



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ROTC Scholarship Program
File: B-241476
Date: May 20, 1991

DECISION

We have been asked to render a decision regarding retroactive payment of college tuition for two Reserve Officer Training Corps (ROTC) cadets currently attending Creighton University, Mary K. O'Hare and Shaundra D. Linsley. The Army believes that the statute that authorizes tuition funding does not permit retroactive payment. We disagree. We believe the Secretary has the discretion under the statute to make such payments, consistent with the scholarship program's intent and objectives, and we therefore recommend that the Army reconsider the two cadets' situations.

During the 1988-89 school year, Cadet O'Hare was conditionally granted a 4-year ROTC nursing scholarship to begin with the fall semester of 1989. The award was conditioned upon Cadet O'Hare's successful completion of a physical examination and laboratory tests. The physical was performed on March 27, 1989. On April 20, the medical board sent Cadet O'Hare a letter informing her of the laboratory tests needed to complete her medical qualification. The record indicates that she did not respond until a duplicate letter was sent to her on October 26. Cadet O'Hare apparently met the medical qualification on December 21, 1989, although the board's computer did not generate and issue a letter to that effect until February. When this error was discovered, Cadet O'Hare's record was corrected to indicate that she qualified on December 21. However, Creighton's fall semester had ended on December 16, 1989. Cadet O'Hare's scholarship therefore began with the second semester.

Cadet Linsley likewise received a 4-year conditional nursing scholarship to begin in the fall semester of 1989. She had a physical in January 1989. Cadet Linsley was notified in February 1989 that two laboratory tests were required. She cleared one of those, a drug screening test, in June 1989. The record is not clear as to any further activity on Cadet Linsley's part before a duplicate letter was sent to her on October 26 to remind her to complete her laboratory tests. Due to a recurring infection, Cadet Linsley did not meet her

medical qualifications, and therefore did not qualify for her scholarship until April 1990, long after the end of the fall semester. In accordance with ROTC regulations, Cadet Linsley's tuition for the second semester was paid.

Both cadets claim tuition for the fall 1989 semester, arguing that they did all they could to resolve their medical qualifications in time. The Cadet Command, which administers the Army ROTC scholarship program, has refused to pay their first semester's tuition on the grounds that the statute governing scholarships does not permit retroactive payment of tuition. An Army Judge Advocate legal opinion included in the record supports the Cadet Command's position.

The current ROTC scholarship program was established by 10 U.S.C. § 2107, which authorizes the military department Secretary to provide for the payment of tuition, fees, and other student expenses. The student also receives a subsistence allowance of \$100 per month during the academic year, pursuant to 37 U.S.C. § 209.

The administration of the scholarship program for Army ROTC is governed by Army Regulation (AR) 145-1 (February 20, 1987). The regulation provides that conditional students are not eligible to participate in the ROTC scholarship program. Conditional students include those whose eligibility based on medical criteria has not been finally determined. See AR 145-1, paragraph 3-26 and 3-28. Older versions of the regulation specifically prohibited reimbursement for tuition for any term completed before the term in which the scholarship was finally awarded. See AR 145-1, para. 3-57(g) (March 1, 1982).^{1/}

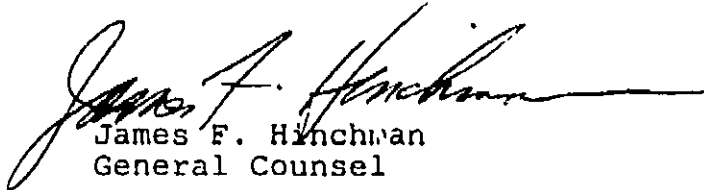
We do not find any language in 10 U.S.C. § 2107 expressly prohibiting retroactive payment of tuition for school terms before the term in which a cadet achieves full qualification. Rather, the statute simply authorizes the payment of tuition and other expenses, and gives the secretaries of the military departments the authority to issue regulations for the administration of the scholarship program. In our view, 10 U.S.C. § 2107 thus leaves to the Secretary of the Army's discretion the determination of the appropriate policy in cases like those presented here.

We find nothing in AR 145-1 that clearly addresses the situation of these two cadets. The regulation provides only that a conditional student is not eligible for a scholarship.

^{1/}We have not been able to determine why the express prohibition on retroactive payment was removed from the current version of AR 145-1.

Consequently, to the extent the Army has any obligation to a scholarship candidate under the regulation, the obligation does not arise until the eligibility process is completed. The regulation, however, does not establish that the obligation may not be met for a semester already completed by the time of full qualification. In fact, it is our understanding that if a conditional student fully qualifies before the end of a semester, the Army will pay for that entire semester.

In any event, it is for the Secretary of the Army to determine, in the exercise of his sound discretion, whether payment should be made in these two cases based on factors he deems appropriate, consistent with the intent and objectives of the scholarship program.



James F. Hinchman
General Counsel