

Opinion No. 63-132

October 1, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Dan Sosa District Attorney Third Judicial District Dona Ana County Court House Las Cruces, New Mexico

QUESTION

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Can a veteran who established residence in the State of New Mexico in May of 1955, qualify as a veteran amputee according to Section 64-11-7 if he has suffered the total loss of use of his left arm, which is due to a service connected disability affecting the portion of the arm between the elbow and the arm pit?

CONCLUSION

Yes, providing the service connected disability did **not** occur before September 16, 1940 or in the period of time beginning with July 2, 1946 and ending June 1, 1950.

OPINION

{*294} ANALYSIS

The law in question, Section 64-11-7, N.M.S.A., 1953 Compilation, reads as follows:

"AMPUTEES AND THOSE WHO HAVE LOST USE OF LIMBS EXEMPTED. -- A. A **veteran** for the purpose of this section is any **person who** (1) is a bona fide resident of New Mexico, **who** (2) served in the armed forces of the United States between September 16, 1940, and July 1, 1946, or who served in such armed forces after June 1, 1950, and **who** (3) suffered the loss, or complete and total loss of use, of one (1) or both legs at or above the ankle or one (1) or both arms at or above the wrist while so serving or from a service connected cause. (number and emphasis supplied)

B. A veteran as above defined shall be exempt from payment of any motor vehicle registration fees to the state on one (1) passenger vehicle owned by said veteran."

The above quoted statute sets up three separate conditions which must be met by the claimant before he is entitled to the exemption. The three conditions refer to (1) residency, (2) time of military service and (3) the nature and result of the injury or disease.

Under the facts as disclosed the veteran in question became a state resident in 1955 -- thus qualifying under the (1st) condition. He has lost the total use of his left arm due to a service connected injury -- thus qualifying under the (3rd) condition. The fact that the injury occurred at the portion of the arm between the elbow and the armpit is immaterial since it resulted in the total loss of the use of at least one arm at or above the wrist, as is required under the (3rd) statutory condition.

Since we have no knowledge as to when the injury occurred we are unable to decide whether the claimant has complied with the (2nd) statutory condition. Section 64-11-7, supra, requires that the disablement entitling the veteran to the exemption must have occurred while he was "so serving or from a service connected cause," and said military service {*295} must have taken place "between September 16, 1940 and July 1, 1946 or after June 1, 1950" Therefore, if the claimant served during the time prescribed above he qualifies under the (2nd) condition and is entitled to the exemption. However, if the claimant's service connected disability is the result of an injury or disease which occurred while he was serving in the armed forces, but before September 16, 1940 or between the dates of July 2, 1946 and June 1, 1950, then he is clearly not entitled to the statutory exemption.

In closing -- we do note that under Section 64-11-7, supra, it could be argued that before the claimant qualifies for the exemption he must establish the fact of residency at the time he entered service. However, we do not believe this was the intent of the legislature as can be ascertained from analyzing the grammatical construction of the law. In reading Section 64-11-7, supra, it is observed that the three conditions qualifying the claimant for exemption are set out in four independent clauses, appropriately separated by commas, which begin with the word "who". The word "who" is a pronoun which is a word of reference and is the subject of each clause. In the first clause the subject "who" refers to its immediate antecedents which are the words "veteran" or "person" appearing in the first sentence of subsection "A" of Section 64-11-7, supra. The pronoun-subject "who" in the following three clauses setting forth the (2nd) and (3rd) conditions cannot refer to the word "resident" in the first clause since the four clauses are independent and should be read independently. When viewed in this manner, the pronoun-subject "who" in each of the four independent clauses refers to and actually means "veteran" or "person".

Therefore, we conclude that the legislature intended the claimant to be a bona fide New Mexico resident, but need be only at the time he applies for the statutory exemption. Finally, any doubts as to this interpretation we believe are removed when we take into consideration the fact that Section 64-11-7 is in the nature of a veterans' bonus law and the courts have liberally construed these laws in favor of the veteran. (See cases annotated in 22 A.L.R. 2d 1135 and particularly **Adams v. Atlantic** County, 137 N.J.L. 648; 62 A. 2d 162; 22 A.L.R. 2d 1136.)

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