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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

August 2, 1949

To Personnel Department
Re: Veterans' Preference

Through the examination supervisor the department has asked for a ruling from the Attorney General's office relative to the allowing of ten points' preference to veterans on open competitive examinations in the State's classified service. The specific question asked is what percentage of present existence of service-connected disability is necessary to qualify a veteran for the ten-point preference.

The statute under which the preference is given to disabled veterans is Chapter 360 of the Public Laws of 1945. The pertinent past of the statute to be considered in answering your question reads as follows:

> "II. Ten-point preference is a term applying to veteran preference which entitles the holder to an addition of 10 points to earned qualifying ratings in examination. The classes of 10-point preference are as follows:
>
> A. Disability preference applies to honorably discharged veterans who establish by official records
>
> 1. the present existence of a service-connected disability, or
>
> 2. the current receipt of compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the war department or the navy department."

In ascertaining a veteran's entitlement to the ten-point preference, it is necessary that the examining or appointing authority rely upon "official records." Generally speaking, these words mean the records of the United States Veterans' Administration, and the examining or appointing authority is entitled to place reliance thereon unless errors appear on the face of the record.

The record should be scrutinized to ascertain whether it is reflecting the present existence of a service connected disability or reflecting only the existence of a service-connected disability at the time of discharge. The statute contemplates the awarding of the ten-point preference only for the present existence of a service-connected disability under subparagraph 1 quoted above.

If the official record makes no reference to the present existence of a service-connected disability, but does indicate that the applicant is currently receiving compensation, disability retirement benefits or pension by reason of laws administered by the Veterans' Administration, the War Department or the Navy Department, the ten-point preference should be awarded under subparagraph 2 quoted above.

With respect to the percentage of service-connected disability which will entitle the veteran applicant to the ten-point preference, you are advised that a zero percentage will entitle the veteran to the preference if it appears that there presently exists a service-connected disability. The federal laws, regulations and executive orders, when studied as a whole, explain the meaning of the words "zero disability" as used by the Veterans' Administration,

to the effect that they mean that the veteran has sustained a war-service-connected disability and that such war-service-connected disability continues to exist, and that for the purpose of compensation under the federal statute the disability is less than 10%. See *Barry v. Chapman*, 73 N. Y. Supp. 2d, 143.

The purpose of the statute cited above does not entirely refer to disabilities which impair earning capacity. "It points toward a reward for one who had, even in a slight degree, sustained in war service some physical depreciation which the federal government had recognized as such and whose impaired physique due to such recognized illness, disease, or wound has continued to exist." See *Potts v. Kaplan*, 264 N. Y., page 117.

The "zero disability" rating is one which refers exclusively to a rating dealing with the payment of benefits by the federal government for "impaired earning capacity" and has no relation to the question of preferences under the State Personnel Law. See *Barry v. Chapman*, 73 N. Y. Supp 2nd, 142.

The New York statutes being construed by the above quoted cases do not materially differ from the words used in the Maine law. Further support for this opinion may be found in the Maine law itself, in that any other conclusion would render subparagraph 1 of no effect, if the receipt of compensation under subparagraph 2 were a prerequisite to an entitlement to the ten-point preference.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 3, 1949

To W. Earle Bradbury, Deputy Commissioner,
Inland Fisheries and Game
Re: Night Hunting—first and second offenses

In reply to your memorandum of August 2, 1949, you are advised that the provisions of Chapter 250 of the Public Laws of 1949 apply to all offenses of night hunting appearing on the convicted person's previous record. You will note that this section of the law only adds jail sentences to the previous provisions relative to the imposition of fines.

It would appear that this chapter does not supersede the general power of the court to extend probation under the provisions of Section 1 of Chapter 136. The night hunting law merely denies the court the right to suspend the imposition of sentence.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 3, 1949

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Eligibility, Maine-New Hampshire Interstate Bridge Authority to Membership

In reply to your memorandum of July 11, 1949, you are advised that the State of Maine employees in the employ of the Maine-New Hampshire Interstate Bridge Authority are employees of a "quasi-municipal corporation" within the meaning of the Retirement Law relative to participation in the System by local units of that nature.

JOHN S. S. FESSENDEN
Deputy Attorney General