

OPINION NO. 91-006**Syllabus:**

A veteran who has received a United States military discharge designated "General (under honorable conditions)" has been "honorably discharged" for purposes of R.C. Chapter 5901, and if otherwise qualified, is eligible for assistance from a veterans service commission.

To: Paul F. Kutscher, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, January 11, 1991

I have before me your request for my opinion concerning the qualifications for the receipt of assistance from a veterans service commission under R.C. Chapter 5901. Specifically, you wish to know if R.C. Chapter 5901 recognizes a distinction between a veteran who has received an Honorable discharge and a veteran who has received a General discharge (under honorable conditions). Your question focuses upon the definition of "veteran" provided by R.C. 5901.01(A), which states: "'Veteran' means an *honorably discharged* member of the armed forces of the United States who served on active duty for reasons other than training." (Emphasis added.) To be eligible for the financial assistance provided for by R.C. 5901.02 through R.C. 5901.15, the applicant must be a needy veteran or enumerated relative of a needy veteran and be further qualified by residence in Ohio and the county. R.C. 5901.08.

Since your inquiry is narrowly focused upon discharges denominated by the United States military services as "Honorable" and "General (under honorable conditions),"¹ a brief examination of both are required. An "Honorable

¹ Every member of the military services of the United States who separates from the military services is given a completed Certificate of Release or Discharge From Active Duty DD Form 214, which describes the member's military service and the circumstances of termination. 10 U.S.C. §1158; 32 C.F.R. §45.3(b). The DD Form 214 requires the listing of "character of service, as appropriate." 32 C.F.R. §45.3(d)(9). Thus, every member of the military services receives a characterization of service upon termination of service. Separation status of a service member may be denominated by the U.S. military services as "Honorable," "General (under honorable conditions)," or "Under Other Than Honorable Conditions," "Bad Conduct," "Dishonorable" or "Uncharacterized." 32 C.F.R. Part 41, App. A, Part 2(C); 32 C.F.R. §45.3(d)(9).

32 C.F.R. Part 41, App. A describes the conditions under which the "Honorable," "General (under honorable conditions)," "Under Other Than

discharge is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.² 32 C.F.R. Part 41, App. A, Part 2(C)2b(1). A "General (under honorable conditions)" discharge is appropriate if "a member's service has been honest and faithful" even "when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record."³ 32 C.F.R. Part 41, App. A, Part 2(C)2b(2).

Thus, while there are several types of discharges which use the word "honorable" in their title, the federal government does not use the term "honorably discharged," which appears in Ohio law, as a description of any single type of discharge. Since the term "honorably discharged" is also not defined by Ohio statute, I concluded, in 1988 Op. Att'y Gen. No. 88-078, that the term should be interpreted according to the general meaning of those words, rather than giving them a technical meaning limited to a particular category of federal discharge. Accordingly, I determined "honorable discharge" to mean "[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 omitted.) Op. No. 88-078, at 2-387. "Honorable discharge" also means a "discharge...granted at the end of an enlistment and accompanied by an official certificate of good conduct during the service."⁴ *Id.* In comparison, a "dishonorable discharge" is "a dismissal from the service for bad conduct or as a punishment imposed by sentence of a court-martial for offenses against the military law." *Black's Law Dictionary* 463 (6th ed. 1990). The purpose of an honorable discharge is to show service in the military forces of the United States and that the service member "has been *honorably relieved* from active federal service." (Emphasis added.) See 1944 Op. Att'y Gen. No. 7249, p. 684, 686.

Inasmuch as your request letter specifically calls into question whether a veteran with a discharge characterized as "General (under honorable conditions)" is

Honorable Conditions" and "Uncharacterized" descriptions apply to an "enlisted member of a Military Service." 32 C.F.R. §41.6(a) (emphasis added). Other regulations control the descriptions of service characterization as applied to warrant or commissioned officers. See, e.g., U.S. Army reg. 635-100. In addition, discharges characterized as "Bad Conduct" or "Dishonorable" are punitive discharges adjudged by a court-martial. 10 U.S.C. §§818, 819; see also 1944 Op. Att'y Gen. No. 7249, p. 684, 686 ("no one receives a dishonorable discharge except as a result of the sentence of a court-martial").

² The Honorable Discharge is given to one who has satisfactorily performed military service, has earned "good" conduct and efficiency ratings and has not been convicted by a general court-martial nor by more than one special court-martial. If a member's record in the military has been good, this discharge will be given despite a few lapses. In reality, the Honorable Discharge suggests adequacy rather than excellence. Other forms of recognition (medals, commendations, promotions) distinguish the outstanding soldier from the mediocre.

Termination of Military Membership, The Military in American Society (MB) §5.01[1] (1978).

³ The General discharge (under honorable conditions) "is given to a person whose military record is not sufficiently untainted to warrant an Honorable Discharge, but who avoided the requisite breaches of satisfactory conduct to warrant a discharge under less than complimentary conditions." *Id.*

⁴ The meaning of honorable discharge as determined in 1988 Op. Att'y Gen. No. 88-078 was adopted from *Black's Law Dictionary* (5th ed. 1979). The current edition (6th ed. 1990) retains the definitions without change.

"honorably discharged" for purposes of R.C. 5901.01(A), an examination of the relevant rules of construction to be applied is required. Statutes granting assistance to the disadvantaged are generally given a liberal interpretation in favor of the applicants for assistance. See, e.g., *Thomas v. Huesman*, 10 Ohio St. 152, 156 (1859) ("[l]ooking thus at the object of the statute, and perceiving it to be one of an equitable character and beneficent tendency,...the same ought to be liberally construed, for the furtherance and attainment of such object"); *Beach v. Trustees of Marion Township*, 2 Ohio Dec. Repr. 221, 223 (C.P. Hancock County 1857) ("the acts...for the relief of the poor'...are to be liberally construed"). The general rule of construction is applicable to statutes that give assistance to needy veterans. 1944 Op. No. 7249, at 688 (soldiers' relief [now veterans assistance] "grows out of the humane impulse to relieve distress due to poverty, disease and other misfortune....[T]he well established principle [is] that relief acts are to be liberally construed"); 1944 Op. Att'y Gen. No. 6951, p. 306, 311 ("the statutes under consideration, being designed for the purpose of affording relief to 'all needy soldiers, sailors and marines' who have served in the military forces of the nation, are entitled to have a liberal construction").

Applying a liberal construction to "honorably discharged," as used in R.C. 5901.01, requires that it be read to broadly include all those veterans who were honorably discharged. "Honorably discharged" is, therefore, not restricted to just those veterans who have a service characterization of "Honorable" pursuant to United States military regulations.

When a discharge document does not expressly use the term "honorable discharge," it may still indicate that a veteran was "honorably discharged" for purposes of Ohio law so long as it does not indicate the circumstances as not honorable. Thus, in 1944 Op. No. 6951, at 312, a veteran was determined eligible for Ohio veterans' benefits without an Armed Forces of the United States Report of Transfer or Discharge DD Form 214, see n.1, *supra*, showing "Honorable" as the discharge characterization. Instead, the veteran's "certificate of service" which did not characterize the discharge at all, was deemed to show the veteran was "honorably discharged" because the form demonstrated "the fact of his honorable service and the termination thereof,...and having in mind the beneficent purpose of the Soldier's Relief Act, there could be no reason when he has thus completed his service for denying to him or to his dependents the relief provided." *Id.*

Moreover, in 1944 Op. No. 7249, at 684, one of my predecessors was asked whether a discharge document which was issued in cases where the soldier's⁵ "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" constituted an honorable discharge. That sort of discharge was described as being applied to "a wide range of men who are not entitled to the honorable discharge and yet not deserving of the dishonorable." 1944 Op. No. 7249, at 687. The term "honorable" was taken to mean one who is *not dishonorably discharged*. The effect of a discharge "which is not in terms an honorable discharge from active service...was for all practical purposes equivalent to an honorable discharge." *Id.* at 686. Therefore, even if an "honorable discharge" was not issued to a veteran, a veteran may be considered "honorably discharged" for purposes of assistance to veterans if the discharge granted does not indicate a service member was relieved from service under less than honorable conditions.

Based on the foregoing discussion, it is, therefore, my opinion, and you are hereby advised that a veteran who has received a United States military discharge designated "General (under honorable conditions)" has been "honorably discharged" for purposes of R.C. Chapter 5901, and if otherwise qualified, is eligible for assistance from a veterans service commission.