

**OPINION
52-203**

January 10, 1952 (OPINION)

VETERANS

RE: Soldier's Bonus - Procedure to Contest Decision

I have your letter of January 8 in which you request the opinion of this office on the following: Section 37-2108 of the Veterans Adjusted Compensation Law which is found in the 1949 Supplement to the 1943 Revised Code and provides:

The adjutant general shall have authority to determine any claim in any case where a doubt arises as to the eligibility of an applicant to receive payment, and the decision of the adjutant general in such case shall be final, except on questions of residence which shall be subject to review by a court of competent jurisdiction."

Under those facts, your question is, "If a bonus applicant desired to contest the adjutant general's decision, in what court would the action be brought and what procedure would the applicant follow?" You also state that you have been asked whether the review could be by writ of certiorari.

The North Dakota Supreme Court has held in this state that a writ of certiorari will no lie unless the inferior court officer, board or tribunal has exceeded its jurisdiction and there is no appeal, nor in the judgment of the court any plain, speedy and adequate remedy. Duluth Elevator Company vs. White, et al, 11 N. D. 534, 90 NW 12. In a later decision the court held, "The review in certiorari is limited to a determination as to whether the board whose action is questioned acted within its jurisdiction." State Ex Rel Brunette vs. Sutton, 71 ND 530, 3 NW 2d 106.

It will be seen then that certiorari will not lie to review the determination of the adjutant general since there is no question involved in such cases as to his jurisdiction in making the determination.

Section 28-3215 of the Administrative Agencies, Uniform Practice Act, which is found in the North Dakota Revised Code of 1943, provides:

"APPEAL FROM DETERMINATION OF AGENCY; TIME TO APPEAL; HOW APPEAL TAKEN. Any party to any proceeding heard by an administrative agency, except in cases where the decision of the administrative agency is declared final by any other statute, may appeal from such decision within thirty days after notice thereof has been given, or if a rehearing has been requested as provided herein and denied, within thirty days after notice of such denial has been mailed to him. Such appeal may be taken to the district court designated by law, and if none is designated, then to the district court of the county wherein the hearing or a part thereof was held. Only

final orders or decisions and orders or decisions substantially affecting the rights of parties are appealable. A procedural order made by an administrative agency during the pending of a hearing before it shall not be deemed a final order nor an order affecting a substantial right. Such appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before such administrative agency, and by filing the notice of appeal and specifications of error together with proof of service thereof, and the undertaking herein required, with the clerk of the district court to which such appeal is taken. An undertaking must be executed by the appellant, with sufficient surety to be approved by the judge of the district court, conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against him in the district court. Such undertaking shall be made to the state of North Dakota and may be enforced by the agency concerned for and on behalf of the state as obligee."

That section provides for a review of an administrative agency's determination.

Section 28-3201 of that act defines an administrative agency as any officer, board, commission, bureau, department, or tribunal other than a court, having state-wide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state. The adjutant general is an officer other than a court who has state-wide jurisdiction with the authority to make a determination as to residence which has the force and effect of law and which by statute is subject to review in the courts of this state.

Therefore, it is the opinion of this office that when an individual desires to appeal from the adjutant general's determination of residence, he must follow the procedure outlined in the administrative agencies, uniform practice act, particularly that set out in Section 28-3215 of the North Dakota Revised Code of 1943.

It is also the opinion of this office that the appeal would lie in Burleigh County District Court since there is no court designated by law and the act provides that if none is designated, then the appeal must lie in the district court of the county wherein the administrative agency's determination was made.

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