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1. VETERAN, DISABLED—PUBLIC LAW 16, 78 CONGRESS—DISABLED VETERAN ENGAGED IN “ON-THE-JOB” TRAINING—RECEIVES COMPENSATION FOR SERVICES TO EMPLOYER AMENABLE TO OHIO WORKMEN’S COMPENSATION LAW—INJURED IN COURSE OF EMPLOYMENT—ENTITLED TO BENEFITS OF WORKMEN’S COMPENSATION LAW—AVERAGE WEEKLY WAGE PAID BY EMPLOYER—BENEFITS, IRRESPECTIVE OF ANY DISABILITY AWARDS OR BENEFITS RECEIVED FROM FEDERAL GOVERNMENT.

2. IN EVENT OF DEATH AS RESULT OF INJURIES RECEIVED UNDER SUCH CIRCUMSTANCES, EMPLOYEES DEPENDENTS WOULD BE ENTITLED TO BENEFITS SIMILARLY COMPUTED.
3. EMPLOYER AMENABLE TO OHIO WORKMEN'S COMPENSATION LAW OBLIGED TO REPORT AS PART OF PAY ROLL ANY COMPENSATION PAID TO DISABLED VETERANS WHO RECEIVE "ON-THE-JOB" TRAINING UNDER PUBLIC LAW 16, 78 CONGRESS.

SYLLABUS:

1. A disabled veteran engaged in "on-the-job" training under the provisions of Public Law 16 of the 78th Congress who receives compensation for services rendered to an employer amenable to the Ohio Workmen's Compensation Law, and who is injured in the course of and arising out of his employment is entitled to the benefits of the Workmen's Compensation Law to the extent appropriate in view of his average weekly wage paid to him by said employer irrespective of any disability awards or benefits received by him from the Federal Government. In the event of the death of such workman as a result of injuries received under such circumstances his dependents would be entitled to benefits similarly computed.

2. An employer amenable to the Ohio Workmen's Compensation Law is obliged to report as a part of his payroll any compensation paid to disabled veterans who receive "on-the-job" training under Public Law 16 of the 78th Congress.

Columbus, Ohio, December 24, 1947

Mr. S. S. Stewart, Secretary, The Industrial Commission of Ohio
Columbus, Ohio

Dear Sir:

You have requested my opinion relative to the following inquiries:

- "a. In the event a disabled veteran (Public Law 16) receives compensation for services rendered to an Ohio employer and is injured in the course of and arising out of his employment is he entitled to benefits of the Ohio Workmen's Compensation Act, despite the fact that he receives a disability award from the Federal Government which may be increased by virtue of this injury, or his wife be entitled to a widow's pension from the Federal Government should he be deceased as a result of such industrial accident?

- b. Recognizing that an employer is amenable to the law if he has three or more employees and advising you that nearly all Public Law 16 veterans receive some compensation from their employer, during on the job training, in addition to subsistence and disability award from the Federal Government and acknowledging the fact that by far the larger part of his income is his subsistence and disability award, would these conditions and facts in any way excuse the employer from his liability to the employee or the employee's dependents as a result of an industrial injury?"

Public Law 16, referred to in such inquiries, is entitled "The Act Providing for Vocational Rehabilitation of Disabled Veterans" and is Public Law 16 of the 78th Congress, dated March 24, 1943. Said Public Law 16 provides for "on-the-job" training for disabled veterans and Section 2 of Public Law 16 reads in part as follows:

"Veterans Regulation Numbered 1 (a), as amended, is hereby amended by adding at the end thereof a new part to be known as part VII and to provide as follows:

'PART VII * * *

4. Where any person while following a course of vocational rehabilitation as provided for in this part suffers an injury or an aggravation of any injury, as a result of the pursuit of such course of vocational rehabilitation, and not the result of his or her own willful misconduct, and such injury or aggravation results in additional disability to or death of such person, the benefits under laws applicable to veterans of the present war shall be awarded in the same manner and extent as if such disability, aggravation, or death were service-connected within the meaning of such laws; except that no benefits under this paragraph shall be awarded unless application be made therefor within two years after such injury or aggravation was suffered, or such death occurred.'"

So far as I have been able to determine paragraph 4 of Part VII of Veterans Regulation Numbered 1 (a), as amended, above quoted, is the only provision relative to compensation or benefits payable for injury or death in the course of and arising out of employment in connection with "on-the-job" training under the Act Providing for Vocational Rehabilitation.

Thus it appears that Congress has not in any way supplanted or abrogated the provisions of any state workmen's compensation laws nor

has it pre-empted the entire field of compensation relative to veterans engaged in "on-the-job" training. Therefore, unless there is some provision in the Ohio Workmen's Compensation Law which excepts such employment from its operation, it would appear that veterans receiving compensation from their employers in addition to subsistence payments for "on-the-job" training are entitled to coverage and hence to the protection and benefits of the Ohio Workmen's Compensation Law.

It is pertinent, therefore, to examine the provisions of Section 1465-61, General Code of Ohio, which read in part as follows :

"The term 'employee,' 'workman' and 'operative' as used in this act shall be construed to mean * * *

2. Every person in the service of any person, firm or private corporation, including any public service corporation, employing three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors but not including any person whose employment is but casual and not in the usual course of the trade, business, profession or occupation of his employer."

Certainly any veteran who, while engaged in "on-the-job" training receiving compensation for services rendered to his private employer is "in the service of any person, firm or private corporation" if such "person, firm or private corporation" employs three or more workmen and is otherwise amenable to the workmen's compensation law. Of course, it would appear obvious that the compensation and benefits payable on account of injury or death of such veteran under the Ohio workmen's compensation law should be calculated on the basis of his average weekly wage as paid by the employer, excluding subsistence allowances paid by the Federal Government.

Thus the answer to question "a" above set forth would be that a disabled veteran who receives compensation for services rendered to an Ohio employer and who is injured in the course of and arising out of such employment is entitled to the benefits of the workmen's compensation law to the extent appropriate in view of his average weekly wage paid to him by such Ohio employer irrespective of any disability awards or benefits received by him from the Federal Government. And, in the event of the

death of such workman as a result of an injury under such circumstances, his dependents would be entitled to benefits similarly computed.

In view of the answer to question "a" it of course follows that an Ohio employer under such circumstances is liable for the payment of premiums on his pay roll including such amounts as are paid for the services of the veteran receiving "on-the-job" training under the provisions of Public Law 16.

Respectfully,

HUGH S. JENKINS,
Attorney General.