

OLD AGE PENSIONS: Applicant who has forfeited his citizenship by reason of conviction of desertion, not entitled to receive assistance.

March 13, 1936

3-16



Reba E. Choate
Assistant Commissioner
Old Age Assistance Division
Jefferson City, Missouri

Dear Madam:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"We have received the following letter from Mr. C. E. Larkins, of the Buchanan County Old Age Assistance Board:

" 'We are enclosing a copy of a letter from the Adjutant General's Office, Washington, regarding the application of Frederik Smith, this city.

"This letter states that Mr. Smith has lost his rights of citizenship, but in the last paragraph you will note that their statement leaves some doubt in our minds as to whether or not this man is entitled to assistance inasmuch as the Prosecuting Attorney of this County has stated that it is his opinion that the man does not necessarily lose his right of suffrage in Missouri because of the action of the Federal Court-Martial pertaining to Army service.

"This is the second case of this kind that has come to our attention, and we would be pleased to have an opinion from your department or the Attorney General's office so that we may be

able in the future to handle these cases promptly.'

"We have also a copy of the following letter from E. T. Conley of the Adjutant General's office, Washington, D. C.

" ' I have your letter of February 21, 1936, in which you request information concerning citizenship in the case of Frederik Smith.

"The records show that Frederik Smith enlisted October 22, 1885, at Albany, New York, and was assigned to Company D, 19th U. S. Infantry. He was tried by a general court-martial convened at Ft. McIntosh, Texas, and found guilty of desertion, and was sentenced to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at hard labor, in such place as the proper authority shall direct, for a period of four (4) years and six (6) months. The sentence was approved and promulgated in G.C.M.O. #36 dated Hqrs. Dept of Texas, June 1, 1886.

"Rights of United States citizenship are forfeited under Sections 1996 and 1998 U. S. revised statutes, only upon conviction by a general court-martial of desertion committed prior to August 22, 1912, or subsequently in time of war.

"Mr. Frederick Smith has lost his rights of citizenship.

"Nothing has been found of record to show that his rights of citizenship have been restored. However, the rights of suffrage differ in several states and what effect is given in any one of them to a dishonorable discharge, desertion from the Army, is a matter determined under the

constitution and laws of that state.'

"After you have read through these two letters, will you give us an opinion on the citizenship standing of Frederik Smith, as it would apply to Section 6 of the Missouri Old Age Assistance Law. "

Section 6 of the Old Age Assistance Act provides the qualifications an applicant must have to receive old age assistance. Said Section reads as follows:

"Old age assistance may be granted only to an applicant who, has attained the age of 70 years or upwards, is incapacitated from earning a livelihood and is without adequate means of support, is a citizen of the United States, has resided in the State for 5 years or more within the 9 years immediately preceding application for assistance and for the one year next preceding the date of application for assistance (absence in the service of the State or of the United States shall not be deemed to interrupt residence in the state if domicile be not acquired outside of the state), is not at the date of making application or of receiving aid an inmate of any prison, jail, insane asylum, or any other public reform or correctional institution, and has no child or other person responsible under the law of this state and found by the state board or by the county board able to support him."

The above section specifically provides, among other things, that old age assistance will only be granted to a citizen of the United States.

Section 12, Title 8, U. S. C. A. provides:

"All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a

provost marshal within sixty days after the issuance of the proclamation by the President, dated March 11, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.
* * * * *

The above section was first enacted March 3, 1865.

Section 11, of Title 8, which was enacted August 22, 1912, provides:

"Every person who deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 12 of this title. The provisions of this section and said section 12 shall not apply to any person deserting the military or naval service of the United States in time of peace. The loss of rights of citizenship heretofore imposed by law upon deserters from the military or naval service may be mitigated or remitted by the President where the offense was committed in time of peace and where the exercise of such clemency will not be prejudicial to the public interests."

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According to the letter received from the Adjutant General's office, quoted above, the applicant in question was tried by a general court-martial and found guilty of desertion and said sentence was approved June 1, 1886. As this conviction occurred prior to August 22, 1912, it is plain that the applicant forfeited his right of citizenship. Under the provisions of Section 11, supra, the right of citizenship so forfeited prior to August 22, 1912 may only be remitted by the President. According to the letter from the Adjutant General's office this has not been done.

In view of the above, it is the opinion of this department that a person who was convicted by a general court-martial, of desertion, prior to August 22, 1912, forfeits his right of citizenship and unless such citizenship is restored by order of the President such person is not entitled to receive old age assistance under the provisions of Section 6 of the Old Age Assistance Act of the State of Missouri.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

JET:LC