

SOLDIERS' BONUS:

Board of Review provided by Soldiers' Bonus Act still may pass upon applications for bonus.

July 19, 1949



Brig. General J. A. Harris,
The Adjutant General,
Jefferson City, Missouri

Attention: Leo B. Crabbs, Jr.

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Attached hereto is Claim No. 137905 of Abraham Holiby for Missouri Bonus paid to veterans of World War I. This claim was disallowed for lack of evidence that the claimant had resided in Missouri, as required by the Missouri Soldiers' Bonus Law.

"It is respectfully requested that your office render an opinion as to this claimant's eligibility for the bonus.

"It is further requested that your office furnish an opinion as to whether the Board of Review as set up originally in the Missouri Soldiers' Bonus Law has the right to function as such today. If not, does the law provide any means for a claimant whose application has been disallowed by the Bonus Commission or the Adjutant General, to appeal for a rehearing?

"While the time for filing claims expired December 31, 1947, House Bills 401 and 402, now on the informal calendar of the Senate, provide for an extension of time and an appropriation to pay claims."

Section 44b, Article 4, Constitution of 1875, adopted at a special election held August 2, 1921, provided for the payment of a bonus to residents of Missouri for service in World War I. Legislation enacted to implement the constitutional provision is found in Laws of 1921, 2d Ex. Sess., p. 6, Sec. 9577.1 - 9577.26 Mo. R.S.A.

The duty of passing upon applications was placed originally upon a Soldiers Bonus Commission of three members, with the provision that after May 1, 1923, all duties of the Commission should be performed by the adjutant general. Sec. 9577.9 Mo. R.S.A. Insofar as the adjutant general is required to determine whether or not the facts of a particular application show an applicant entitled to a bonus, such determination must be made by the adjutant general, and this department cannot pass upon the question where a purely factual matter is involved.

In the present case, the application of the claimant has been rejected because of his failure to furnish evidence of his residence in Missouri for a period of at least one year immediately prior to April 6, 1917. Such residence is required by the constitutional provision and Section 1 of the Soldiers' Bonus Act, cited above.

Determination of this matter is, under the circumstances of this case, determination of a question of fact, which must be made by the adjutant general, and we cannot, therefore, pass upon the question of whether or not the applicant is entitled to receive a bonus.

As for your second question, application for payment of bonus was originally required to have been made on or before Dec. 31, 1922. Section 9, Soldiers' Bonus Act, cited above. The time for making application has been extended from time to time, the last extension being found in Laws of 1945, p. 1756, and reading as follows:

"It shall be the duty of the adjutant-general to determine as expeditiously as possible the persons who are entitled to the payments under this act and to make such payments in the manner herein prescribed. Applications for such payments shall be filed with the adjutant-general on or before December 31, 1947, and at such place or places as the adjutant-

general may designate and upon blanks furnished by the adjutant-general: Provided further, the adjutant-general shall have the power to adopt all proper rules and regulations not inconsistent herewith to carry into effect the provisions of this act; and provided further, that all officers of the state or any county and any city or town therein are hereby directed to furnish free of charge, in writing, any information that the records in his office may disclose relative to the identity, place and period of residence and the war service of any soldier claiming a payment under this act whenever such information is required by the adjutant-general of any person making an application for such bonus or any part thereof; and any application for bonus heretofore filed and rejected may be filed before the adjutant-general and by him again heard; and if it appears that the rejection of the claim was erroneous, the rejection may be set aside, and the claim allowed and paid; and provided further, that no department of the state government shall employ any clerks for the purpose of carrying out the provisions of this act, except the adjutant-general shall employ an examiner of soldier bonus claims and one stenographer for the handling of claims."

Provision was made by Section 10 of the Soldiers' Bonus Act (Sec. 9577.11 Mo. R.S.A.) for appeal, in the event of rejection of an application, within sixty days after such rejection, to a board of review, consisting of the Governor, Attorney-General and Secretary of State.

In the present situation, the application was first rejected on April 8, 1925. It was reconsidered in May 1931, and again rejected. There is no record of an appeal to the board of review on either of these occasions. On June 11, 1949, the applicant again wrote the adjutant general, requesting reconsideration of his application.

Under the last enactment, quoted above, providing for extension of time for filing of applications, the final date by which application was required to be made was Dec. 31, 1947. The act also provided that "any application for bonus filed and rejected may be filed before the adjutant general and by him heard again." We feel that any such application for reconsideration would also be subject to the time limit for filing of Dec. 31, 1947.

The rejection by the adjutant general of any application, whether an original application or one for reconsideration, filed on or before such date, would, we feel, continue to be subject to review by the board of review in accordance with the provisions of Section 10, supra. The act has not been repealed and would, we feel, remain in effect so long as applications might be considered by the adjutant general.

In the present case, the application for reconsideration was not made prior to Dec. 31, 1947, as required by law. Therefore, we feel that no right of appeal presently exists as to the application for reconsideration made on June 11, 1949. Nor is there any provision for rehearing before the adjutant general, except in accordance with the above quoted statute, which, as set out above, we feel must have been requested before Dec. 31, 1947.

As you have pointed out, there is now pending on the informal calendar of the Senate House Bill No. 402, providing for another extension of time for filing applications to Dec. 31, 1952. Should this bill be enacted into law, the applicant would be entitled to re-file his application, and, upon rejection, assuming that no other change is made in the law, would have a right to appeal to the board of review.

CONCLUSION

Therefore, it is the opinion of this department that, where the question of whether or not a person is entitled to receive a bonus for the State of Missouri for military service in World War I depends upon the determination of a matter of fact, that determination must be made by the adjutant general, and cannot be made by this department. We are further of the opinion that final rejection by the adjutant general of any application for a bonus or of any re-filed application of a previously rejected application, is subject to review by the board of review as provided in Section 10 of the Soldiers' Bonus Act, but that the application or re-filing must have been made prior to Dec. 31, 1947, unless further extension of time for such filing is provided.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL