

DECISION



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

FILE: B-219059

DATE: March 24, 1986

MATTER OF: Corporal Maurice E. Marshall, USMC

DIGEST:

1. A member of the Marine Corps who enlisted for 4 years under the Educational Assistance Program and reenlisted 10 months prior to the end of the first enlistment may receive his educational assistance benefits in a lump sum as provided in 10 U.S.C. § 2146 and implementing regulations. Language in the statute which indicates that a member should make the election of lump-sum benefits upon reenlistment at the end of the enlistment during which the benefits were earned does not limit the election only to those who reenlist at the end of the first enlistment. However, payment may not be made until he completes the initial 4 years of service.
2. A member of the Marine Corps who enlisted under the Educational Assistance Program is not limited to either the student loan repayment benefit or the educational assistance benefit, but may receive both types of benefits if he enlisted under both segments of the program and was otherwise eligible. The law does not restrict a member to one type of benefit, and the legislative history indicates that both types of benefits are available to the member for the same period of service, as does the implementing Department of Defense guidance.

This action is in response to a request for an advance decision from the U.S. Marine Corps regarding payments to be made to Corporal Maurice E. Marshall, USMC, pursuant to the

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Educational Assistance Program.^{1/} The specific issues presented are, first, may a lump-sum payment be made to a member who has earned educational benefits and has elected to receive them in a lump sum upon reenlistment as provided in 10 U.S.C. § 2146, if the member reenlists prior to the end of the enlistment in which he earned the benefits. Second, may a member participate in the program and receive both loan forgiveness and educational assistance benefits based on the same period of service.

It is our view that the implementing regulations are consistent with the statute and the intent of the law and that the lump-sum payment may be made at the end of the enlistment period in which it was earned, and that a member may participate in the program and receive both types of benefits for the same service.

Background

The Educational Assistance Program was established pursuant to the authority granted in section 901 of Public Law 96-342, 94 Stat. 1077, 1111 (1980), codified at 10 U.S.C. § 2141 et seq. (1982). The Secretary of Defense is authorized to prescribe regulations for the administration of the program. 10 U.S.C. § 2141(b).

Under the program members of the uniformed services who enlisted after September 30, 1980, and before October 1, 1981, became eligible for financial assistance for an academic year for each year of their enlistment served, up to 4 years, provided the member completes at least 2 years of the term of enlistment. 10 U.S.C. § 2142(a). In lieu of receiving the educational benefits during a course of study, a member may elect to receive in a lump sum 60 percent of the amount he would have received, if he is:

"A member who is entitled to educational assistance under this chapter and who reenlists at the end of the enlistment which established such entitlement * * *."
10 U.S.C. § 2146(a).

^{1/} The request was submitted by the Disbursing Officer, Centralized Pay Division, Marine Corps Finance Center, Kansas City, Missouri. It has been approved and assigned control number DO-MC-1454 by the Department of Defense Military Pay and Allowance Committee.

Another program, established by section 902 of Public Law 96-342, provides authorization for the Secretary of Defense to repay certain educational loans made under the Higher Education Act of 1965 for members enlisting after September 30, 1980. See 10 U.S.C. § 2141 note (1982). The Secretary is authorized to repay 33-1/3 percent of a loan or \$1,500, whichever is greater, for each year of service performed on active duty as an enlisted member of the Armed Forces in a military specialty specified by the Secretary.

In the case presented to us, Maurice E. Marshall, now a corporal, enlisted in the Marine Corps on July 7, 1981, for a period of 4 years. A document he executed at that time (Application for Enlistment, DD-1966/7) indicated that he was enlisting under the provisions of sections 901 and 902 of the Educational Assistance Program. Corporal Marshall had an outstanding student loan at the time he enlisted, and by 1984 the service had paid approximately \$6,500 on his behalf under the section 902 loan repayment program.

On August 14, 1984, approximately 10 months prior to the end of his enlistment period, Corporal Marshall reenlisted for another 4-year period of service. He has requested payment of section 901 educational benefits in a lump sum as provided in 10 U.S.C. § 2146, and the Commandant of the Marine Corps has recommended that payment be made.

The Marine Corps Disbursing Officer asks whether the lump sum may be paid to Corporal Marshall. She believes that Corporal Marshall's entitlement to this payment is doubtful for two reasons. First, she notes that 10 U.S.C. § 2146 provides the option to elect the lump-sum payment in lieu of educational assistance to a member who "reenlists at the end of the enlistment which established such entitlement* * *." Since Corporal Marshall did not actually complete the initial 4-year enlistment but was discharged early to reenlist for 4 more years, it is not clear that he met the statutory requirement. Second, the Disbursing Officer questions whether a member may receive both the loan repayment (section 902) and the lump-sum payment (section 901) based on the same period of service.

Analysis

The legislative history of section 901 shows that while it was intended that the member complete his period of

service before becoming eligible for benefits, the program was not intended to be a disincentive to reenlistments. Thus, options such as assignment of the benefits to family members or receipt of the benefits in a lump sum were provided for so that members would not be encouraged to leave the service in order to take advantage of the benefits, as they had been under the provisions of the original GI Bill. See, e.g., 126 Cong. Rec. 1,490 (May 15, 1980) (Statement of Rep. White).

As noted above, the authorization was given to the Secretary of Defense to establish and implement the program. Policies governing eligibility, criteria, benefits, change in occupational speciality or enlisted status, discharge provisions and breach of contract were established, and additional implementing guidance was provided by each service.

Marine Corps Order 1780.1 provides this guidance for members of the U.S. Marine Corps. The section of that order entitled "Provisions of Section 901 (Educational Assistance Program)" provides in paragraphs 2e(1) and (2):

"(1) A service member who is discharged to reenlist before completing 4 years of active enlisted service on the qualifying enlistment continues to accrue benefits for a maximum of 48 months.

"(2) If a service member reenlists early, the lump-sum 60 percent cash out or transferability option is not available until the completion of the term of the original enlistment upon which entitlement is based."

It is our view that this regulation is consistent with the purpose of the benefit, to encourage reenlistment, and is not inconsistent with the language and purpose of the authorizing statute. Therefore, it would be proper for payment to be made to Corporal Marshall at the end of the 4-year period upon which the educational assistance was originally based, notwithstanding that this period will end while he is serving in his subsequent reenlistment period.

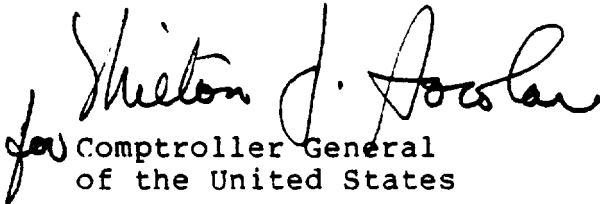
The second issue presented is whether a member may participate in both the loan forgiveness and educational benefit programs and receive both types of benefits for the same service. The implementation of these programs was

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approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) in a memorandum dated October 31, 1980, to the Army, Navy and Air Force. The memorandum outlined the programs and specifically provided that an enrollee may elect to participate in both the loan forgiveness and an educational benefit program.

Nothing in the law itself limits the enrollee to either the loan forgiveness program (section 902) or the educational benefit program (section 901). Instead, individual criteria for each benefit are established. Although other limitations, such as service for a minimum of 2 years, are included in the law, Congress provided no indication that an enlisted member is limited to only one of these two benefits. This view is supported by the applicable legislative history which explains that both benefits are available and in which the purpose for each type of benefit is explained. See, e.g., 126 Cong. Rec. 18,421 (July 2, 1980) (Comments of Senator Nunn).

It is our view, therefore, that if otherwise eligible, Corporal Marshall may be paid educational benefits in a lump sum at the end of his first 48 months of service notwithstanding the fact that he has already received a benefit under the loan forgiveness portion of the program.


for Comptroller General
of the United States