

## **Office of Government Ethics**

**80 x 8 -- 10/24/80**

### **Letter to a Former Employee dated October 24, 1980**

This is in response to your October 2, 1980 letter of inquiry regarding the post-employment restrictions of the Ethics in Government Act of 1978, as amended.

You have indicated that until July of 1980 you were employed as a GS-15 Administrative Law Judge assigned to [an agency] and that you presided at [certain types of benefits] hearings.

Your letter does not give the factual details of any specific case. Consequently, our response is limited to a general discussion of the post-employment restriction issues raised in the three basic questions which you have posed.

First, you inquire as to whether the post-employment restrictions would prevent you from representing claimants who seek [the subject] benefits at hearings before Administrative Law Judges [of your former agency]. Then you pose a variation of that question by inquiring as to whether you may represent an applicant for [these] benefits who has had his original application denied at a hearing at which you presided and then, in lieu of an appeal, files a new application.

Your third question deals with your representation of a claimant on rehearing when you initially made a finding [that the claimant was entitled to certain benefits], and several years later the [agency] decides to have the claimant reexamined resulting in a termination of benefits.

We are of the opinion that as to your first question, as a general proposition, nothing in the post-employment restrictions would prevent you from representing new claimants who seek [these] benefits at hearings before Administrative Law Judges [of your former agency]. However, as to questions two and three, there are certain specific qualifying factors which may bar future representational activities on your part.

The applicable statute covering the situations which give rise to your questions, in relevant part, states that:

(a) Whoever having been an officer or employee of the Executive branch of the United States Government . . . after his employment has ceased, knowingly acts as agent or attorney for anyone, or otherwise represents others than the United States in connection with any judicial or other proceeding, application, request for ruling or other determination, claim or controversy or other particular matter involving a specific party or parties in which the United States is a party or has direct and substantial interest and in which he participated personally or substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise while so employed . . . -- shall be fined not more than \$10,000, or imprisoned not more than two years, or both.<sup>1</sup>

Our implementing regulations of this statutory provision state that the same particular matter may continue in another form or in part. Further, in determining whether two particular matters are the same, "the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information and the continuing existence of an important Federal interest."<sup>2</sup>

Thus, since the term "particular matter" applies to specific cases or matters and not to a general area of activity, you may represent new claimants [for these benefits]. However, if the same or related issues are involved in a reapplication hearing referred to in your second question or the rehearing referred

to in your third question, you are precluded by the statute as well as our regulatory interpretations from taking part in such representational activity. A copy of our final regulations is attached for your information.

It is further suggested that, in view of the fact that each type of problem you raise requires a case by case analysis, you consult with the [your former agency's] Designated Agency Ethics Official [name and address deleted] before undertaking any specific representational activities in matters where you have actually been involved as a presiding judge.

In responding to your inquiry, this Office has not considered the effect, if any of the Code of Professional Responsibility as it may apply to your future plans.

Sincerely,

J. Jackson Walter  
Director

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**1** 18 U.S.C. sec. 207(a) (Pub. L. No. 95-521, 92 Stat. 1864 (1978)) as amended by (Pub. L. No. 96-28, 93 Stat. 76 (1979))

**2** 5 C.F.R sec. 737.5(c)(4).