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SOLDIER — DISMISSED FROM MILITARY SERVICE BY DISCHARGE CERTIFICATE — UNITED STATES ARMY REGULATIONS — “BLUE DISCHARGE” — SUCH SOLDIER WITHIN PURVIEW OF SECTION 2930 ET SEQ., G. C. — IF OTHERWISE ELIGIBLE, ENTITLED TO RELIEF AT HANDS OF SOLDIERS’ RELIEF COMMISSION.

SYLLABUS:

A soldier who has been dismissed from military service by a discharge certificate designated by United States Army regulations as a “blue discharge” comes within the purview of Section 2930 et seq. General Code, and if otherwise eligible, is entitled to relief at the hands of the soldiers’ relief commission.

Columbus, Ohio, December 12, 1944

Division of Soldiers’ Claims and Records

Columbus, Ohio

Gentlemen:

I have before me the request for my opinion from Mr. Wade C. Christy, Supervisor of your Division, such request reading as follows:

“Kindly give me an opinion on Section 2934, ‘Laws of Ohio Governing Soldiers’ Relief’ which lists persons entitled to relief but does not specify that the soldier shall be honorably discharged.

We are having requests for relief from soldiers with blue discharges which are used when the enlisted man has neither honorable or dishonorable discharge, but is used in cases where service has not been honest and faithful or where a character of ‘FAIR’ or ‘POOR’ is given, and in which a dishonorable discharge cannot be given.”

The Soldiers’ Relief Commission was established under the provisions of Section 2930 to Section 2941, inclusive, General Code. Section 2934 is the only section in the act which appears to set out the qualifications of those to whom the relief shall be granted. This section reads as follows:

“Each township and ward soldiers’ relief committee shall receive all applications for relief under these provisions, from applicants residing in such township or ward, examine carefully into the case of each applicant and on the first Monday in May in each year make a list of all needy soldiers, sailors and marines, and of their needy parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried, but again have become needy widows, who reside in such township or ward, and including the soldiers, sailors and marines of the Spanish-American war, or of the world war and their wives, widows, needy parents, minor children and wards, who have been bona fide residents of the state one year, and of the county six months, next prior to such first Monday in May, and who, in the opinion of such relief committee, require aid, and are entitled to relief under these provisions.”

It will be noted that this section prescribes that the list of applicants for relief shall include “all needy soldiers, sailors and marines” etc. Aside from the requirements as to residence there are no other prescribed qualifications except that the applicant shall be “needy.” The statute formerly read “indigent.” Giving full force to the words “*all* needy soldiers, sailors and marines”, it would seem that the relief was intended to be extended to all persons who had been in the army or navy or marine corps, without discrimination as to the quality of their service or the circumstances under which it had been terminated.

However, in an opinion which I rendered on June 18, 1940, found in Opinions, Attorney General, 1940, p. 595, and being No. 2422, it was held:

“An applicant for soldiers’ relief must be able to exhibit to the Soldiers’ Relief Commission an honorable discharge, based on the records and rolls of the Adjutant General of the United States Army up to and including the date of the application for relief.”

The question then before me arose out of an application by one who had been *dishonorably* discharged from the army. He had previously served an enlistment in the army and had been honorably discharged therefrom but later re-enlisted, and shortly thereafter deserted and was dishonorably discharged. He presented his former honorable discharge in support of his application for relief. The question before me, therefore, was merely whether a man who had been dishonorably discharged, should be entitled to relief under the Soldiers’ Relief Act. In arriving at my con-

clusion in that case, I relied largely upon the provisions of Section 2949 General Code, which reads in part as follows:

“The word ‘Soldier’ shall mean: An honorably discharged soldier, sailor or marine, who served in the army or navy of the United States of America.”

That definition is not found in the act establishing and regulating the soldiers’ relief commission but is found in a later act which provides for soldiers’ burial at the county’s expense and commits the duty of providing a burial plot and administering the act to the soldiers’ relief commission. It was then considered that that definition indicated the legislature’s intent to confine the benefits of both acts to one who had received an honorable discharge.

In the course of that opinion attention was called to the fact that a soldier who has been found guilty of the crime of desertion forfeits all right to a pension, his savings in the pay department of the army, his right of admission to a soldiers’ home, and his citizenship. It might have been added that no one receives a dishonorable discharge except as a result of the sentence of a court-martial.

It was not necessary in rendering the opinion aforesaid, to hold affirmatively that one who seeks the benefits of the soldiers’ relief act must be able to present an honorable discharge. It would have been sufficient to hold, and in my present judgment, more accurate to hold that one who has been dishonorably discharged, cannot qualify for such relief.

In a later opinion rendered May 31, 1944, and being No. 6951, I held that one who has received a “certificate of service” which is not in terms an honorable discharge but which shows that he has served in the military forces of the United States and has been honorably relieved from active federal service or transferred to the enlisted reserve corps, should be eligible for assistance under the provisions of the act in question, and the former opinion was to that extent modified. The effect of that later holding was that such certificate of service was for all practical purposes equivalent to an honorable discharge.

From information which you have submitted, I find that the Administrator of Veterans’ Affairs on January 21, 1944, issued a bulletin from

which I quote the following:

"1. An honorable discharge or discharge under honorable conditions is a condition precedent to entitlement to pension under Veterans Regulation No. 1 (a), Parts I and II, as amended.

2. As to W.D., A.G.O. Form No. 56 (blue), Discharge from the Army of the United States, the Acting Adjutant General, War Department, under date of December 28, 1943, advised as follows:

'A blue discharge certificate (WD AGO Form No. 56) is neither honorable nor dishonorable, but one that sets forth the fact of discharge. It may not be accepted as showing discharge under honorable conditions. This form is used in all cases where service has not been honest and faithful, or where a character of 'Fair' or 'Poor' is given, and in which a dishonorable discharge cannot be given.'

3. Accordingly a soldier who is issued a blue discharge (WD AGO Form No. 56) is not entitled to compensation or pension under Public No. 2, 73d Congress, as amended. However, the receipt of such discharge does not of itself bar him from being entitled to hospitalization or domiciliary care under the provisions of Regulations and Procedure R-6047 (E)."

From this it appears that while one who has received what is designated as a "blue discharge" is not entitled to a pension, he is nevertheless entitled to relief in the way of hospitalization and domiciliary care under the federal regulations.

A bulletin issued by the same administrator relative to naval discharges indicates that the navy uses three forms called "honorable", "ordinary" and "unfavorable" corresponding generally to the three employed by the army. It is obvious that some men are deficient in physical or mental endowments, or both, and not wholly responsible for the fact that they are useless or worse than useless as members of the military forces and must be thrown out of the army or navy. The "blue discharge" may include men of this class. In fact it doubtless includes a wide range of men who are not entitled to the honorable discharge and yet not deserving of the dishonorable.

The definition of "soldier" given in Section 2949 General Code, may quite appropriately apply to the burial of a soldier at public expense because such burial is by way of doing honor to one who has earned the

right to be honored. It is not relief, in any sense. That definition does not seem so appropriate in a statute designed solely for giving relief to indigent soldiers and their dependents and the legislature has not seen fit to adopt it. Relief is not administered for the sake of bestowing an honor upon one who has earned the right to it, but grows out of the humane impulse to relieve distress due to poverty, disease and other misfortune.

Having in view, therefore, the language of Section 2934 above quoted, which appears to provide for relief to *all needy* soldiers, sailors and marines and their dependents, and having in mind also the well established principle that relief acts are to be liberally construed, I feel compelled to modify my 1940 opinion and to hold that a soldier who has been dismissed from military service by a discharge certificate designated by United States Army regulations as a "blue discharge" comes within the purview of Section 2930 et seq. General Code, and if otherwise eligible, is entitled to relief at the hands of the soldiers' relief commission.

Respectfully,

THOMAS J. HERBERT

Attorney General