

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

118700

FILE: B-205339

DATE: June 15, 1982

MATTER OF: Jeffrey D. Rushlo, B. Shay Bradley, and others

- DIGEST:**
1. The Defense Officer Personnel Management Act, Public Law 96-513, repealed 37 U.S.C. 205(a)(7) and (8), which had authorized constructive longevity of service credit for medical and dental officers of the uniformed services based on their years of professional education. The constructive service credit was terminated because the Congress had concluded that it resulted in an anomalous receipt of elevated basic and retired pay by medical and dental officers, and inaptly encouraged their early retirement. Also, the Congress had developed a special pay system for all uniformed health professionals to increase their current income, and it was concluded that the constructive service credit for medical and dental officers was therefore no longer appropriate.
 2. A statutory saving clause generally preserves rights under repealed legislation only to the extent that those rights are enumerated in its provisions. Statutory provisions with unambiguous language and specific directions may not be construed in any manner that will alter or extend their plain meaning, and if persons and things to which a statute refers are specifically and unambiguously designated, it is to be inferred that all omissions were intended. However, if giving effect to the plain meaning of words in a statute leads to an absurd result that is clearly unintended and at variance with the policy of the legislation as a whole, the purpose of the statute rather than its literal words will be followed.
 3. The Defense Officer Personnel Management Act repealed constructive longevity of service credit for medical and dental officers of

the uniformed services effective September 15, 1981, and it contained a saving clause with plain and unambiguous language specifically preserving the credit only for service members who on that date were already medical and dental officers, or were enrolled in the Uniformed Services University of the Health Sciences or the Armed Forces Health Professions Scholarship Program (10 U.S.C. ch. 104 and 105). The saving clause may not be extended to participants in the National Health Service Corps Scholarship Program or the Senior Commissioned Officer Student Training and Extern Program (42 U.S.C. 294t, 218a), since there is no justification for a conclusion that their omission was clearly inadvertent and would lead to an absurd result.

4. Participants in the National Health Service Corps Scholarship Program enter into a "written contract" prescribed by 42 U.S.C. 294t(f) in which they become eligible for a scholarship in return for their agreement to serve after their graduation from professional school with the Department of Health and Human Services "in a health manpower shortage area," either as civilians, or as officers of the Public Health Service if they elect to apply for a commission and are accepted. The terms of this statutory contract do not give rise to an entitlement for program participants commissioned as medical and dental officers of the Public Health Service after September 15, 1981, to constructive service credit under the provisions of 37 U.S.C. 205(a)(7) and (8) which were repealed on that date.

5. It is fundamental that the pay and allowance entitlements of members of the uniformed services are completely dependent upon rights prescribed by statute and that common law contract principles have no place in the determination of their pay entitlements. Hence, the United States is not bound by the advice or promises of service recruiters concerning pay entitlements, if that advice does not conform to the governing provisions of statute.

6. Participants in the National Health Service Corps Scholarship Program and the Senior Commissioned Officer Student Training and Extern Program (42 U.S.C. 294t, 218a) were advised by the Public Health Service prior to 1981 that persons it commissioned as medical and dental officers received constructive service credit for their years of professional education under 37 U.S.C. 205(a)(7) and (8). That advice was accurate when given, but 37 U.S.C. 205(a)(7) and (8) were repealed in 1981. The program participants should have realized that the advice they received was subject to future changes in the law, but even if they were misled in the matter payments to them under the repealed law may not be made.

This action is in response to a question that has been brought to our attention concerning the basic pay entitlements of persons commissioned as medical and dental officers of the Public Health Service after September 15, 1981, but who participated in the National Health Service Corps Scholarship Program prior to that date. The question is whether they are entitled to the constructive service credit for basic pay purposes authorized for medical and dental officers under the provisions of 37 U.S.C. 205(a)(7) and (8), which were repealed effective September 15, 1981, by the Defense Officer Personnel Management Act.

We have concluded that scholarship program participants commissioned as medical and dental officers of the Public Health Service after September 15, 1981, may not be credited with constructive service for basic pay purposes under the repealed provisions of 37 U.S.C. 205(a)(7) and (8).

The circumstances of 2 individuals affected in this matter have specifically been brought to our attention:

1. Mr. Jeffrey D. Rushlo is in his last year of dental school at the University of Iowa. When he entered dental school in 1978, he also entered into an agreement with the Department of Health, Education, and Welfare (now Health and Human Services) under the National Health Service Corps Scholarship Program. He has agreed that in return for 4 years of financial assistance under the scholarship program he will serve for 4 years following his graduation from dental school as a commissioned officer or civilian member of the Public Health Service. In 1978 the Public Health Service informed him through brochures that dental officers in its Commissioned Corps received, among other things, 4 years' longevity of service credit for basic pay purposes for 4 years of dental school. Following enactment of the Defense Officer Personnel Management Act in 1980, however, he learned that he might not receive the 4 years' service credit if he were commissioned as a dental officer after the Act went into effect on September 15, 1981. He applied for a Reserve commission with the Public Health Service, was accepted, and was appointed as a Junior Assistant Health Services Officer (O-1) on August 2, 1981. It is contemplated that following his graduation from dental school, his commissioned status will be changed to Senior Assistant Dental Surgeon

(0-3), and he will then enter active service as a dental officer.

2. Ms. B. Shay Bradley is attending the Medical College of Virginia. She is also a participant in the National Health Service Corps Scholarship Program, and when she entered the program she was furnished with information indicating that medical officers of the Public Health Service received 4 years' longevity of service credit for basic pay purposes based on 4 years' attendance at medical school, plus an additional year of credit based on internship training or the equivalent. Unlike Mr. Rushlo, she does not now hold a Reserve commission in the Public Health Service, and she learned only recently that due to a change in the law she might not be eligible for the constructive service credit if she is now commissioned as a medical officer.

The Department of Health and Human Services has determined that Mr. Rushlo and Ms. Bradley and others similarly situated will not be entitled to the additional constructive service credit in the computation of their basic pay if they now enter on active duty as commissioned medical and dental officers. Mr. Rushlo and Ms. Bradley have expressed disagreement with that determination. It is reported that other scholarship program participants aside from Mr. Rushlo and Ms. Bradley have been affected by the determination, and that some of them are also dissatisfied with it. However, the particular facts and circumstances of their cases have not been presented to us.

The scholarship program participants suggest that the terms of the Defense Officer Personnel Management Act may actually give them a right to the constructive service credit authorized by the repealed provisions of 37 U.S.C. 205(a)(7) and (8). They note that the Act has a saving clause preserving the constructive service

credit for medical and dental students who were enrolled in either the Uniformed Services University of the Health Sciences or the Armed Forces Health Professions Scholarship Program prior to September 15, 1981. They also note that the saving clause was apparently enacted because persons enrolled in those programs had previously been counseled that they would receive the additional service credit. They suggest that since National Health Service Corps Scholarship Program participants received similar counseling, the benefits of the saving clause should also be applied to their program.

Mr. Rushlo suggests that the benefits of the saving clause should be extended to him for the additional reason that he received a Reserve commission as a Junior Assistant Health Services Officer prior to September 15, 1981. He notes that while the Department of Health and Human Services has determined that he is not covered by the saving clause, the Department has also determined that the saving clause does cover participants in the Public Health Service's Senior Commissioned Officer Student Training and Extern Program (Senior COSTEP) who were commissioned as Junior Assistant Health Services Officers prior to September 15, 1981, on the basis that this program was analogous to the programs specifically designated in the saving clause. Mr. Rushlo therefore suggests that the benefits of the saving clause should be extended to him and other commissioned participants in the National Health Service Corps Scholarship Program, since their situation is analogous to that of Senior COSTEP participants.

Furthermore, the scholarship program participants contend that even if it cannot be concluded that they are covered by that saving clause of the Defense Officer Personnel Management Act, it would nevertheless be improper to withhold the constructive service credit from them since this would constitute a material breach of their scholarship agreements. They say that they relied upon inducements made to them concerning the additional constructive service credit they would receive as commissioned medical and dental officers of

the Public Health Service when they entered into those agreements. They consequently suggest that this was an offer of enhanced basic pay that was incorporated into the scholarship agreements, and that payment of basic pay in any amount less than the promised rate would therefore constitute a breach of contract by the Government.

I. Laws Governing the Pertinent Scholarship and Education Programs

Provisions of law governing the National Health Service Corps Scholarship Program are contained in section 294t of title 42, United States Code. Section 294t authorizes the Secretary of Health and Human Services to provide scholarships to students enrolled in courses of study leading to a degree in one of the health professions. The Secretary and the individual scholarship program participant must enter into a "written contract," the contents of which are prescribed by subsection 294t(f). The Secretary must agree to provide the individual with a scholarship for a school year or period of years (not to exceed 4 school years), and in return the individual must agree to perform a period of obligated service with the Department of Health and Human Services "in a health manpower shortage area" equal to 1 year for each school year for which the individual was provided a scholarship, or for 2 years, whichever is greater. Individuals participating in the scholarship program need not be commissioned officers of either the Public Health Service or one of the Armed Forces, and a scholarship recipient may fulfill the service obligation through civilian employment with the Department of Health and Human Services.

The Senior COSTEP is governed by 42 U.S.C. 218a. Participants in that program must be commissioned officers of the Public Health Service while attending professional school. After graduation participants are obligated to serve on active duty as officers of the Public Health Service for 2 times the period of education supported by the Public Health Service, or for 2 years, whichever is greater.

The administration of the Uniformed Services University of the Health Sciences is governed by chapter 104 of title 10, United States Code. Participants in that program must be commissioned officers of one of the uniformed services serving on active duty, and they incur an additional 7-year service obligation through participation in the program.

The Armed Forces Health Professions Scholarship Program is governed by chapter 105 of title 10, United States Code. Participants in that program must be commissioned officers in Reserve components of the Armed Forces. Service obligations incurred for participation in that program are determined under regulations prescribed by the Secretary of Defense, subject to a statutory requirement that the minimum obligation is 1 year of active duty for each year of participation in the program.

II. Statutory Authorization of Constructive Longevity of Service Credit for Medical and Dental Officers

Prior to September 15, 1981, 37 U.S.C. 205(a)(7) and (8) provided that:

"(a) Subject to subsections (b)-(d) of this section, for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding--

* * * * *

"(7) for an officer of the Medical Corps or Dental Corps of the Army or Navy, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer-four years;

"(8) for a medical officer named in clause (7) who has completed one year of medical internship or the equivalent thereof-one year in addition to the four years prescribed by clause (7); * * *"

III. The Defense Officer Personnel Management Act

Section 402 of the Defense Officer Personnel Management Act, Public Law 96-513, approved December 12, 1980, 94 Stat. 2904, repealed the above-quoted provisions of 37 U.S.C. 205(a)(7) and (8) effective September 15, 1981. The legislative history of the Act indicates the Congress had concluded that the constructive service credit authorized by 37 U.S.C. 205(a)(7) and (8) resulted in an anomalous receipt of elevated basic and retired pay by medical and dental officers which was inconsistent with the military pay and allowance system as a whole, and that the service credit inaptly encouraged those officers' early retirement. In addition, since the time the constructive service credit had originally been authorized, the Congress had developed a system of special additional pay for all uniformed health professionals to increase their current income to a level believed adequate to encourage their retention in service, and it was concluded that the constructive service credit for medical and dental officers was therefore no longer appropriate. See H.R. Rep. No. 96-1462, 96th Cong., 2d Sess. 39-40 (1980) reprinted in (1980) U.S. Code Cong. & Ad. News 6333, 6370-6371; and S. Rep. No. 96-375, 96th Cong., 1st Sess. 82 (1979).

Subsection 625(b) of the Defense Officer Personnel Management Act, 94 Stat. 2952, contains a saving clause for certain individuals who would otherwise have lost the constructive service credit allowed by the repealed provisions of 37 U.S.C. 205(a)(7) and (8). That saving clause states:

"(b)(1) Any officer who on the effective date of this Act is an officer of the Army or Navy in the Medical or Dental Corps of his armed force, an officer of the Air Force

designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service creditable to him for such purposes under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act.

"(2) Any person who on the day before the effective date of this Act was enrolled in the Uniformed Services University of the Health Sciences under chapter 104 of this title or the Armed Forces Health Professions Scholarship Program under chapter 105 of this title and who on or after the effective date of this Act graduates from such university or completes such program, as the case may be, and is appointed in one of the categories specified in paragraph (1) is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service that would have been credited to him under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act, had such clauses not been repealed by this Act."

Paragraph (1) of the saving clause was enacted "to allow physicians and dentists on active duty to continue using their constructive service credit on the basis it was credited to them on the effective date of the bill." Paragraph (2) was enacted for the benefit of persons enrolled in the Uniformed Services University of the Health Sciences and the Armed Forces Health Professions Scholarship Program for the stated reason that "such

individuals have been counseled regarding these entitlements and have entered these programs, at least in part, because of their existence." See H.R. Rep. No. 96-1462, 95th Cong., 2d Sess. 39-40 (cited above) and 148-149 (1980).

The Defense Officer Personnel Management Act was enacted in December 1980, but it did not go into effect until September 15, 1981. The purpose of deferring the effective date for 9 months was to allow sufficient time for problems in the implementation of the Act to be identified and corrected by remedial legislation. See H.R. Rep. No. 97-141, 97th Cong., 1st Sess. 1 (1981) reprinted in (1981) U.S. Code Cong. & Ad. News 24. Those problems were subsequently identified and addressed in the Defense Officer Personnel Management Act, Technical Corrections Act, Public Law 97-22, approved July 10, 1981, 95 Stat. 124. The saving clause was not amended by the corrective legislation.

IV. Analysis

Concerning the application of the above-quoted provisions of the saving clause contained in subsection 625(b) of the Defense Officer Personnel Management Act, a statutory saving clause generally preserves rights under repealed legislation only to the extent that those rights are enumerated in the language of the saving clause. See 30 Comp. Gen. 65, 66 (1950); and 82 C.J.S. Statutes, 383 and 440 (1953). In applying provisions of statute, including saving clauses, we are ordinarily bound to follow the settled rule of statutory construction that provisions with unambiguous language and specific directions may not be construed in any manner that will alter or extend their plain meaning. See Matter of Veterinary and Optometry Officers, 56 Comp. Gen. 943, 949 (1977); 50 Comp. Gen. 822, 824 (1971); and other Comptroller General decisions and court rulings there cited. See also 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION 46.01-46.07 (4th ed. C.D. Sands 1973). And if persons and things to which a statute refers are specifically and unambiguously designated, it is generally to be inferred that all omissions were

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intended. See 46 Comp. Gen. 695, 699 (1967); and 2A SUTHERLAND, cited above, 57.10. However, if giving effect to the plain meaning of words in a statute leads to an absurd result which is clearly unintended and at variance with the policy of the legislation as a whole, the purpose of the statute rather than its literal words will be followed. See 50 Comp. Gen. 604, 606 (1971); and 2A SUTHERLAND, cited above, 45.12, 47.38.

The plain language of the saving clause here in question specifically and unambiguously preserves the constructive service credit of the repealed provisions of 37 U.S.C. 205(a)(7) and (8) only for physicians and dentists commissioned as medical and dental officers prior to September 15, 1981, and for service members enrolled in the Uniformed Services University of the Health Sciences or the Armed Forces Health Professions Scholarship Program prior to that date. The language of the saving clause makes no provision whatever for student participants in the Senior COSTEP or National Health Service Corps Scholarship Program. Hence, we have no basis to construe the saving clause as having any application to them in the absence of circumstances clearly demonstrating that their omission was inadvertent and would lead to an absurd result.

The Senior COSTEP and the National Health Service Corps Scholarship Program are similar in some respects to the other education programs specifically designated in the saving clause. It also appears that participants in all the programs were advised by the program sponsors prior to 1981 that medical and dental officers of the uniformed services received constructive longevity of service credit based on their years of professional education. Yet, the 4 programs are governed by different laws and, as described above, the programs are significantly different in certain respects. Furthermore, participants in the Senior COSTEP and National Health Service Corps Scholarship Program may refuse to undertake their obligated service upon graduation from professional school, and officers of the Public Health Service may unilaterally resign their commissions at any time prior to fulfilling all of their service commitments.

In that event, they may be liable to pay a prescribed monetary penalty, and they may forfeit certain travel and transportation allowances or lump-sum accrued leave settlements. See 42 U.S.C. 218a(b) and 294w(c); and Matter of Manges, 58 Comp. Gen. 77 (1978). However, that is the extent of their accountability, since civilians and commissioned officers of the Public Health Service are generally not subject to court-martial jurisdiction under the Uniform Code of Military Justice. See 10 U.S.C. 802; and 41 Comp. Gen. 767, 769-770 (1962). On the other hand, officers of the Armed Forces enrolled in the other 2 programs could not unilaterally resign their commissions, and they could be subjected to court-martial prosecution under the military code if they attempted to dishonor their active duty commitments. See 10 U.S.C. 802 and 41 Comp. Gen. 767, cited above. Hence, we are unable to conclude that any and all benefits conferred by statute upon service members enrolled in those 2 programs should automatically be construed as extending to participants in the Senior COSTEP or the National Health Service Corps Scholarship Program, or that legislative distinctions made among the programs are clearly inadvertent, absurd, or unreasonable. In addition, the fact that the saving clause was not amended during the 9 months allowed for the enactment of corrective legislation prior to the time the Defense Officer Personnel Management Act went into effect on September 15, 1981, tends to preclude any conclusion that the Senior COSTEP and the National Health Service Corps Scholarship Program were omitted from the saving clause through sheer error and inadvertence.

It is therefore our view that the provisions of the saving clause contained in subsection 625(b) of the Defense Officer Personnel Management Act do not apply to participants in either the Senior COSTEP or the National Health Service Corps Scholarship Program. It is also our view that the Department of Health and Human Services was in error in determining that Senior COSTEP participants were covered by the saving clause simply on the basis that their program was similar or analogous in certain respects to the other programs specifically designated in the saving clause.

Concerning the suggestion made by participants in the National Health Service Corps Scholarship Program that the withholding of the constructive service credit from them would constitute a material breach of their scholarship contracts, we have examined the contract form executed by the participants and have found nothing in it that promises or guarantees them the constructive service credit. Indeed, the contract form does not even guarantee that the program participant will be commissioned as a medical or dental officer of the Public Health Service upon graduation from professional school. Instead, in conformity with the governing provisions of 42 U.S.C. 294t(f), the participant simply agrees to perform a period of obligated service with the Department of Health and Human Services "in a health manpower shortage area." The contract merely indicates that this service may be performed as an officer of the Public Health Service, if the participant elects to apply for a commission and is accepted. Hence, we conclude that the scholarship program participants are not entitled to the constructive service credit under the terms of the statutory contract prescribed by 42 U.S.C. 294t(f).

Moreover, while the Public Health Service is not an "Armed Force," it is defined by statute as being a "uniformed service." See 10 U.S.C. 101(4); 37 U.S.C. 101(3) and (4). It is fundamental that the pay and allowance entitlements of members of the uniformed services are completely dependent upon rights prescribed by statute and that common law contract principles have no place in the determination of their pay entitlements. See 42 U.S.C. 210(a); Matter of Blaylock, 60 Comp. Gen. 257, 259-260 (1981); Matter of Veterinary and Optometry Officers, 56 Comp. Gen. 943, 950, cited above, and Comptroller General decisions and court rulings there cited. Hence, the United States is not bound by the advice or promises of service recruiters concerning pay entitlements, if their advice does not conform to the governing provisions of statute. See Blaylock and Veterinary and Optometry Officers, cited above.

In the present matter, it appears that participants in the Senior COSTEP and the National Health Service Corps

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Scholarship Program received advice or information from Public Health Service recruitment brochures published prior to December 1980 indicating that individuals commissioned as medical and dental officers received, among other things, the additional constructive service credit authorized by 37 U.S.C. 205(a)(7) and (8). The information was accurate when it was published, but the individuals who were given that information should have also realized that the pay entitlements of medical and dental officers were subject to future changes through statutory amendment. To any extent that the Senior COSTEP and National Health Service Corps Scholarship Program participants nevertheless believe that they were misled in the matter, that alone could not in any event afford a legal basis for crediting them with constructive service under the repealed provisions of 37 U.S.C. 205(a)(7) and (8).

Accordingly, we hold that participants in the Senior COSTEP and the National Health Service Corps Scholarship Program, 42 U.S.C. 218a and 294t, who are commissioned as medical and dental officers of the Public Health Service after September 15, 1981, are not entitled to constructive service credit under the repealed provisions of 37 U.S.C. 205(a)(7) and (8).

Milton J. Fowlow

Acting Comptroller General
of the United States