

ALLEN CATES

July 26, 2004

**Ms. Mary Saffell**  
The Vietnam Virtual Archive  
Texas Tech University  
SCL Rm. 108  
Lubbock, TX 74909-1041

Dear Ms. Saffell,

I found a name error in the letter I sent you in June. I have corrected the error and ask that you accept the corrected letter for the record and destroy the last letter. Please retain the attachments sent with the original letter.

I am very sorry for the inconvenience.

Yours truly,

  
Allen Cates

June 24, 2004

**Mr. James D. Johnston**  
Executive Secretary  
DoD Civilian /Military Service Review Board  
SAF Personnel Council  
1535 Command Dr., EE Wing, 3<sup>rd</sup> Fl.  
Andrews AFB, MD 20762-7002

Dear Mr. Johnston:

I am extremely pleased to report that the Air America Association general membership unanimously agreed to support Veteran Status eligibility during the annual meeting held in Dallas, Texas this month.

The Association, though not legally affiliated with the original company, is considered by the C.I.A. and many veteran groups to be the unofficial voice for former Air America employees. The Association's endorsement is therefore important, and it demonstrates that the majority of the former employees considers themselves as veterans and adds clout to the application.

The Association also agreed to continue supporting a bill introduced by a member of Congress that, if passed, would change the current law and allow former employees of Air America, Inc. to receive Civil Service Retirement benefits (CSR). That bill is currently in committee.

Former employees of Air America, Inc., and the general public have always had difficulty with identification as to who we were and who actually was our employer. The confusion that exists among former employees may also exist among the military historians who will review the application and incorrectly slant their opinion. I am not an attorney Mr. Johnson, and knowing that you are an attorney, I am treading cautiously since I am aware

that those who act like they know, and don't, are disturbing to those who actually know the truth of the matter. I believe I have investigated the issues sufficiently enough to be able to deliver a lay opinion about our rightful status. I also believe that many who support CSR do so because of the complexity of the issue and understandable ignorance about basic business law. And, there are some who are just hoping Congress will change the law and allow certain benefits to be bestowed without consideration of the ramifications, because they frankly need the money, and/or feel it's deserving.

The former employees of Air America, Inc. are my brothers in arms and many are close friends. I sincerely believe they were a unique group that deserves more than just a pat on the back and I anguish over the difference in opinion concerning these issues. Yet, I cannot in good faith support CSR, but I'm not opposed to those who do support it, as long as it does not affect me financially, or derail VA status eligibility. Further, while I believe we were all hired in the same manner, it should be understood that we are talking about a company that existed over 25 years, and my hiring experience may not be the same as some of the other employees. The recent history concerning the application process, the reason for the manner it was presented, and my personal hiring experience is presented for the benefit of the approving authority.

The general membership previously supported the effort to seek veteran status approval, but a formal endorsement had never been issued. In the early part of 2003, with new board members, a request by some members was made to the board to support CSR for former employees. The request was coupled with an additional request to place veteran status on-hold while the CSR issue was being addressed because it was feared that should VA status be approved it would hinder the chances for CSR approval. The board approved the request, but did so without general membership endorsement. I dissented, and asked the board to delay any action until I could write a letter to the C.I.A. asking for their endorsement for VA status. I told the board that I wanted the effort for VA status eligibility to continue if we received a positive response and they indicated they would wait to see what kind of response was received. The letter to the C.I.A., and their response, were sent to you as part of the initial application.

The letter from the C.I.A. was promising, but did not represent a clear endorsement for VA status. I think the response frightened the CSR proponents enough for them to take steps to discourage Mr. Hugh Grundy,

the former President of Air America, Inc., to act as the author of the application, which was my original intention. This was accomplished by telling Mr. Grundy that the Association members desired CSR over VA status and his endorsement could hinder the CSR effort.

Mr. Grundy, an honorable gentlemen, wrote to me and said this; ***“In principle, I am quite willing to support any appropriate endeavor that might be helpful to my former colleagues who served so well under my watch, as well as under my predecessors. On the other hand, I do not wish to participate in any undue demands or pressures on Government, or impose on any department thereof. If Government, in accord with precedents and standing rules, and, in it's largesse, finds it possible to respond favorably to a respectful request, then that would be fine. I believe, however, that company employees were adequately informed of, and accepted at time of employment, the terms of that employment and are not due expanded company benefits. Unquestionably, many of them served far beyond the requirements of those employment terms, but presumably did so willingly in pursuit of their jobs and personal principles and/or for patriotic reasons. Those endeavors are to be applauded, greatly appreciated, and perhaps more materially rewarded, and recognition as veterans having served the national interests, might be an appropriate avenue of compensation.”***

Mr. Grundy was very helpful with past history and went on to urge me to obtain Air America Association general membership endorsement for VA status. He did not feel comfortable filing the application as author until, or unless, that could be accomplished.

It would have been impossible to accomplish this at the 2003 reunion due to timing, and my own ignorance for the procedures required filing the application. I canvassed the members through email and garnered enough support to justify a group application and filed it under my name and letterhead in July 2003. Meanwhile the proponents for CSR went about their business and I went about mine with you. Still, I felt that the members had not received enough information in order to make a clear determination about their status while employed with Air America. My rationale was that if I were a historian looking at this issue, I would want to see some evidence of majority support, and a clear understanding of the employer/employee relationship.

Therefore, for the past several months I have argued that the two issues are

separate and I have lobbied the members to formally endorse Veteran Status on the Association level. I also tried to provide information about both issues with the best of my knowledge and ability during the course of these discussions. But the CSR opponents are biased, and to be fair, I too am biased. Therefore, I urged the board to seek unbiased professional assistance due the complexity of these issues.

The request for unbiased assistance was ignored, but there were enough members who wanted the issue to be discussed at the general membership meeting to support a formal motion for VA status eligibility to be introduced. The motion was seconded and almost two hours of discussion and debate ensued, which, in my opinion, was the proper method and venue.

My argument to the members that supporting both would not injure either was one reason the members agreed to support both. Otherwise, there would have been a split and the Association might end up not supporting either one. I believe my argument about the issues being separate is still valid, but requires clarification, and, there is an element of doubt that I have in this regard, and perhaps the same doubt by those who support CSR.

Portions of the criteria for determining veteran status state that the government cannot duplicate benefits to an individual. Yet, the WASP did receive veteran status and CSR. However the WASP were not employed by a private company and worked directly for the U.S. Government. Another example often cited by members is a Naval Task Force of civilians, who acted as a security force. They requested and received CSR, but they too worked directly for the Government. Had Air America employees been employed directly by the government this issue would be moot, and they too might qualify for both CSR and veteran status without argument or question.

Through my investigation, and Mr. Grundy's advice, I was able to conclude that Air America, Inc. was a private company that was lawfully formed as a corporation in the state of Delaware. Therefore, the corporation, and not the owners, hired the employees and the employees worked for the corporation and not the owners, which in this case was the U.S. Government. I accepted employment and their payroll/benefit package and they fulfilled their obligation completely with me. The fact the U.S. Government owned the corporation would not pierce the corporate veil. There is no known instance where an employee of a private company was entitled to, or was granted, CSR to my knowledge. I was paid a salary, including overtime and other incentives, which were far higher than what I would be paid as a civil

servant. I deducted from my taxable income \$20,000.00 per year for three years and \$25,000.00 per year for the next four years. That deduction is not available to a civil servant. The IRS questioned the Bona Fide residence that provided the \$25,000 deduction because we were not paying taxes to the host country. Certain Air America employees hired a U.S. Attorney and the attached opinion presents the positive argument for that deduction. Later, the Revenue Ruling cited by the IRS was revised, but whether we were entitled to Bona Fide residence or physical presence is inconsequential. The IRS never questioned the physical presence deduction because they always considered us to be private citizens working for a private corporation. The main point is that if we were entitled to CSR, we could not take either deduction. And, it is obvious the employees never thought at any time they were employed by the Government, nor were they ever given any reason to conclude otherwise. In fact, the employees were saying they were not government employees and were private citizens working for a private corporation. The IRS eventually agreed with that argument and the Bona Fide residence income deduction was allowed.

Yet, Air America, Inc. did have imbedded employees that worked directly for the government and were enrolled in CSR. Did that act pierce the corporate veil to enable the rest of the employees to be entitled to CSR? Further, there was some official basis for our existence in the host countries. We were not treated the same as private citizens, and as stated before, we did have access to military installations, PX, commissary, dining halls and clubs. We also refueled our aircraft at military airfields with no questions asked and never refused, and we were operating U.S. Military aircraft and performing military duties. Knowledge of these practices makes it easy to understand why many employees are confused about our status after it was made public that the C.I.A. owned the corporation. Some employees sued for CSR and the defendant, the United States Government, prevailed. It was appealed to the Federal Court of Appeals and they upheld the lower court decision and essentially said that an employee must be offered CSR by a person authorized to make that offer, and a payroll deduction made accordingly. Therefore, can it be concluded that the only reason Air America employees were not enrolled in CSR was because we were not offered that benefit? Can the owners of a corporation be shielded from liability if the primary purpose for the corporation was to prevent the employees from benefiting from their, at the time, private pension fund?

The C.I.A. has always taken the position the employees of Air America, Inc. were not employees of the C.I.A., and this position was not established and

maintained for confidentiality reasons only. Initially yes, but in a letter written to a member of the U.S. House Of Representatives on be-half of a constituent, who requested status clarification, the C.I.A., well after the secret was out about Air America, wrote this in 1992: ***“As you are aware, the Merit Systems protection Board and the Federal courts, have consistently taken the position that employment by Air America was not an appointment to the Federal civil service. As such, Mr. (name left off since it is a private letter, but a copy of the entire letter is held in my possession) is not entitled to civil service benefits or credits under any other Federal retirement program”***

So, who were we? There are many private companies then and now that contract with the government. One existing company is Radio Free Europe, Inc. I wrote to them and asked if the government owned them and if they were enrolled with CSR. This was their reply.

***“Hello Allen --Radio Free Europe/Radio Liberty is a private, international communications service incorporated in the state of Delaware. It broadcasts to Eastern and Southeastern Europe, Russia, the Caucasus, Central Asia, the Middle East, and Southwest Asia, and is funded by the U.S. Congress through the Broadcasting Board of Governors. As a private corporation its employees are not government employees and do not receive civil service retirement.***

***More information is available at:  
<http://www.rferl.org/about/organization/radiostation.asp>***

***Regards,***

***RFE/RL Internet Department***

***<http://www.rferl.org>”***

Were RFE and Air America similar companies? Both incorporated in Delaware, and both owned by the U.S. Government, but there, it seems to me, the similarity ceases to exist. Do all private companies owned by the government have access to military installations and perform paramilitary operations? I don't think so, and all other government owned Private Corporation employees know without any doubt their status.

Using me as an example, I was a Marine Corps helicopter pilot when I went to Vietnam the first time in 1964. I was assigned to MAG 36 in Santa Ana, California in 1965 when I came back. Once a bustling military

establishment, Santa Ana was now a ghost town since practically all had been deployed to Vietnam that year. The Marine Corps jet base at El Toro near by was still fairly active, and I tried to get transferred to jets, but there was no way to get transferred direct. I didn't want to go to the training command in Pensacola, but saw that avenue as a method to get into the jet pipeline and asked for a transfer to Pensacola as a flight instructor in fixed wing aircraft. I ended up teaching formation and night flying in the North American T-28.

Eugene Rainville (Gene), a Vietnam squadron mate, was teaching helicopter flying in the same area. He told me that he had an interview with Air America in Washington D.C. and suggested that I go with him. Cross-countries with the T-28 were authorized and encouraged. So, I placed Gene in the back seat and we headed to Andrews AFB.

Gene had an appointment, and Mr. Red Dawson, who conducted hiring interviews for Air America, agreed to see me also. There was another applicant there that day. He was an African American and his name was Willie Parker. Willie also was in the Marine Corps, and also a Vietnam veteran. Willie was an enlisted man and wanted a job with Air America as a helicopter Flight Mechanic. Willie had served with the Marines unscathed and he was a handsome black man with a good attitude and a fine sense of humor.

Gene was hired on the spot and I believe Willie was also. They could leave immediately, but I was a regular officer and could not leave the Corps without resigning my commission and my request was refused until December 1966. I called Red Dawson a couple of times and he told me that all the helicopter slots were filled. On the second or third call I asked him if any fixed wing slots were open. I told him I was flying T-28s and wondered if there were any flying jobs available in that airplane. Dawson became real upset at the very mention of T-28s, but I really had asked innocently and was not aware of the very secret T-28 program called Water Pump that some Air America pilots were involved with. I told him I also had some C-45 Beech Craft experience and he told me that pilots over there had been shot in the head and died, and he wanted to make sure I understood that. I told him I did and he wanted to know why I wanted to get out of the United States so bad. I told him I was leaving the Corps and needed a job. This was the first part of December and I told him I was leaving on the 15<sup>th</sup>. He wanted to know if I was available to leave on the 26<sup>th</sup> of December and whether I had a passport. I told him that yes I was ready and yes I had a passport.

I was hired right there on the telephone. A few days later I received a package that included first class tickets on Pan American Airways to Taipei, Taiwan. I was led to believe that Air America, Inc. was a private company, which it was. Never at any time was I told, or was it in any way intimated that my employment was with the United States Government, which in fact, it was not. At least legally it was not.

In Taipei, I was given some routine processing and sent to Bangkok for school. There, I met another new employee, Mr. Frank Thorsen. Frank and I were assigned to Saigon to fly fixed wing. Frank went to the C-45 program. I had a choice of that or the C-47 and opted for the Goony Bird, as the C-47 was often called. We each attended ground school for our assigned aircraft in Bangkok and in January 1967 Frank and I were in Saigon.

I could talk a great deal more about my experience there, but it is not germane to the veteran status issue. To make a long story short, I flew as co-pilot in the C-47 for six months and then was assigned as Captain in the PC6C Porter. Frank checked out as Captain in the C-45. He later was assigned to the turbine modified C-45 called the Volpar. A few years later, Frank was killed by a gunshot wound while flying the Volpar in Laos doing photo recon work. By that time the war in Vietnam had wound down and the war in Laos had heated up. Air America needed fewer flight crews and I found I could no longer hold a Captain's position in fixed wing. Nor could Frank, and he was flying as co-pilot when he was killed. I requested a transfer to Udon as a helicopter pilot when I saw what was happening with my seniority. Helicopter pilots had a higher attrition rate and I could retain my position as Captain. I was in Udon when Frank was killed and I helped Rayford Jeffrey, who was a C-123 Captain, clean Frank's dark red arterial blood off his personal effects in subdued silence.

Gene Rainville and Willie Parker met again in Udon. They were assigned to crew the UH-34D helicopters that were on loan from the United States Marine Corps. The Dog, as we called the H-34, had a 1525 HP radial engine, but it required extremely good piloting in the mountains because it lost a lot of performance at altitude. Very often, landings were more like controlled crashes, and sometimes, real crashes. The H-34 used 115/145 Aviation gas for fuel and was constructed of magnesium for weight reduction. Unfortunately, it would burn furiously and the fire could not be extinguished. Gene and Willie crashed and burning fuel got in side Willie's gloves. His hands were burned terribly. Gene suffered some minor burns. Many operations later Willie still has some long term disability.

Could these incidences, and many others, equate with what other private companies did when they contracted with the government? No, there is no doubt that our assigned tasks were decidedly different than other contracted companies. Other companies performed paramilitary operations, but only Air America used loaned U.S. Military aircraft. Was Public law 95-202 intended to provide veteran benefits for such injuries to employees of certain companies? Yes, as I read the law, that was the Congressional intent. You see, both Gene and Willie were veterans already, but Willie's injuries, and disability, occurred with Air America and currently are not regarded as "service connected", even though they both were performing identical work when they were in the Marine Corps and flying an aircraft that was owned by the Marine Corps. Had Willie still been in the Marine Corps, he would have been classified as disabled and would be receiving disability compensation. He would also have been awarded the Purple Heart and been reclassified by the VA because the injuries occurred while flying in combat conditions.

Recently, Charley Mosley, a former kicker with Air America, underwent open heart surgery. I am enclosing two articles Charley wrote for the Air America Association News Letter. Charley was a smoke jumper prior to Air America and never served in the armed services. He is not the only one in that category, but he is among the few. He did not have health insurance and had to search for a doctor to perform the surgery pro bono. But, the hospital bill and the very expensive prescription medication are at his expense. CSR won't help Charley because it does not offer health benefits and he did not have five years with Air America to be vested anyway. Veteran status eligibility for certain civilian organizations was tailored for people like Charley and Willie Parker. They both served their country with honor and they both deserve the benefits as established by Congress for veteran service. Are we to equivocate over the confusion surrounding our status and deny people like Willie Parker compensation for his disability obtained through honorable service to his country, or adhere to the intent of Congress when PL 95-202 was passed and give Mr. Parker and Mr. Mosley what they rightfully deserve.

Logically speaking, it appears to me that certain organizations can be enrolled in CSR and may qualify for veteran's status eligibility also. Certain private companies may qualify for veteran status eligibility, but unless Congress changes the law, they do not qualify for CSR. Employees of CAT/Air America, Inc. worked for a private corporation. I believe that I have submitted ample evidence to support my claim that we qualify for veteran's

status eligibility. Currently, we do not, in my opinion, qualify for CSR legally, but may qualify ethically under the unusual circumstances surrounding our employment. Congress may change the law allowing CSR benefits, but if that happens, a stipulation should be made to forgive any back taxes, penalties and interest for deductions made while employed with Air America in good faith, and any such status change should not affect veteran status eligibility.

The question about what is deserved and what is ethical may be in the eye of the beholder. There is more to these issues than financial gain. Duty, honor, integrity and the many sacrifices CAT/Air America employees and their families made due to the scope of their employment are factors that should be considered by the military historians. The C.I.A. should not have any problem supporting veteran status, and should do so strongly. I do not agree with their attitude that they owe us nothing. Yes, in the letter of the law, they did everything they promised they would do. But, with the same reasoning, the employees owed them nothing more than what was asked of us, and we did much more than that. It has been unofficially reported that when Air America, Inc. was dissolved in 1976 more than 20 million Dollars was returned to the U.S. Government. So, it was not just blood, sweat and tears that were rendered.

CSR, by its design has been requested in the form of a demand and without precedent to support that demand. Not so with veteran status. The application has been filed in accordance with existing law, armed with historical precedent and respectfully filed as a request. Gaining this status long after everyone has passed away may be honorable, but it would not serve any practical purpose. I am hoping this issue could be decided favorably while it will still do some benefit.

Yours truly,

  
Allen Cates