

Opinion No. 141.

**Military Service—Veterans—Burial of
Veterans—Discharges, Military.**

Held: The term "honorably discharged," as used in Chapter 25 of the Laws of 1945, embraces all veterans who were discharged, relieved, released, transferred, or retired from active duty status with the military forces under reputable circumstances—to the exclusion of persons who were dishonorably discharged and persons who received bad-conduct or undesirable discharges.

April 3, 1946.

Mr. H. R. Eickemeyer
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Eickemeyer:

You have asked for an interpretation of the phrase "any honorably discharged person," as used in Chapter 25 of the Laws of 1945; and you have stated this proposition:

"During World War II, several men were discharged from the armed services with a discharge that was neither honorable nor dishonorable but some degree in between. The question arises whether or not the county is obligated to pay the \$150 for funeral expenses toward burial of men holding discharges of this kind."

Section 4536 of the Revised Codes of Montana of 1935, as last amended by Chapter 25 of the Laws of 1945 (previously amended by Chapter 163 of the Laws of 1937 and Chapter 52 of the Laws of 1939), provides among other things:

"It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged soldier, sailor, or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged person, whether male or female, and including nurses, who shall have served in any branch of the armed services of the United States and who may hereafter die . . ." (Emphasis mine.)

The recently compiled work "American Law of Veterans" (cited as Am Vet) considers with some exactitude the types of discharges issued by the various branches of the service:

"191. **Types of Discharges Issued by Army.**—The Army issues three classes of certificates of discharge, namely, honorable discharge, blue discharge, and dishonorable discharge. Honorable discharge is issued when the service has been honest and faithful, and a character of 'Good', 'Very Good', or 'Excellent', is given. Dishonorable discharge is issued pursuant to sentence of a court martial or military commission. An enlisted man will not be dishonorably discharged except pursuant to sentence of a court martial or a military commission. The blue discharge is used when an enlisted man is discharged otherwise than as specified above. It is issued in all cases where 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. It is neither honorable nor dishonorable . . .

"192. **Types of Discharges Issued by Navy and Coast Guard.**—The Navy has three types of discharge certificates, namely: honorable, under honorable conditions, and unfavorable. The Coast Guard issues the same types of discharges as are given by the Navy. All discharges from the Navy except 'undesirable', 'unfitness', 'bad conduct', and 'dishonorable', are considered to have been issued under 'satisfactory conditions'. And all certificates bearing the notation 'under satisfactory conditions' are considered as having been issued 'under honorable conditions'. The character of the discharge is shown on the face of the certificate, and on the reverse side appear the date of enlistment, qualifications, vessels and stations, the reason for discharge, etc. From this data, it can be determined whether or not the person had active duty. The underlying reason for the discharge is not shown on the certificate when it might tend to be injurious to the individual . . .

"193. **Types of Discharges Issued by Marine Corps.**—The Marine Corps has four classes of discharges, namely, honorable discharge, discharge, bad-conduct discharge, and dishonorable discharge. The honor-discharge is issued upon expiration of enlistment, for medical reasons, on the grounds of dependency of relatives, the convenience of the man or of the Government, inaptitude not reflecting upon moral character or conduct, immaturity or minority, and under other circumstances and on other grounds. The simple 'discharge' is issued in certain medical cases, for undesirability, fraudulent under-age enlistment, and on other grounds. A bad-conduct discharge is issued pursuant to sentence of a summary or general court-martial, and the dishonorable discharge is issued by sentence of a general court-martial . . ."

Unfortunately the general public—and many persons in military service—do not understand the complexity of the discharge system employed by the various branches of the armed forces. While the above quotation serves to

point it out somewhat, the most graphic picture of the cloudy discharge problem which I have seen presented to date was contained in an article entitled "What You Should Know About Your Discharge Papers," contained in the January 12, 1946, issue of the "Saturday Evening Post." I wish to quote a portion of that article here to emphasize the confusion which exists regarding the status of many of the discharges:

"... The common assumption is that there are two kinds of discharges: honorable and dishonorable. The fact is that the Navy issues three kinds of 'tickets,' as they are called, and they fall into five subdivisions, while the Army issues at least six or seven varieties in four colors. Veteran personnel officers can't remember what the various types mean, and some of them represent distinctions that would delight a medieval theologian. The Army has a blue discharge, for example, which, while not honorable, is not dishonorable, either. The Navy has three kinds of yellow discharges; along with the straight dishonorable ticket, there is also a bad-conduct discharge and an undesirable discharge. What is more important, there are several confusing versions of the honorable discharge.

"One man likely to encounter misunderstanding is the veteran who shows up with a 'certificate in lieu of an honorable discharge.' This sounds distinctly second rate, as if he were not quite entitled to the real thing. Actually it means nothing of the kind. All it means is that he has lost his honorable discharge—as do hundreds of veterans every day. The certificate is what he gets when he writes in for a duplicate. In the Army, that is. The Navy will issue duplicates; the Army won't. The point to remember is that a certificate, despite the 'in lieu,' is just as good as an honorable discharge.

"Another man likely to be misunderstood is the Navy veteran whose discharge uses the restrictive words 'under honorable conditions.' The trouble here is that the Navy, for reasons useful in Navy administration, but nowhere else, issues two models of an honorable discharge. One says plainly and honestly that it

is an honorable discharge, using those words. The other uses the words 'under honorable conditions.' Instead of testifying to the man's service, this tends to raise a doubt: Why wasn't he given an honorable discharge? The difference is not one of honor at all. There are two forms; both are classified as honorable. Form 660, which plainly identifies itself as an honorable discharge, is given to the man whose conduct was flawless and whose proficiency was exceptionally high. Form 661, which uses the misleading words 'under honorable conditions,' is what the same man would get if his Navy 'grades' were a little lower—or perhaps if he had served under officers a trifle more critical. The thing to remember here is that 'under honorable conditions' is an honorable discharge and there's nothing conditional about it.

"Perhaps 10 per cent of Army enlisted men, including men with war records as good as that of General Eisenhower himself, will not have honorable discharges at all. They have 'certificates of service.' If you will look closely, the words 'honorably served' are in the text. The reason a man gets this kind of document instead of a standard honorable discharge is that he is staying in the Organized Reserve. But it's honorable. It's the tops. It just doesn't sound like it. It's the same with thousands of men who became officers in the Army of the United States, the reserve army. Many of them were commissioned for the duration and six months. Until that happy day, they can't be given discharges, and so get certificates instead. Perhaps the feeblest praise anywhere in the whole rainbow of discharges—white, yellow, blue and pink—is that given the thousands of men who served as officers in the Naval Reserve. Some of them have a shirtful of medals, but all they get upon leaving is a diploma bearing the begrudging title 'Certificate of Satisfactory Service.' Not 'splendid,' not 'heroic,' not 'outstanding,' not even 'good.' Just 'satisfactory.' A one-gun salute with a leaking water pistol would be more ringing. It sounds as if the boys just barely got by. It doesn't mean anything of the kind. It's the only kind of separa-

tion paper issued to officers staying in the Naval Reserve. Pale though it sounds, it's the best there is . . ."

When our legislative assembly used the words "Honorably discharge person" in Chapter 25 of the Laws of 1945, did it mean only an individual who had received a technical "honorable discharge"—to the exclusion of those individuals who were issued "certificates of satisfactory service" or those who were given only "certificates of service" or those who were discharged merely under "honorable conditions"? Did it intend to include within the benefits of the act those persons who received bad-conduct and undesirable discharges—to the exclusion only of those individuals who received dishonorable discharges? Did it intend to discriminate between those persons who received the technical honorable discharge and those who served with equal honor but failed to receive honorable discharges by reason of their being transferred to inactive status in the reserve corps or retired?

In the case of *Dierkes v. City of Los Angeles et al.*, (1945) 156 Pac. (2d) 741, 744, 745, the Supreme Court of California considered the meaning of the words "honorable discharged," as used in the Los Angeles charter provision for war service credit in computation of service required of policemen before retirement. The plaintiff had been a member of the Fleet Reserve of the Navy, was placed on retired status in 1937, recalled to active duty in 1941, released therefrom in 1942 for the purpose of resuming his duties as a member of the Los Angeles police department. By reason of such **release (not discharge)** from active duty, was he "honorable discharged" from the military service and thus entitled to credit for the period of his active military duty under the Los Angeles charter provision requiring he be "honorable discharged"?

The court said:

" . . . it is our duty to avoid, if reasonably possible, a result which would upon a purely arbitrary basis (the fact that the particular employe-veteran was given an 'honorable discharge' instead of being transferred without discharge to inactive status in a reserve corps) confer credit benefits upon some city employe-veterans who had served the nation

honorably in the armed forces (and had been 'discharge') while denying such benefits absolutely to other city employe-veterans who had served equally honorably in the armed forces (but who had been transferred to inactive status in the reserve corps or retired instead of being discharged).

"We are satisfied that the words 'honorable discharged from such service' must be construed to mean, in a proper case, **honorable relieved, released, transferred, or retired from active duty status . . .**" (Emphasis by the court.)

Webster's New International Dictionary, Second Edition, 1941, defines "honorable" in this manner: "In an honorable manner; in a manner consistent with honor." Synonyms listed are: "nobly, worthily, justly, equitably, fairly, reputably." Antonyms are: "dishonorably, shamefully, unjustly."

If—as perhaps many legislators assumed in enacting Chapter 25 of the Laws of 1945—there were only two types of discharge from the military service, honorable and dishonorable, there would be nothing for this office or a court to construe; but the existence of many types of discharges which fall into neither the honorable or dishonorable categories causes the ambiguity to exist. In *State et al. v. Board of Commissioners et al.*, (1930) 89 Mont. 37, 87, 88, 296 Pac. 1, 15, 16, our Court spoke at length regarding the construction of statutes where the language is obscure or ambiguous:

"In construing a statute, where the language used is not clear, the court ought to consider the effect and consequences which will follow its determination. 'In the construction of statutes, where the language is obscure or ambiguous, or for any reason its precise intent is not plain and cannot be made so by the context or other statutes in *pari materia*, the effects and consequences enter with more or less force into consideration . . . A result which may follow from one construction or another of a statute is always a potent factor and is sometime in and of itself conclusive as to the correct solution of the question as to its meaning . . . Considerations of what is reasonable, convenient, or causes hardship and

injustice have a potent influence in many cases. It is always assumed that the legislature aims to promote convenience, to enact only what is reasonable and just. Therefore, when any suggested construction necessarily involves a flagrant departure from this aim, it will not be adopted if any other is possible by which such pernicious consequences can be avoided . . . In such a matter as the construction of a statute if the apparent logical construction of its language leads to results which it is impossible to believe that those who framed or those who passed the statute contemplated, and from which one's own judgment recoils, there is in my opinion good reason for believing that the construction which leads to such results cannot be the true construction of the statute . . . A construction which must necessarily occasion great public and private mischief must never be preferred to a construction which will occasion neither . . . Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice; to favor public convenience, and to oppose all prejudice to public interests. (2 Lewis' Sutherland on Statutory Construction, 2d Ed., par. 487 et seq.)"

The possibility the legislature intended to extend burial benefits only to those veterans who received "honorable" discharges is repugnant to me. I cannot envision their desiring to omit from the benefits of the act the innumerable veterans who received "certificates of service," "certificates of satisfactory service," discharges under "honorable conditions," or those many thousands who were relieved, released, transferred or retired from active duty status in the armed services without receiving the technical honorable discharge.

The legislative intention, as I view it, was to extend burial benefits to all veterans who served their country worthily and left service under reputable circumstances. To say otherwise would be to create an absurdity and to foster an injustice.

Likewise, I cannot force myself to the view the words "honorably discharged" will include those individuals who left the service under color of bad

conduct or undesirable discharges. The common assumption, erroneous though it is, is that such persons were dishonorably discharged. While in truth and in fact bad-conduct and undesirable discharges are not technically dishonorable, it requires a greater stretch of reason and language than I am willing to indulge to classify the recipients thereof as "honorably" discharged.

It is therefore my opinion the term "honorably discharged," as used in Chapter 25 of the Laws of 1945, embraces all veterans who were discharged, relieved, released, transferred, or retired from active duty status with the military forces under reputable circumstances—to the exclusion of persons who were dishonorably discharged and persons who received bad-conduct or undesirable discharges.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General

(Editors note: Above quotation from the Saturday Evening Post, is used with permission of the copyright owners.)