

**OPINION
52-201**

June 4, 1952 (OPINION)

VETERANS

RE: Soldiers Bonus - Eligibility

Reference is made to your request for an opinion concerning the administration of the Veterans Adjusted Compensation Act.

8d of Section 37-2102 of the 1949 Supplement provides in part, "No person shall be considered a resident of North Dakota for the purpose of receiving any benefits under this act (chapter) if he was on continuous active duty in the armed forces for a period of five years or more, immediately prior to December 7, 1941, and has not established actual abode in North Dakota prior to the effective date of this act (chapter)."

According to your letter the following is the Adjutant General's interpretation of 8d of Section 37-2102 and which interpretation has been adopted by regulation.

- A. The applicant must have been a resident of the State of North Dakota at the time of the enlistment which began his continuous duty in the Armed Forces and for the six month period immediately preceding that date. "Continuous duty" is not to be given a literal day after day interpretation, but is to be interpreted as that duty which is so continuous as to indicate that service in the Armed Forces was the applicant's primary occupation. Thus even though there is a break between enlistments of some length of time, the applicant may be considered as having continuous service.
- B. The applicant must have been a legal resident of the State of North Dakota on January 1, 1941, and must have maintained said residency throughout his compensable period of service. ("Compensable period of service" is the dates the applicant served in the Armed Forces between January 1, 1941, and January 1, 1946, for which Adjusted Compensation is authorized.)
- C. The applicant must have ended his continuous active duty tour. (See definition of continuous duty in Number A above.) He then must have returned to North Dakota and re-established his home in the State of North Dakota prior to the effective date of the act, i.e. February 18, 1949.

Your first question asks: "Is the Adjutant General acting within his scope and rights under the North Dakota Adjusted Compensation Act in setting forth this interpretation as an administrative rule and regulation under the apparent authority granted under Section 8, Chapter 236 of the 1949 Session Laws of the State of North Dakota?"

Section 37-2108 of the Veterans Adjusted Compensation Act provides in part, "For the purpose of carrying into effect the provisions of this act (chapter), the adjutant general is charged with the administration thereof * * *, and shall make any regulation necessary to the efficient administration of the provisions of this act (chapter)."

It is our opinion that the interpretation of these sections, as given above, may be adopted as a regulation and is also a reasonable interpretation and one which will carry out the apparent intent of the legislature to differentiate between those individuals whose civilian occupations were interrupted as a direct result of our entry into war and those who had entered the service prior to December 7, 1936, and thus could be classified as being more or less career service men and to exclude the latter from the benefits of the Act.

Your second question is: "Does the above cited section apply in determining the eligibility of beneficiaries of deceased veterans?"

Example (a). Veteran was a resident of the state of North Dakota six months prior to his entry into active duty on December 6, 1936. The veteran served on continuous duty until killed while in the service on December 30, 1945. Are the beneficiaries of this veteran eligible?

The beneficiaries of this veteran are ineligible for compensation in view of the fact that in the definition of "veteran" no distinction is made between living and deceased veterans. Section 37-2104 which provides for the payment to beneficiaries states in part, "In the case of a veteran who died in active service". Since, as stated above, the definition of a veteran does not make any distinction between living and deceased veterans in determining eligibility of claimants, we are of the opinion that there is no authority to deviate from the eligibility requirements of the act and therefore the beneficiaries would be ineligible.

Example (b). Same factual situation as in Example (a) above only veteran was declared incompetent while a member of the Armed Forces, never returned to the State of North Dakota prior to February 18, 1949, and was placed in a hospital located in a state other than North Dakota.

We are of the opinion that the act contains no indicate that an applicant is to be given the "benefit of the doubt" that had he not been declared incompetent, he would have returned to the state of North Dakota to establish his abode prior to February 18, 1949. In determining eligibility under the act only the facts of the case may be considered and the Adjutant General would be exceeding his authority in deviating from the strict eligibility requirements of the act and in a case such as cited in the example, the Adjutant General would be obliged to disallow the claim.

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