

OPINION 15

OFFICIAL OPINION NO. 15

April 17, 1961

Mr. William F. O'Neal, Director  
Veterans' State Service Department  
State Office Building  
Indianapolis, Indiana

Dear Mr. O'Neal:

This is in answer to your recent inquiry wherein you request my Opinion in answer to the question stated in the last paragraph of your letter. Your letter reads, in part, as follows:

"We have been advised that the Auditor of \* \* \* County has been denying burial benefits to veterans, due to the fact that they are unable to furnish a discharge certificate. He contends that the DD 214 is not a discharge.

"As you know, those persons entering service have an eight year obligation which may be served in various manners. It was our understanding that a person, upon being released under Honorable Conditions, the DD 214 which he received at the time of his discharge constituted an Honorable Discharge. The Auditor in question contends that this is not an Honorable Discharge and that he does not receive a discharge until he has fulfilled his obligation with the Federal Government.

"QUESTION: Does the DD 214 that the veteran receives at the time of separation from active duty constitute an Honorable Discharge for filing for the Indiana Burial Benefit?"

Your question is based on the Acts of 1915, Ch. 3, Sec. 1, as amended, and found in Burns' (1959 Supp.), Section 59-1009, which reads, in part, as follows:

"Whenever any person, male or female, who has heretofore served, or who may hereafter serve, as a member of the armed forces of the United States as a soldier, sailor or marine in the army or navy of the

United States, or as a member of the women's components thereof, resident of any county of this state, *and who, while a member of the armed forces and before discharge therefrom, or, who after receiving an honorable discharge therefrom, or the wife or widow, the husband or widower of any such member of the armed forces of the United States, resident of any county of this state, has died or shall hereafter die, upon claim being filed by an interested person with the board of commissioners of the county of the residence of such deceased person, stating the fact of such service, death and discharge, if discharged from such service prior to death, and that the body has been buried in a decent and respectable manner, in a cemetery or burial ground, such board of commissioners shall hear and determine such claim, like other claims, filed for allowance by them, and if the facts averred are found to be true, as a tribute of respect due such member of the armed forces, shall make allowance of such claim in a sum not exceeding one hundred dollars [\$100] for service rendered and material furnished in care of such body and where necessary an amount not to exceed twenty-five dollars [\$25.00] for a place of burial of such body."* (Our emphasis)

Your question necessitates a consideration of the purpose and effect of two standard forms used by the Armed Forces, namely, a "Report of Separation from the Armed Forces of the United States (DD 214)," and a "certificate of Honorable Discharge." The purpose and scope of use of these forms is found in 10 U. S. C. A. § 1 *et seq.* and in the respective regulations governing each branch of the Armed Forces.

An Honorable Discharge from the Armed Forces of the United States is clearly defined in *Griffin v. United States* (1953), 115 F. Supp. 509, 514, wherein the Court said:

*"Under the law, an honorable discharge of a soldier at the end of his service is a formal final judgment passed by the government upon the entire military record of the soldier, and it is an authoritative declaration that he has left the service in a status of honor.* United States v. Kelly, 15 Wall. 34, 82 U. S. 34, 21 L.

## OPINION 15

Ed. 106; In re Fong Chew Chung, 9 Cir., 149 F. 2d 904; Ex parte Drainer, D. C. Cal., 65 F. Supp. 410, affirmed in 158 F. 2d 981; 6 C. J. S., Army and Navy, § 32, page 415; 36 Am. Jur., page 208. See also, United States ex rel. Hirshberg v. Cooke, Commanding Officer, 336 U. S. 210, 69 S. Ct. 530, 93 L. Ed. 621.” (Our emphasis)

The above definition is quoted in the case of Olenick v. Brucker (1959), 173 F. Supp. 493, 494 and the Court clearly recognized the distinction between *separation* and *discharge* when it said:

“He was *honorably separated* from active service on December 15, 1954, to complete eight years service in the Reserve as provided by the above statute.” (Our emphasis)

All of the various branches of the Armed Forces issue a certificate of Honorable Discharge, which form of certificate is both distinctive and readily distinguishable from Form DD 214. The certificate of Honorable Discharge is artistically spaced, of a design suitable for framing and states that the recipient “was Honorably Discharged from” the applicable branch of the Armed Forces and that the “certificate is awarded as a testimonial of Honest and Faithful Service.”

In the U. S. Army Regulations, AR 635-200, Section 1, a discharge is defined as follows:

“b. Discharge. Discharge is complete severance from all military status.”

In 6 C. J. S. Army and Navy § 32, p. 415, the effect of a discharge is stated as follows:

“\* \* \* *It absolutely terminates any contractual relations with the government.* \* \* \*” (Our emphasis)

An examination of a Form DD 214 will show no attempt, by the use of such form alone, to effectuate a complete severance of contractual relations.

The history of Burns' 59-1009, *supra*, will disclose that, pursuant to the express terms thereof as it existed in 1942, such burial benefit was limited to "honorably *discharged* soldier(s), sailor(s) or marine(s)" or their wives or widows. Such was the conclusion of the Attorney General in 1942 O. A. G., page 56, the effect of which was to deny such benefit to such service man in the event of death while in the active service. The statute at that time clearly required that a certificate of Honorable Discharge, as above described, was an absolute prerequisite to receiving such benefit.

However, since the issuance of that Opinion, this section of the statute has undergone several amendments as a result of which such burial benefit now extends to two (2) classifications, to wit:

Any person, or the wife or widow of such person, being a resident of any county of this state, who has heretofore served, or who may hereafter serve, as a member of the armed forces of the United States

(1) "and who, while a *member* of the armed forces and *before* discharge therefrom, or,"

(2) "who after receiving an honorable discharge therefrom, \* \* \* has died or shall hereafter die \* \* \*."

The choice of the disjunctive "or," together with the language used, makes it clear that now there are two general, but separate and distinct, classes to which the section applies. The second class is a restatement concerning those situations in which an Honorable Discharge is received.

The first class consists of those who are "a member of the armed forces and before discharge therefrom." Unquestionably, this language includes members of the Armed Forces on active duty, but the language defining this class of eligible persons does not in terms restrict its application to such members only as are on active duty. Therefore, the basic problem is the determination of what class or classes of persons are includable within the language "a member of the armed forces and before discharge therefrom." Thus, the answer to the precise question presented by you depends upon

## OPINION 15

whether a veteran, to whom has been issued only a DD 214, qualifies as such a member.

Your letter states that "those persons entering service have an eight year obligation which may be served in various manners." This suggests another class of service personnel for whom burial rights should be considered, namely those members of the Armed Forces, who when separated from active service and given a Form DD 214, instead of being given a discharge, are transferred to a Reserve component of the Armed Forces or to the Indiana National Guard, and whose death occurs before the termination of such last named period of service. In my 1958 O. A. G., page 153, No. 34, I considered the effect of Burns' 59-1009, *supra*, as it pertained to members of the Indiana National Guard. My further discussion herein will include application to the Reserve components of the Armed Forces.

Under subhead "7" of United States Army Regulations, AR 635-200, Section II, Separation Certificates, the following provision is made:

*"7. Armed Forces of the United States Report of Transfer or Discharge (DD Form 214). a. Individuals who are discharged or released from active duty will, in addition to a discharge certificate or a Certificate of Service as provided in paragraphs 5 and 6, be furnished a factual record of military service rendered, the character and duration thereof, and the type of separation on DD Form 214, except that enlisted members of the Reserve components ordered to active duty for a period of 90 days or less, other than those separated or retired for disability, will not be furnished a DD Form 214.*  
\* \* \*"  
(Our emphasis)

Form DD 214, therefore, is only issued to persons who have been on active duty with the Armed Forces, which would be *qualifying service* as a "member of the armed forces" as required under Burns' 59-1009, *supra*. In my 1958 O. A. G., pages 153, 156, No. 34, *supra*, I distinguished *qualifying service* from *inactive duty membership* and stated:

*"It is my opinion \* \* \* that the Legislature in Burns' 59-1009, supra, did not intend to include service*

*in the reserve as qualifying service as a member of the Armed Forces. \* \* \** (Our emphasis)

If a person has no remaining service obligation to the Armed Forces, he may receive both a Form DD 214, and a discharge at the time of separation, which discharge, if so merited, will be honorable. On the other hand, a person may have a remaining service obligation to the Armed Forces when he is released from active duty and be entitled to receive only a Form DD 214, under subhead "7" of United States Army Regulations, *supra*, and comparable regulations of other branches of the Armed Forces. In that event, he will not be discharged but, will be transferred to one of the Reserve components of the Armed Forces, set forth in 10 U. S. C. A. §§ 261, 262, as follows:

"§ 261. Reserve components named

"(a) The reserve components of the armed forces are:

- (1) The Army National Guard of the United States.
- (2) The Army Reserve.
- (3) The Naval Reserve.
- (4) The Marine Corps Reserve.
- (5) The Air National Guard of the United States.
- (6) The Air Force Reserve.
- (7) The Coast Guard Reserve.

"(b) Except as otherwise provided in this title, no person may be a member of more than one reserve component at the same time. \* \* \*

"§ 262. Purpose.

"The purpose of the reserve components is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency and at such other times as the national security requires, to fill the needs of the armed forces whenever, during, and after the period needed to procure and train additional units and qualified persons to

## OPINION 15

achieve the planned mobilization, more units and persons are needed than are in the regular components.”

It has been decided in *Olenick v. Brucker*, 173 F. Supp. 493, 496, *supra*, that the Reserve components of the Armed Forces are integral parts of the Armed Forces. The Court considered the case of a member of the Armed Forces who had been “honorably separated” and transferred to the Army Reserve for the remainder of his obligated service. The Court quoted 10 U. S. C. A. § 262, *supra*, and then said:

*“Thus, Congress clearly intended the United States Army Reserve, Ready Reserve, to constitute an integral part of the Army. Since the reserve forces are geared toward the possibility of active military duty, the required qualifications of a soldier are the same whether he be on active duty or in the reserves. \* \* \*”* (Our emphasis)

The issuance alone of a Form DD 214 is clearly not the equivalent of a certificate of Honorable Discharge. Rather than alone evidencing discharge from the Armed Forces, such form is used in conjunction either with the issuance of a certificate of Discharge, or as a preliminary to transfer from active duty to a Reserve component. However, a person so transferred remains a member of the Armed Forces. If he dies prior to the receipt of a discharge, he is included under the provisions of Burns’ 59-1009, *supra*, as a “member of the armed forces.” There is nothing in the statutory or case law which would justify the unusual conclusion that the reserve status of such persons, their training and immediate availability for active service in the defense of their country, should disqualify them for such burial benefit.

It is noted that a member of the Armed Forces with remaining service obligation may elect to serve his reserve duty with the Indiana National Guard or Indiana Air National Guard and if he does so elect then he serves in a dual nature as a member of the Guard and also as a member of the comparable Reserve component. In the event that the occasion arises for a discharge from the Guard such person remains a member of the comparable Reserve component unless his service obligation has also been fulfilled. In this case he will receive a

## 1961 O. A. G.

discharge from both the Guard and the Armed Forces. Therefore, service in the Guard is not the criterion for determining whether he comes under the provisions of Burns' 59-1009, *supra*, but rather his status in the Armed Forces is determined by Form DD 214.

I wish to point out, as I did in my 1958 O. A. G. No. 34, *supra*, that the foregoing discussion of the provisions of Burns' 59-1009, *supra*, does not in any way affect the power conferred by statute upon the Board of County Commissioners to hear and determine each claim for burial allowance. In this connection it is well to note the statement of the Attorney General in 1948 O. A. G., pages 90, 93, No. 19, wherein he was considering Burns' 59-1009, *supra*, namely: that this "\* \* \*" is an Act with a humane and benevolent purpose, and as such, should be liberally construed."

See also: Sutherland, Statutory Construction, 3rd Ed., Vol. 3, Sec. 7216, p. 448.

In summary, it is my opinion that:

- (1) *Where a service man or woman has fully completed his or her entire term of service at the time of death a certificate of Honorable Discharge is the proper form for the authentication of such fully completed term of service. A Form DD 214 is not the equivalent of such a certificate.*
  
- (2) *Where a service man has completed the required period of qualifying service with the Armed Forces, has been issued a Form DD 214; has been transferred to a Reserve component of the Armed Forces and is a member of a Reserve component at the time of his death, a Form DD 214, showing performance of the required active duty with the Armed Forces, with such service being characterized as "honorable" or "under honorable conditions," together with a statement authenticating his continued membership in a Reserve component, at the time of death, is sufficient fulfillment of the military service requirements to entitle one to the burial benefits provided in Burns' 59-1009, *supra*.*