

Military Collar Insignia for Border Patrol Agents

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This is in response to your letter of January 27, 1981 seeking our legal opinion concerning the wearing of military collar insignia by various sector, regional, and Central Office Border Patrol personnel.

The Acting Commissioner of the Service has authority to prescribe the wearing of collar insignia by Border Patrol personnel. 5 U.S.C. 301 confers such "housekeeping" authority on the Attorney General. This power, among others, was delegated to the Commissioner of the Immigration and Naturalization Service through 8 CFR 2.1 and 8 CFR 100.2 (1980). 5 U.S.C. 5901 authorizes an appropriation to each agency for a uniform allowance.

Insignia of various types, and symbols of rank and service, have been required as part of the official uniform for many Service personnel. The Administrative Manual for the INS outlines the uniform requirements for Service personnel. INS Administrative Manual 2415.04 et seq. These requirements often include the wearing of insignia, for identification and morale purposes. (See for example: section 2415.04, immigrant inspectors, section 2415.31 V and VI, border patrol; section 2415.54, detention officers; section 2415.63, deportation officers.)

The type of insignia mandated by the Acting Commissioner's memorandum of September 4, 1980 is no different from other insignia currently required as part of the official uniform for different Service personnel. Therefore, procurement procedures for the insignia in question should not differ from those already established for other insignia. Although the INS Administrative Manual section on Border Patrol uniforms (2415.31) does not contain an insignia procurement procedure, the Immigrant Inspector Uniforms section does. INS Administrative Manual 2415.04.3 states:

Requisitioning Uniform Insignia. Badges, cap insignia, shoulder sleeve emblems (patches) and length of service stars shall be requisitioned from the Central Office on form G-514. The quantity ordered and on hand shall not exceed a one (1) year supply. They will be issued by the regions to Service employees required by existing regulations to wear a uniform. When employees are transferred to positions not requiring a uniform, or are separated from the Service, they must return to the region their badges and cap devices.

This clause seems to indicate that required uniform insignia are purchased through the Central Office using the general uniform appropriation, and are then provided to the uniform employee as part of the uniform allotment.

This procedure is consistent with general uniform policy for government employees formulated by the Comptroller General.

The Comptroller General considered whether the special clothing and equipment purchase authorization provision contained in 60 stat. 809 (1946) (attached) covered the purchase of uniforms for CAA personnel. In holding that it did, the Comptroller General outlined a test for determining the propriety of furnishing special clothing and equipment for government employees:

"where such equipment is essential to the safe and successful accomplishment of the work involved and primarily for the benefit of the government, payment may be made from appropriations otherwise available therefor; but that on the other hand, if the equipment be solely for the protection of the employee without resulting benefits to the government, and such as the employee might be expected to furnish as a part of the official uniform of his position, appropriated funds would not be available for the purchase of thereof."

32 Comp. Gen. 229, 231. (1952).

90 Stat. 809 (1946) provides for the purchase of special clothing "for the protection of personnel in the performance of their assigned tasks." On its face, this statute is more restrictive than the current uniform allowance statute, 5 U.S.C. 5901 (1966) which authorizes uniform appropriations "on a showing of necessity or desirability." Yet the Comptroller General allowed a fairly liberal application of the 1946 uniform provision in the above case, leaving the determination of "essential", "safe and successful", and "benefit" to the government, to the agency head. (See also 45 Comp. Gen. 215 (1965)).

Currently, under 5 U.S.C. 5901, the agency or department head must determine that a group of employees is required to wear a uniform, and that such a requirement is necessary or desirable, and inures to the benefit of the government. See 57 Comp. Gen. 379 (1978). The agency head may also specify the particular components of the required uniform. In the case at hand, the agency head has already determined that an identifying Border Patrol uniform is required, necessary, and benefits the government. See INS Administrative Manual 2415.31. The Acting Commissioner has directed that a military collar insignia be part of the required uniform for Border Patrol agents.

In his memo of September 4, 1980, the Acting Commissioner determined that supervisory and staff Border Patrol agents were required to wear military collar insignia as part of the already prescribed uniform. The stated purpose of the insignia is "[t]o enhance recognition...among the general public." This purpose is arguably necessary and/or desirable. It also arguably benefits the government rather than the individual employee. Thus, the memo may satisfy the agency head's burden, under 5 U.S.C. 5901, of showing necessity/desirability in order to be included in the uniform allowance.

Furthermore, the Acting Commissioner's memorandum indicates that funds for the new military collar insignia will come out of the general uniform fund at Central Office General Services. The memo contemplates that INS will furnish the required insignia to the appropriate personnel. The INS will furnish the insignia to those personnel to whom the INS currently furnishes other required uniform components. Those employees who currently receive a cash uniform allowance however, will be expected to purchase the required insignia from their uniform allowance funds.

The policy for maintenance and replacement of lost insignia should be the same as that in effect for any other standard items included in the prescribed uniform for Border Patrol agents.

If you have any questions regarding this opinion, please contact William P. Joyce of this office at 6333197.

Attachment

cc:

CO 988.1

WF-Opinions

WF-Border Patrol Matters

GENCO Log

Reading

COCOU:WPJoyce:gak 8/27/81

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