

ARMED SERVICES OF UNITED STATES—ANY PERSON WHO LEFT STATE EMPLOY TO ENTER ARMED SERVICES IS ENTITLED TO RECEIVE THE INCREASE IN SALARY OR WAGE GRANTED UNDER HOUSE BILL 227, 95 GENERAL ASSEMBLY, FOR SUCH PERIOD OF TIME AMENDED. SENATE BILL 1, 96 GENERAL ASSEMBLY IS OPERATIVE—REQUIREMENT—HONORABLE DISCHARGE OR OTHER EVIDENCE OF COMPLETION OF MILITARY SERVICE.

SYLLABUS:

Any person who left the employ of the state to enter the armed services of the United States, as such term is defined in Amended Senate Bill No. 1 of the 96th General Assembly, is entitled to receive, upon his return to the state service after an honorable discharge, or other evidence showing satisfactory completion of his military service, the increase in salary or wage granted to him under House Bill No. 227 of the 95th General Assembly, for such period of time as said Amended Senate Bill No. 1 is operative.

Columbus, Ohio, May 19, 1945

Mr. Delbert H. Glaser, Personnel Supervisor, Department of Highways
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

“Will you please advise me regarding the proper action to take in the matter of a returning Serviceman who would take up the same position in the State service that he held prior to his induction, relative to House Bill 227 where the employee was not on the State Payroll as of the effective date of this Bill.

Is there anything in the law that specifically gives the Serviceman all accrued benefits that may have come to his position in his absence? If such should be the case, would he not be entitled to the 10% increase under House Bill 227?”

The salary and wage adjustment provisions of House Bill No. 227 of the 95th General Assembly, contain the following language:

"The temporary increases in compensation herein authorized shall not be paid to former employes who are not in the service of the state upon the date this act is filed in the office of the Secretary of State, except where those employes have left the employ of the state to serve in any branch of the armed forces of the United States."

The above provisions, which in express terms denied to former employes of the state who were not in the state service on the date that said act was filed in the office of the Secretary of State, the salary and wage increases prescribed therein, specifically excepted those who left the service of the state to enter the armed forces of the United States. Therefore, the salary and wage increases provided for in said House Bill No. 227 were granted to such latter persons.

Paragraph (a) of the salary and wage adjustment provisions contained in Amended Senate Bill No. 1 of the 96th General Assembly, reads in part:

"All state employes in the service of the state on the effective date of this act shall continue to receive during the period this act is operative, the increase in salary or wage granted to or received by them in accordance with the salary and wage adjustment provisions of House Bill 227 of the 95th General Assembly."

From the above it will be noted that all state employes who were in the service of the state on the effective date of Amended Senate Bill No. 1 (January 5, 1945), are entitled to receive during the period that said act is operative the salary and wage increases granted under said House Bill No. 227. Since, as above pointed out, the increases prescribed in the salary and wage adjustment provisions of House Bill No. 227 were granted to former employes who left the service of the state to enter the armed forces, even though such persons were not in the service of the state on the date that said House Bill No. 227 was filed in the office of the Secretary of State, such persons would clearly be entitled to said increases if they were in the service of the state on the effective date of Amended Senate Bill No. 1.

However, your question deals not only with those persons who left the employ of the state to enter the armed forces and who were after their

discharge reemployed by the state and were in the service of the state on January 5, 1945, but also with those who left the state service for the armed forces and who were not in the service of the state on said date.

Standing alone, the above language of paragraph (a) of Amended Senate Bill No. 1 would deny to such latter persons the salary and wage increases granted to them under House Bill No. 227. In this connection, however, there remains additional language which I feel must be considered in resolving your question in so far as it affects such persons.

In regard thereto, your attention is directed to the following language which appears in the salary and wage adjustment provisions of Amended Senate Bill No. 1:

“Any person who at the time he held or holds an office or position in the state service enlisted or enlists in the armed services of the United States subsequent to December 8, 1941, was or is commissioned in said armed services or was or is called into said armed services in consequence of an Act of Congress, the call of the President of the United States, or due to his status in the reserve forces, National Guard or other similar defense organizations, shall upon his return to the state service after an honorable discharge, or certificate, or other evidence showing satisfactory completion of his period of military service, be given credit for the period in which he served in such armed services as though such time were served in the course of his regular employment with the state.

The term ‘armed services’ of the United States, as used in this section, shall be deemed to include the following: Army, Navy, Marine Corps, Coast Guard, Auxiliary Corps as established by Congress, Army Nurse Corps, Navy Nurse Corps, Red Cross Nurse serving in the Army, Navy, or hospital service of the United States, and such other service as may now or hereafter be designated by the Congress of the United States as included therein.”

It will be observed from the above that any person who left state employment to enter the armed services, as such term is defined in the act, shall upon his return to state service after an honorable discharge or other evidence showing satisfactory completion of his military service, be given credit for the period in which he served in the armed services *as though such time were served in the course of his regular employment with the state.*

If a returned war veteran who formerly worked for the state is to be given credit for the period in which he served his country in the armed forces as though such time were served in the course of his regular employment with the state, it would seem to follow that he must be considered to have been "in the service of the state on the effective date of Amended Senate Bill No. 1", if on such date he was in the armed services. So considered, such veteran would, under the provisions of paragraph (a) of Amended Senate Bill No. 1, be entitled to the salary or wage increase granted to him in accordance with the salary and wage adjustment provisions of House Bill No. 227.

Looking to the object of the salary and wage adjustment provisions of Amended Senate Bill No. 1, and perceiving it to be one of an equitable and beneficial character, I feel that such provisions should be liberally construed, for the furtherance and attainment of such object. It certainly could not be regarded as either equitable or just, to say in face of the above language that our returning veterans who have suffered the hardships of battle and who have made not only heroic but also monetary sacrifices, should be denied benefits given to state employes who remained at home and lived in the comparative luxury and security of their own homes.

You are therefore advised that in my opinion any person who left the employ of the state to enter the armed services of the United States, as such term is defined in Amended Senate Bill No. 1 of the 96th General Assembly, is entitled to receive, upon his return to the state service after an honorable discharge, or other evidence showing satisfactory completion of his military service, the increase in salary or wage granted to him under House Bill No. 227 of the 95th General Assembly, for such period of time as said Amended Senate Bill No. 1 is operative.

Respectfully,

HUGH S. JENKINS

Attorney General