

Office of Government Ethics
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Letter to an Employee dated January 7, 1985

This is a reply to your letter of July 3, 1984, to [an agency] regarding whether Government attorneys may, consistent with 18 U.S.C. § 205, provide representation for veterans in proceedings within the Veterans Administration, before the Board of Veterans Appeals (BVA). Pursuant to the authority of section 402(a) of the Ethics in Government Act of 1978, your letter has been referred to this Office for a direct response.

By virtue of 18 U.S.C. § 205, Federal officers or employees are generally prohibited from prosecuting claims against the United States or from acting as attorneys before any agency in a proceeding in which the United States is a party or has an interest. There is, however, a statutory exception in the fourth paragraph of section 205 which permits a Government officer or employee, if not inconsistent with the faithful performance of his or her duties, to act as agent or attorney for any person who is the subject of disciplinary, loyalty or other personnel administration proceedings in connection with those proceedings.

In prior opinions, the Department of Justice has ruled, and we agreed, that Congress intended to permit representation of Federal employees only in matters directly connected to their treatment as employees by their Federal employers. Thus, the statute has been construed to permit appearances before the Military Discharge Review Boards and the Boards for the Correction of Military Records, in proceedings involving the discharge status of members of the military services. At the same time, however, both the Department of Justice and this Office have unequivocally rejected the notion that representation of a beneficiary before the Social Security Administration was intended to be permitted as a "personnel administration proceeding."

The BVA has appellate jurisdiction over all questions on claims involving benefits under the laws administered by the Veterans Administration.¹ Some questions such as determinations of discharge character and duty status involve the treatment of a Federal employee with regard to his employment and fit within the core purpose of the "disciplinary, loyalty or other personnel

administration proceedings" exemption of section 205. Other questions, however, involve entitlement to various benefits. These determinations cast the individual in the role of a beneficiary rather than an employee, and in that respect seem to be closely analogous to the adjudication of Social Security entitlement.

In our view, the extension of the section 205 exception to these entitlement proceedings before the BVA would unjustifiably and undesirably expand by administrative action the scope of the provision as passed by Congress. Further, to permit a bifurcated approach by recognizing the exemption of certain specified types of proceeds involving solely employment issues of veterans would involve a classification by subject matter which would not be possible or practical.

Accordingly, we must deny pro bono representation before the BVA to Government attorneys altogether rather than sanction what appears to be the unauthorized administrative amendment of the legislation.

Sincerely,

David H. Martin
Director

1 See 38 U.S.C § 4004(a).