

## OPINION NO. 88-078

## Syllabus:

1. A veteran's entire military record determines eligibility for veteran's benefits under Ohio law.
2. The board of trustees of the Ohio Veterans' Home may promulgate a rule prescribing the evidence required to demonstrate that a veteran is honorably discharged based upon the veteran's entire military record.
3. Since a DD Form 214 may cover a period of less than a veteran's entire term of military service, all DD Forms 214 or their equivalents documenting any portion of a veteran's military service may be relied upon as a veteran's entire military record for purposes of determining eligibility for veteran's benefits under Ohio law.
4. For purposes of R.C. 5907.04 and 9 Ohio Admin. Code 5907-3-01, a veteran does not qualify as "having been honorably discharged," and is thus ineligible for admission to the Ohio Veterans' Home, when a DD Form 214 for the veteran's final period of service indicates the character of his service as "Under Conditions Other Than Honorable," notwithstanding a DD Form 214 for a prior period of service that indicates the character of his service as "Honorable."

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To: Kenneth M. Mahan, Vice Chairman, Board of Trustees, Ohio Veterans' Home,  
Sandusky, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

I have before me your request on behalf of the board of trustees of the Ohio Veterans' Home for my opinion regarding eligibility for admission to the Ohio Veterans' Home. Specifically you ask:

When an individual receives both an "Honorable Discharge" and a "Discharge Under Conditions Other Than Honorable" from the United

States Armed Forces as documented by different "Armed Forces of the United States Report of Transfer or Discharge DD214 forms", which discharge classification is controlling for determining admission to the Ohio Veterans' Home pursuant to R.C. 5907.04 and 9 Ohio Admin. Code 5907-3-01?

Eligibility for admission to the Ohio Veterans' Home is established by R.C. 5907.04, which states, in relevant part:

All members of the armed forces, who served in the regular or volunteer forces of the United States or the Ohio national guard or members of the naval militia during the war with Spain, the Philippine insurrection, the China relief expedition, the Indian war, the Mexican expedition, World War I, World War II, or during the period beginning June 25, 1950 and ending July 19, 1953, said period being known as the Korean conflict, or during the period beginning August 5, 1964, and ending July 1, 1973, said period being known as the Vietnam conflict, or any person who is awarded either the armed forces expeditionary medal established by presidential executive order 10977 dated December 4, 1961, or the Vietnam service medal established by presidential executive order 11231 dated July 8, 1965, who have been honorably discharged or separated under honorable conditions therefrom, or any discharged members of the Polish and Czechoslovakian armed forces who served in armed conflict with an enemy of the United States in World War I or World War II who have been citizens of the United States for at least ten years, provided that the above-mentioned persons have been citizens of Ohio for five consecutive years or more at the date of making application for admission, are disabled by disease, wounds, or otherwise, and are by reason of such disability incapable of earning their living, and all members of the Ohio national guard or naval militia who have lost an arm or leg, or their sight, or become permanently disabled from any cause, while in the line and discharge of duty, and are not able to support themselves, may be admitted to the Ohio veterans' home under such rules as its board of trustees adopts.

Pursuant thereto, the board of trustees has promulgated a rule regulating admissions, at 9 Ohio Admin. Code 5907-3-01, which states:

Admission to the Ohio veterans home shall be subject to the following provisions:

(A) Any person admitted to the Ohio veterans home shall be a resident of the state of Ohio.

(B) *Any person admitted to the Ohio veterans home shall have received a discharge under honorable conditions from military service.* Any person admitted shall have served in the Ohio national guard or naval militia or shall have served during a war, declared emergency, or armed conflict, as provided by section 5907.04 of the Revised Code.

(C) Admission of an applicant with service during a war, declared emergency, or armed conflict, shall be only upon the determination by a licensed physician of a disability by reason of disease, wounds or otherwise which prevents the applicant from earning his living and subsequent confirmation of such determination by a physician appointed by the Ohio veterans home. Admission of an applicant with service in the Ohio national guard or naval militia shall be only upon the determination of a licensed physician that such applicant, in the line and discharge of duty in such service, has lost an arm, leg, or eyesight, or has otherwise become permanently disabled from any cause and is unable to support himself; such determination shall be subject to subsequent confirmation by a physician appointed by the Ohio veterans home.

(D) Priority of admission to the Ohio veterans home or assignment to a position on the waiting list shall be based upon the date of an approved application meeting the requirements set forth in this rule without regard to the income of an applicant for admission or

to his ability to pay assessed fees, provided, however, that priority of admission shall be given to applicants who served in Ohio military organizations. (Emphasis added).

According to information you provided, except for the questionable honorable discharge, the individual under discussion clearly meets the eligibility requirements of R.C. 5907.04 and rule 5907-3-01. You indicate that the veteran under consideration possesses a valid Armed Forces of the United States Report of Transfer or Discharge DD Form 214<sup>1</sup> which states the veteran was honorably discharged after completing a portion of his enlistment and immediately reenlisting.<sup>2</sup> After admitting the veteran to the Ohio Veterans' Home, you were informed by the U.S. Veterans Administration that subsequent to the period covered by the original DD Form 214 indicating an "honorable discharge" the veteran failed to complete his reenlistment obligation. A second DD Form 214 indicating discharge under conditions other than honorable was issued. The second DD Form 214 prompted you to question whether the veteran is a "member of the armed forces...who [has] been honorably discharged or separated under honorable conditions therefrom" and thus eligible for admission to the Ohio Veterans' Home.

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<sup>1</sup> 32 C.F.R. Part 45 prescribes Certificate of Release or Discharge From Active Duty (DD Form 214/5 Series). The purpose of the form is to:

record and report the transfer of or separation of military personnel from a period of active duty....

DD Form 214 and 215 (or their substitutes) will provide:

- (1) *The Military Services* with a source of information relating to military personnel for administrative purposes, and for making determinations of eligibility for enlistment or reenlistment.
- (2) *The service member* with a brief, clear-cut record of the member's active service with the Armed Forces at the time of transfer, release, or discharge, or when the member changes status or component while on active duty.
- (3) *Appropriate governmental agencies* with an authoritative source of information which they require in the administration of Federal and State laws applying to personnel who have been discharged, otherwise released, or transferred to a Reserve component of the Military Services.

32 C.F.R. §45.2(b).

<sup>2</sup> A DD Form 214 may be issued under various circumstances. Several are outlined by 32 C.F.R. §45.3(b)(3) which states:

Members who change their status or component as outlined below, while they are serving on active duty will be provided a completed DD Form 214 upon:

- (i) *Discharge for immediate enlistment or reenlistment* (optional - at the discretion of the Military Services). However, Military Services not providing the DD Form 214 will issue instructions requiring those military offices which maintain a member's records to provide necessary Service data to the member for application to appropriate civilian individuals, groups, and governmental agencies. Such data will include Service component, entry date and grade.
- (ii) Termination of enlisted status to accept an appointment to warrant or commissioned officer grade.
- (iii) Termination of a temporary appointment to accept a permanent warrant or commission in the Regular or Reserve components of the Armed Forces.
- (iv) Termination of an officer appointment in one of the Military Services to accept appointment in another Service. (Emphasis added.)

R.C. 5907.04 clearly permits the board of trustees of the Ohio Veterans' Home to adopt rules governing the admission of veterans to the home. The board of trustees thus has the inherent power to promulgate a rule enumerating the evidence required to establish that a veteran has been "honorably discharged" as that term is used in R.C. 5907.04. As the rule exists today, no such specific criterion exists. Absent such a rule, admission to the Ohio Veterans' Home is to be guided by the principles set forth in this opinion.

No language in R.C. Chapter 5907 defines "honorably discharged." Nor is "honorably discharged" defined in other sections of the Revised Code, despite the frequent usage of the term and related terms in Ohio law. *See, e.g.*, Ohio Const. Art. VIII, §2b, 2d and 2j; R.C. 317.24; R.C. 5901.01; R.C. 5903.03. Absent a statutory definition of "honorable discharge," it should be accorded its ordinary meaning unless, in the context in which it is used, a more technical meaning is appropriate. R.C. 1.42; *Carter v. Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946).<sup>3</sup>

The term "honorable discharge" has been defined as "[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.) *Black's Law Dictionary* 663 (5th ed. 1979)<sup>4</sup>. The definition of "military discharge" states, in relevant part:

The release or dismissal of a soldier, sailor, or marine, from further military service, either at the expiration of his term of enlistment, or previous thereto on special application therefor, or as a punishment. An "honorable" discharge is one granted at the end of an enlistment and accompanied by an official certificate of good conduct during the service.

*Black's Law Dictionary* 417 (5th ed. 1979).

The requirement that a soldier's entire military record must be reviewed to determine eligibility for Ohio veteran's benefits was adopted in 1940 Op. Att'y Gen. No. 2422, p. 595, which had a factual background nearly identical to the instant facts. There, a soldier had enlisted and was honorably discharged. He subsequently reenlisted, deserted and was dishonorably discharged. Thereafter he applied to the county Soldiers' Relief Commission for benefits, presenting his honorable discharge in support of his application. The opinion treated the soldier as having been dishonorably discharged:

It would therefore be illogical to assume that a dishonorably discharged soldier, as shown by the rolls and records of the United States Army, would be entitled to any monetary assistance from a political subdivision of this state, in view of the fact that the Congress of the United States has seen fit by legislative enactment to deprive him by reason of his army record, of all federal benefits, privileges and emoluments. The instrument presented to the Soldiers' Relief

<sup>3</sup> Inasmuch as the General Assembly has established rules of construction at R.C. 1.41 through R.C. 1.59, I decline to follow the decision in 1935 Op. Att'y Gen. No. 4261, p. 566 to give the term "honorably discharged" the meaning placed upon it by the military departments of the federal government.

<sup>4</sup> This definition is derived from *United States v. Kelly*, 82 U.S. (15 Wall.) 34 (1873). Accord, *McTaggart v. Secretary of the Air Force*, 458 F.2d 1320 (7th Cir. 1972); *In re Fong Chew Chung*, 149 F.2d 904 (9th Cir. 1945); *Olenich v. Brucker*, 173 F. Supp. 493 (D.D.C. 1959); *Bernstein v. Herren*, 136 F. Supp. 493 (S.D. N.Y. 1956); *Griffin v. US*, 115 F. Supp. 509, 514 (W.D. Ark. 1953), *rev'd on other grounds*, 216 F.2d 217 (8th Cir. 1954), *cert. den.* 348 US 929(1955); *Ex parte Drainer*, 65 F. Supp. 410 (N.D. Cal. 1946), *aff'd*, 158 F.2d 981 (9th Cir. 1947).

Commission is merely an integral part of the applicant's army record; for its authenticity reference must be made to the official records in the Adjutant General's Office. When a reference is made and the record is viewed in its entirety the dishonorable discharge has the effect of pervading the entire record of the applicant, so that the prior favorable enlistment is completely obscured and is of no consequence either for the purpose of federal relief or state relief. The applicant's record certainly can have no greater weight with the Soldiers' Relief Commission than it does with Federal Government.

1940 Op. No. 2422, at p. 597.

Likewise, I find that the record of the veteran which is the subject of this opinion, when viewed in its entirety, constitutes less than an honorable discharge. The subsequent discharge "Under Conditions Other Than Honorable" colors the veteran's entire record.<sup>5</sup>

Every member of the U.S. military services is entitled to proof of his discharge upon separation from active duty. 10 U.S.C. §1168. DD Form 214 - Certificate of Release or Discharge From Active Duty is used to satisfy the requirements of 10 U.S.C. §1168. 32 C.F.R. §45.1. The regulations explicitly recognize that "[t]he DD Forms 214 and 215 are a source of significant and authoritative information used by civilian and governmental agencies to validate veteran eligibility for benefits." 32 C.F.R. §45.4(a). For purposes of Ohio veteran's benefits law the DD Form 214 is the most important evidence for determining eligibility for benefits. One of my predecessors has stated:

The record most important for preservation is one which gives data regarding *active service*, since the length and character of active service is the crucial consideration in determining whether a person is entitled to veteran's benefits under our laws. DD Form 214 contains such information and its recording is, therefore, of manifest importance. In many cases this is the only instrument which provides such information with respect to type of transfer or discharge, character of service, length of service, selective service board, enlistment data, home of record at time of entry into active service, decorations, allotments, and the authentication, that a person being transferred from *active* to *reserve* duty receives.

1957 Op. Att'y Gen. No. 606, p. 191, 195. See also 1945 Op. Att'y Gen. No. 559, p. 715 (any instrument accompanying military discharge is entitled to be recorded as it "may be of great value to the discharged member of the forces, in determining his rights to certain benefits provided by law", at 716); 1945 Op. Att'y Gen. No. 514, p. 661 (any instrument issued by the military authorities to evidence military discharge is entitled to be recorded as it may be used to fix rights to veteran's benefits).

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 character 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. *Keef v. United States*, 185 Ct. Cl. 454 (1968); 32 C.F.R. Part 41, App. A, Part 2(C)(2)(c).<sup>6</sup> 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.

<sup>5</sup> I expressly reserve my opinion on the effect of a DD Form 214 indicating an "Honorable" discharge subsequent to a discharge under less than honorable conditions.

<sup>6</sup> This limitation on discharge characterization was codified as 32 C.F.R. Part 42 (1964); 28 Fed. Reg. 1796 (1963).

Thus, a single DD Form 214, unless it covers the veteran's entire period of military service, may not be relied upon to determine veteran's benefits under Ohio law. If multiple DD Forms 214 were issued for a veteran's various periods of military service, all such DD Forms 214 must be reviewed. Together, all the DD Forms 214 or their equivalents for a particular veteran may be relied upon to determine the veteran's benefits under Ohio law.

Therefore, it is my opinion, and you are so advised that:

1. A veteran's entire military record determines eligibility for veteran's benefits under Ohio law.
2. The board of trustees of the Ohio Veterans' Home may promulgate a rule prescribing the evidence required to demonstrate that a veteran is honorably discharged based upon the veteran's entire military record.
3. Since a DD Form 214 may cover a period of less than a veteran's entire term of military service, all DD Forms 214 or their equivalents documenting any portion of a veteran's military service may be relied upon as a veteran's entire military record for purposes of determining eligibility for veteran's benefits under Ohio law.
4. For purposes of R.C. 5907.04 and 9 Ohio Admin. Code 5907-3-01, a veteran does not qualify as "having been honorably discharged," and is thus ineligible for admission to the Ohio Veterans' Home, when a DD Form 214 for the veteran's final period of service indicates the character of his service as "Under Conditions Other Than Honorable," notwithstanding a DD Form 214 for a prior period of service that indicates the character of his service as "Honorable."