

OPINION NO. 71-056

Syllabus:

A veteran who has served two periods of active duty, the first period terminated by an honorable discharge, is eligible for soldiers' relief if the second period of service is terminated by a discharge, other than dishonorable, under which some Federal veteran benefits remain to him.

To: Dana L. Stewart, Adjutant General, Columbus, Ohio
By: William J. Brown, Attorney General, September 22, 1971

I have before me your request for my opinion which may be stated as follows:

May a veteran, qualified for soldiers' relief in terms of need and residence, who has served two periods of active duty, the first period terminated by an honorable discharge and the second period terminated by a dishonorable or less than honorable discharge, be eligible for soldiers' relief?

Section 5901.08, Revised Code, provides a list of persons entitled to such relief and reads, in pertinent part, as follows:

"Each township and ward soldiers' relief committee shall receive all applications for relief under Sections 5901.02 to 5901.15, inclusive, of the Revised Code, from applicants residing in such township or ward. Such committee shall 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, marines and airmen and of their needy parents, wives, widows and minor children, who reside in such township or ward. The list shall include soldiers, sailors, marines and airmen of the Spanish-American War, World War I, World War II or the Korean War and their wives, widows, needy parents, minor children, and wards, who have been bona fide residents of the state for one year, and of the county six months, and who, in the opinion of such committee, require aid and are entitled to relief under such sections."

One of my predecessors, in an Opinion involving multiple periods of active service, stated that an honorable discharge was a prerequisite to any compensation from the Soldiers' Relief Fund. Opinion No. 2422, Opinions of the Attorney General for 1940. This position was subsequently modified to the extent that one who has been dishonorably discharged cannot qualify for such relief. Opinion No. 7249, Opinions of the Attorney General for 1944.

The reasoning underlying these Opinions evolves from a consideration of Federal policy in dealing with persons dishonorably discharged from the Armed Forces. No one receives a dishonorable discharge except as a result of the sentence of a general court-martial. It would 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 emolument. Opinion No. 2422, supra. As to the entire service record of an individual, a dishonorable discharge pervades the entire record of the applicant, so that the prior favorable enlistment is completely obscured and is of no consequence for the purpose of state relief.

Turning to the situation of a less than honorable discharge, I feel that part of your query results from a concern over the language of Section 5901.01, Revised Code, which reads, in pertinent part, as follows:

"As used in sections 5901.16 to 5901.37, inclusive, of the Revised Code: (A) 'Soldier' means an honorably discharged soldier, sailor, or marine, who served in the army or navy of the United States."

This statute, although referring specifically to the Code sections relating to the interment of soldiers, has, in the past, been construed as also applying to the Code sections applicable to soldiers' relief. It was thought that there was a legislative intent to confine the benefits of both acts to one who had received an honorable discharge. My predecessor, in Opinion No.

7249, supra, modified this construction. This Opinion, in holding that one who receives a blue discharge certificate which is neither honorable nor dishonorable is eligible for soldiers' relief, states that relief, unlike a military burial, is not administered for the sake of bestowing an honor upon one who has earned a right to it. Rather, it grows out of the humane impulse to relieve distress due to poverty, disease and other misfortune.

Essentially, my predecessor relied on the status of the veteran under Federal law and regulations, holding that the loss of pension and some other benefits were not in themselves sufficient to bar the veteran from benefits under the Ohio law provided the veteran remained eligible for Federal benefits such as hospitalization and domiciliary care. I see no reason to question his views.

In specific answer to your question, it is my opinion, and you are so advised, that a veteran who has served two periods of active duty, the first period terminated by an honorable discharge, is eligible for soldiers' relief if the second period of service is terminated by a discharge, other than dishonorable, under which some Federal veteran benefits remain to him.