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Veterans Benefits, Eligibility

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 16, 1978

To: Robert R. Washburn, Director, Bureau of Veterans Services
From: Kay R. H. Evans, Assistant Attorney General
Re: Eligibility Determination for State Veterans Benefits

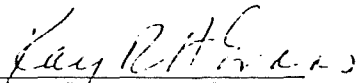
Your memo of December 6, 1977, raises questions with respect to awards of state veterans benefits to veterans whose discharge status has been affected by, in sequence, the general clemency programs of Presidents Ford and Carter and the enactment of Public Law 95-126.

Your memo and the background materials provided indicate that while the Presidential clemency programs operated to upgrade the discharges of certain veterans who separated from the services "on conditions other than honorable," P.L. 95-126 intervened to deny certain veterans benefits to veterans whose discharges were thus upgraded. You note that it has been the practice of your office over the years to use the criteria of the federal Veterans Administration in determining eligibility for state veterans benefits and ask whether you may "follow the guidelines in P.L. 95-126 in making our determinations for eligibility for state veterans benefits programs."

The short answer to your question is that absent legislative or judicial action to the contrary, you may follow consistent administrative practice to the extent that such practice is reasonable and yields a fair result.

The longer answer to your question is one that I cannot definitively give you, for this office cannot provide authoritative interpretation of federal law. I would suggest, however, that P.L. 95-126 itself offers no "guidelines" as such, except that certain benefits be denied veterans obtaining clemency upgrades, unless eligibility for those benefits is found by a case-by-case review under standards and procedures which are directed by P.L. 95-126 to be promulgated and published separately. Veterans affected by the enactment of P.L. 95-126 are given

the right to seek such review and must be so advised. It would appear to me that you would need to either (1) obtain the federal standards and procedures when published to guide your determination of eligibility, follow the procedural requirements of P.L. 95-126 by making a preliminary determination whether a benefit applicant would have received an upgraded discharge under those standards and by providing a hearing prior to final determination where the preliminary determination indicates that an upgraded discharge would not have been awarded, see §(e)(2), third paragraph, P.L. 95-126, or, (2) advise applicants for benefits whose discharge status is questionable under P.L. 95-126 to request of the Veterans Administration a determination of their status. See §(e) 2, ¶ B, P.L. 95-126. I reiterate, however, that the foregoing is not offered as an authoritative interpretation of P.L. 95-126. You might well receive some useful help from the Veterans Administration legal staff, with regard to interpretation of P.L. 95-126 and standards and procedures published thereunder and with regard to assistance from the Veterans Administration in making eligibility determinations. If the Veterans Administration is routinely making the determinations of eligibility required by P.L. 95-126 on request of an applicant for state benefits, where the applicant's state relies on federal criteria for eligibility, it may be possible for you to simply direct your affected applicants to request the necessary determination directly from the Veterans Administration. You would then, according to what you have described as your administrative practice, apply that determination in making or denying a benefit award.


KAY R. H. EVANS
Assistant Attorney General

KRHE:jg