of letters) (-of divinity) (--of laws)." *Id.* at 157.

10. These dictionary definitions suggest some similarity of meaning among the terms "undergraduate," "baccalaureate," and "bachelor's" degrees, and this appears to be bolstered by definitions found in the Dictionary of Education. The latter defines an "undergraduate" as "a student in an institution of higher learning who has not yet taken the bachelor's, or first professional, degree in the field in which he is studying." Carter V. Good, Dictionary of Education 55, 629 (3d ed. 1973). Further, the term "baccalaureate degree" is referenced as synonymous with "degree, bachelor's," the latter being defined as "(1) the first degree in arts

and sciences or in certain professional and technical fields, the requirements usually including 4 years of work of college grade: syn. baccalaureate degree; (2) also used in *bachelor* of laws (L.L.B.) and *bachelor* of divinity (B.D.), typically for 2 or 3 years of study beyond the first 4-year degree...." *Id.* at 55, 1 69 (Note that "baccalaureate degree" is shown as synonymous only with the first definition.)

11. Considering the commonly accepted dichotomy between undergraduate and graduate programs, we observe that the Dictionary of Education defines "graduate study" as "formal study pursued after receiving the bachelor's or first professional degree...." *Id.* at 565. This, together with the above definitions, tends to reinforce the notion that a first professional degree, e.g., M.D., in some quarters, may be recognized as undergraduate-level study. See, John Bear and Mariah Bear, *Bears' Guide to Earning College Degrees Nontraditionally* (12th ed.) ("[i]n many other countries, it is common to enter professional school directly from high school, in which case the first professional degree earned is a Bachelor's.") *Id.* at 17.

12. Finally, we note with interest that the Department of Defense (DOD) procedural regulations governing personnel files of Selected Reservists, such as the claimant, provide instructions for coding the member's educational level of attainment. Under the instructions, DOD defines a first professional degree as including "a certificate conferred on completion of the academic requirement for the first degrees awarded in selected professions: ... Doctor of Medicine (M.D.)...." In addition, those instructions define a baccalaureate degree as "a certificate conferred on completion of a 4-year college program, other than a *first professional* degree." 32 C.F.R., Pt. 114, App. A, fields 13 K and W (emphasis added). See *also*, 20 U.S.C.A. § 1063b(c)(4) and § 1078(b)(1)(v); 42 U.S.C.A. § 295p(1); 26 U.S.C.A. § 127(c)(2).

13. Given the ambiguity present here, we believe the best interpretive approach is to adopt a construction of the pertinent statutory language that implements Congress' manifested intent to expand the scope of educational programs that could be pursued under chapter 1606. Thus, it is our view that only those programs leading to a first professional degree that require a baccalaureate degree for admission should be considered as being beyond the "baccalaureate degree level" for purposes of the benefits in question. If the student may enroll without need of a prior baccalaureate degree, then the first professional degree logically may be considered as not being beyond the baccalaureate degree level.

14. Therefore, your first question is answered in the negative (i.e., in some cases, a student pursuing a first professional degree, such as "Medical Doctor (M.D.)," actually may be pursuing a course of instruction which is not beyond the baccalaureate degree level).

15. Responding to your second question, in making determinations about the level of course pursuit under the subject provision, we believe the educational institution's characterization of the level of the programs it offers is relevant. However, the essential guiding factor here is whether admission to the particular degree program by the individual concerned is contingent upon his or her having first completed a baccalaureate (i.e., bachelor's) degree. While, as a general rule, the admission of a student to a course of instruction for award of a graduate, post-graduate or first professional degree in the United States conforms to that standard, clearly professional degree programs do exist that warrant an exception.

16. In particular, as mentioned above, many foreign medical degree programs may be undertaken without any prior undergraduate level training. Moreover, we note that, even in the United States, a professional nursing degree may be awarded upon completion of the individual's first 4-year bachelor's degree. Had Congress intended to deny the benefit at issue

for pursuing such courses of instruction, it likely would have employed more specific statutory terminology denying the benefit to all individuals pursuing first professional degrees.

17. Concerning implementation of the guidance suggested here, we note that the Board remanded this case to the agency of original jurisdiction for documentation of the VA course approval file for the particular institution. We, too, sought to review information from that file since it contains the factual record of the basis on which the institution's courses were approved for VA purposes. We surmised that the file would include probative information regarding the degree-granting authority conferred on the school by the appropriate Mexican governmental department. In particular, recognizing that VA course measurement rules are different for graduate and undergraduate training, we believed the records should include some documentation of admission requirements and the level of the degrees authorized by the Mexican government and accepted by VA in approving the veteran's courses.

18. As it happens, among the documents in the VA approval file is a record showing the degree granting authority of the school under Mexican law. That translated record states that the institution had authority to offer "Professional Studies" programs characterized as graduate training. Mandatory entrance requirements for such programs included prior attainment of a "Baccalaureate." (See attached Official Newspaper, dated February 20, 1979.) VA ostensibly accepted the medical degree professional studies program as graduate level training as part of its general approval of the program for VA education benefit purposes and applied section 21.7620(d) accordingly to deny benefits to the instant veteran. Under the criteria described in paragraph 15, evidence of that type would be probative as to the issues presented by a case such as this.

CONCLUSION:

For purposes of 10 U.S.C. §16131(c)(1), a Medical Doctor (M.D.) degree program will be considered to be a professional degree program offered at a level beyond the baccalaureate degree, except when the facts found demonstrate that the institution offering the program does not require that the candidate have been awarded a bachelor's degree to be admitted to the program.

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Attachment