

OPINION NO. 98-030**Syllabus:**

An individual who has been issued a clemency discharge from the United States Navy pursuant to Presidential Proclamation No. 4313 of September 16, 1974, following his discharge under conditions other than honorable, has not been honorably discharged for purposes of R.C. 5901.02, and does not, therefore, pos-

sess the requisite qualifications to serve as a member of a veterans service commission.

To: David E. Aldstadt, Director, Governor's Office of Veterans Affairs, Columbus, Ohio
By: Betty D. Montgomery, Attorney General, August 24, 1998

You have asked whether a person serving as a veterans service commissioner, who was discharged with a DD Form 214N, Discharge Certificate, with a character of service marked "under conditions other than honorable," may continue to serve as a member of a veterans service commission. The information attached to your request indicates that this individual was originally granted a discharge from the United States Navy, which characterized his service as "honorable." The discharge "under conditions other than honorable," referred to in your question, was granted for a subsequent period of service in the United States Navy. Additional information has been provided to us that shows that, following the latter discharge, the individual received a DD Form 1953N, "clemency discharge," issued pursuant to Presidential Proclamation No. 4313. Pursuant to Form 215N, the latter discharge was amended by the addition of the DD Form 1953N.

In order to answer your question, we must begin by examining the requirements for appointment to a veterans service commission. Pursuant to R.C. 5901.02, each county has a veterans service commission composed of five persons. Each person must be a resident of the county and, at the time of appointment or reappointment, may not be "an employee of the commission or hold an elective or other appointive office of the county served by the commission." R.C. 5901.02. Moreover, "[e]ach person on the commission shall be an *honorably discharged* or *honorably separated* veteran." *Id.* (emphasis added).

R.C. 5901.01(A) defines "veteran," for purposes of R.C. 5901.02, as meaning, "a former member of the armed forces of the United States who served on active military duty and received an *honorable discharge* or *honorable separation*, a member of the armed forces of the United States who died on active military duty, or a member of the armed forces of the United States missing in action more than ninety days." (Emphasis added.) In order to be eligible for appointment to a veterans service commission under R.C. 5901.02, therefore, an individual must be a veteran who has been "honorable discharged" or "honorable separated."

The terms "honorable discharged" and "honorable separated," as used in R.C. 5901.02, are not defined by statute. Prior opinions of the Attorney General, however, have adopted the definition of the term "honorable discharge," now appearing in *Black's Law Dictionary* 736 (6th ed. 1990), which states in part: "[a] formal final judgment passed by the government upon the *entire* military record of a soldier, and an authoritative declaration by the government that he has left the service *in a status of honor*." (Emphasis added.) See, e.g., 1991 Op. Att'y Gen. No. 91-006; 1988 Op. Att'y Gen. No. 88-078 at 2-388 n. 5. Because this definition of "honorable discharge" refers to a soldier's *entire* military record, these opinions have determined that all parts of a soldier's military record should be examined in order to determine whether he has "left the service in a status of honor."¹ *Black's Law Dictionary* at

¹ As explained in 1988 Op. Att'y Gen. No. 88-078 at 2-388:

Inasmuch as 32 C.F.R. 45.3(b)(3) authorizes the issuance of a DD Form 214 for numerous changes of status, including reenlistment, a veteran may separate from military service with several DD Forms 214. The charac-

736. In those instances in which a person has received an honorable discharge, followed by a later discharge under conditions other than honorable, prior opinions have found the record of that person, when viewed in its entirety, to constitute less than an honorable discharge. See, e.g., 1988 Op. Att'y Gen. No. 88-078 (expressly reserving opinion on the effect of a DD Form 214 indicating an honorable discharge *subsequent* to a discharge under less than honorable conditions); 1940 Op. Att'y Gen. No. 2422, vol. I, p. 595, at 597 ("the dishonorable discharge has the effect of pervading the entire record ... so that the prior favorable enlistment is completely obscured").²

The individual about whom you ask initially received a discharge from the United States Navy that characterized his service as "honorable." For a subsequent period of service in the United States Navy, he received a discharge "under conditions other than honorable," followed by a "clemency discharge." We must, therefore, determine the effect of a "clemency discharge" on the person's military record to determine whether, based upon this person's entire military record, the person left the service in a status of honor.

The meaning of "clemency discharge," for purposes of the Naval Discharge Review Board,³ is explained in section 724.112 of Title 32 of the Code of Federal Regulations (C.F.R.) (1997), as follows:

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters."⁴ Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President's program, and has fully earned his/her return to the mainstream of American Society in accordance with that program.

(b) *The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of*

ter of service designation on a particular DD Form is determined solely by the veteran's military record during the current enlistment or period of service to which the separation pertains. Therefore the character of service noted on one DD Form 214 may be "Honorable" for one period of service and "Under Less Than Honorable Conditions" on another DD Form 214 for the same veteran's subsequent period of service. (Various citations and footnote omitted.)

² Although these earlier opinions considered the meaning of the term "honorable discharge," as used in R.C. 5901.01(A) (defining "veteran"), we have no basis for distinguishing between the receipt of an "honorable discharge" and being "honorably discharged" for purposes of R.C. 5901.02. We, therefore, find the analysis of what constitutes an "honorable discharge" to apply equally to the meaning of the term "honorably discharged," as used in R.C. 5901.02.

³ 32 C.F.R. Part 724 concerns the Naval Discharge Review Board.

⁴ Proclamation No. 4313 of Sept. 16, 1974, 39 Fed. Reg. 33293; Proclamation No. 4345 of Jan. 30, 1975, 40 Fed. Reg. 4893; Proclamation No. 4353 of February 28, 1975, 40 Fed. Reg. 8931, *reprinted as amended* in 50 U.S.C.S. § 462 app. at 469-71 (1996) (History; Ancillary Laws and Directives - Other provisions).

the individual's military service as [having] been under other than honorable condition, nor does it [serve] to change, seal, erase or in any way modify the individual's past military record. Therefore, if the underlying discharge was issued as a result of a general court-martial, the issuance of a Clemency Discharge does not subject the underlying characterization to review under 10 U.S.C. 1553. Clemency discharges are issued by the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps when an individual has met the requirements of the Presidential Proclamation. (Footnote and emphasis added.)

Thus, pursuant to 32 C.F.R. 724.112(b), the issuance of a clemency discharge to an individual who has been discharged from naval service under conditions other than honorable does *not* effect a change in the characterization of that service. Accordingly, although the person you describe was issued a clemency discharge after his discharge under conditions other than honorable, such clemency discharge does not "effect a change in the characterization of the individual's military service as [having] been under other than honorable condition." 32 C.F.R. § 724.112(b).

Because the clemency discharge issued to the individual you describe does not effect a change in the characterization of this person's second period of service as "under conditions other than honorable," this characterization remains as part of the person's military record. Moreover, although the individual's military record now includes a clemency discharge, such a discharge is a "neutral discharge, neither honorable nor less than honorable." 32 C.F.R. § 724.112(b).

Examination of the entire period of service rendered by the individual you describe thus requires consideration of the individual's discharge "under conditions other than honorable." Based upon the reasoning of both 1988 Op. Att'y Gen. No. 88-078 and 1940 Op. Att'y Gen. No. 2422, vol. I, p. 595, that a discharge under conditions other than honorable has "the effect of pervading the [individual's] entire record," 1940 Op. Att'y Gen. No. 2422 at 597, we find that an individual who has been discharged from military service under conditions other than honorable, although later issued a clemency discharge pursuant to Presidential Proclamation No. 4313 for that period of service, has not been honorably discharged for purposes of R.C. 5901.02, and does not, therefore, possess the requisite qualifications to serve as a member of a veterans service commission.

Based on the foregoing, it is my opinion, and you are hereby advised that, an individual who has been issued a clemency discharge from the United States Navy pursuant to Presidential Proclamation No. 4313 of September 16, 1974, following his discharge under conditions other than honorable, has not been honorably discharged for purposes of R.C. 5901.02, and does not, therefore, possess the requisite qualifications to serve as a member of a veterans service commission.