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BLIND PENSIONS - Right to Pension for Period of Suspension from Pension Roll by Decision of Commission for the Blind.

February 13, 1934.



Missouri Commission for the Blind,
3058 Westminster Place,
St. Louis, Missouri.

Attention: Miss Marie M. Finan, Pension Secretary.

Gentlemen:

A request for an opinion has been received from you under date of August 31, 1933, such request being in the following terms:

"We are writing you for a ruling in the case of the above pensioner who was stricken from the pension roll February 15, 1929, after having been examined by Dr. W. E. Yount, Cape Girardeau, Mo., a member of our staff of examiners, and found to have too much vision.

This party appealed the case on February 19, 1929. It was finally agreed on July 17, 1929 between the attorneys representing the plaintiff and the Commission that the plaintiff's attorney would file a motion dismissing the appeal case, if the Commission would authorize a re-examination. This action was taken and the plaintiff was re-examined on July 29, 1929, by Dr. Weiner, who at that time advised he still had too much vision for the blind pension.

On July 17, 1930 the Commission received a letter from the attorney representing Mr. Looney asking for a re-examination, and on July 30, 1930, Mr. Looney was re-examined by Dr. O. A. Smith, and at that time Dr. Smith reported his vision within the pension limit.

Application was filed August 27, 1930, and after the case was reinvestigated he was certified to the State Auditor for reinstatement on the pension roll as of August 27, 1930 the date of the application.

This pensioner was originally put on the roll in 1921. In November 1928 there was an article in the newspaper advising this party had been arrested on a charge of selling home brew to a Federal Prohibition Officer. Case was on the docket in the Cape Girardeau County Circuit Court on January 9, 1929. This Department was endeavoring to secure some information relative to this, evidently having in mind the moral clause in the statute. However, just about the same time we received an anonymous letter that this party had more vision than the pension

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limit, and we ordered him in for re-examination by Dr. Yount, who advised he had vision beyond the limit set by the pension law, and as a result of this he was stricken from the roll.

After he was reinstated in 1930, and placed on the roll as stated above, we received a letter advising Mr. Looney desired to make application for pension from the time his name was stricken from the pension roll to the date of reinstatement, which we advised him was impossible, because, between the time he was stricken from the roll, and the time he was reinstated, his vision according to reports received from our Doctors, was greater than the pension limit.

On May 10, 1932, we received a letter from his attorney, Mr. W. E. Coffey, demanding back pension, and stating the Commission had dropped him from the pension roll because of violation of the Prohibition Law, and that the charge against him had been dismissed.

We wrote Mr. Coffey, and explained Mr. Looney had been dropped from the pension roll because of vision greater than the pension limit, and not because of the case against him for violation of the Prohibition Law.

However, Mr. Coffey has refused to accept our ruling in the case and has insisted the Commission had no right to remove Mr. Looney's name from the pension roll, and he demands pension from the time his name was off of the roll.

The latest development in the case is a sworn statement by Mr. Looney to the effect that he was stricken from the roll because of the fact he was arrested and charged with selling home brew, but that official reason was given as vision greater than allowed by law. He also claims that Dr. Weiner did not make a scientific examination of his eyes, and that Dr. Yount was prejudiced. Further states, that his vision had not changed during the past 8 or 10 years, and his vision was not greater during the years 1929 and 1930 when he was not on the pension roll, then it is at the present time, or it was at the time of examination by Dr. Smith, which examination resulted in his reinstatement on the roll.

He also has furnished us with several affidavits from residents of Cape Girardeau, all to the effect that he is and has been totally blind and was so during the years 1929 and 1930.

When Mr. Looney was examined by Dr. W. Spealding, on June 14, 1921, the Doctor advised the vision in right eye "nil", in left eye, "light perception", which would make him eligible for the pension. The right eye has been removed.

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He was examined on February 24, 1926, by Dr. Albert N. Lemoine, another member of our staff, and at that time Dr. Lemoine reported right eye "removed"; left eye "light perception only".

After we received information that this party had more vision than the pension law permitted, we had him re-examined on January 8, 1929 by Dr. W. E. Yount, Cape Girardeau, also a member of our staff. At that time Dr. Yount reported right eye "removed", left eye "light perception, hand motion at two feet, and counting fingers at one foot", and it was as the result of this report from Dr. Yount that the man was stricken from the roll.

He was re-examined by Dr. Meyer Weiner, who was then our Medical Director on July 9, 1929. Dr. Weiner reported right eye "removed". Left eye "light perception, motion of a hand at one foot, motion of a hand at two feet, and counting fingers at six inches", which also showed his vision greater than the pension limit.

He was examined by Dr. O. A. Smith, on July 30, 1930, and at that time Dr. Smith reported his vision much decreased. Right eye "out", and left eye "light perception and motion of a hand at six or eight inches only", and as the pension law permits hand motion at one foot, or twelve inches, Dr. Smith's report showed the man was eligible for the pension, and as a result the application was filed and he was reinstated as of August 27, 1930.

Our file very clearly and definitely shows this man was stricken from the roll because of vision greater than the pension limit, and although we did have information concerning the charge against him for selling intoxicating liquors that had nothing whatever to do with his name being removed from the roll.

We have reports in our file from our oculists showing that during the time his name was off the pension roll, his vision was greater than the pension limit. The examination of July 30, 1930, showed him eligible from a vision standpoint, he was permitted to make an application, which he filed on August 27, 1930, and was reinstated as of that date and in accordance with the pension law, his pension began the date of the filing of his application.

With all of the above facts, we will ask you to give us a ruling in this case, as to whether or not this man is entitled to any pension during the period his name was not on the pension roll."

It is our understanding, and we will assume it to be the fact, that the pensioner was properly excluded from such pension during the period in

question, and this opinion will be confined to the single question of law as to whether or not one whose name has rightfully been stricken from the pension roll because his vision is superior to the statutory standard, but whose vision later declines so as to bring him within such statutory standard, is entitled to a pension for the period during which his name was not on the blind pension roll.

The right to receive a blind pension is purely statutory. The statute authorizing payment of blind pensions is Revised Statutes Missouri 1929, Section 8894, which provides as follows:

"Sec. 8894. Vision test - who entitled to pension.- No person shall be entitled to a pension under this article who has vision with or without proper adjusted glasses greater than what is known as light perception; that light perception as used in this section means not more vision than is sufficient only to distinguish light from darkness and recognize the motion (not the form) of the hand of the examiner at a distance not greater than one foot from the eye; and no person shall be entitled to receive a pension except upon scientific vision test supported by the certificate of a competent oculist, approved by the commission, that such person does not possess a greater vision than that provided above in this section; and every person passing the vision test and having the other qualifications provided in this article shall be entitled to receive a pension of three hundred (\$300.00) dollars per annum, payable quarterly."

In this same statute is a prohibition against the receipt by any person of a blind pension who cannot come within the statutory definition of blindness, and since the pensioner in this case did not for the time which is in question possess the statutory qualifications, and since the statute prohibits any person receiving such pension who is not within the statutory standard, it is our opinion that such person could not be entitled to a pension for such period.

Our conclusion is strengthened by that part of Revised Statutes Missouri 1929, Section 8896, which provides as follows:

"* * * whenever it shall become known to the commission that any person whose name is on the blind pension roll is no longer qualified to receive a pension, after reasonable notice mailed to such person at his or her last known residence address, such fact shall be certified to the state auditor and the name of such person shall be stricken from the blind pension roll; * * *"

A remedy is provided for a person aggrieved by decisions of the Commission for the Blind "as to his or her property or income, residential or moral qualifications to receive the benefits of the article" by Revised

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Statutes Missouri 1929 Section 8901 which provides that an appeal may be taken from such decision "to the circuit court of his or her judicial circuit within ninety days from the decision complained of". This statute, when originally enacted in 1923 (see Laws of 1923, page 302, section 9) provided that "any person claiming the benefits of this act who is aggrieved by the action of the commission for the blind may appeal from its decision etc." and under the 1923 statute an appeal would lie from a decision of the Commission as to the vision of an applicant for pension, In Matter of Application of Edith Shelley v. Missouri Commission for the Blind, 309 Mo. 612, 274 S. W. 688 (1925). This statute as amended in 1925 (Laws of 1925, page 316) in which form it is still in effect as quoted above from the revision of 1929 limited appeals to decisions of the Commission as to "property or income, residential or moral qualifications" so that it seems that the statute since 1925 has made the decisions of the Commission as to vision non-appealable and, therefore, the decision of the Commission concerning the vision of the pensioner herein by which he was stricken from the pension roll would not be subject to attack.

It is our opinion that the pensioner Presley Looney, Dunklin County No. 16, is not entitled to a pension for the period during which he was not on the pension roll, subsequent to his being stricken off such roll by decision of the Commission for the Blind and up until his reinstatement thereon, and that the decision of the Commission for the Blind in striking him from such pension roll was, under the facts furnished in your request for opinion, proper, and not subject to attack or review at this time.

Very truly yours,

EDWARD H. MILLER
ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.