

ADJUTANT GENERAL: Eligibility for Missouri World War I bonus
SOLDIERS AND SAILORS: determined as of date of consideration and
ruling upon of claim, and not date of
application.



October 8, 1951

10-12-51

The Adjutant General's Office
Jefferson City
Missouri

ATTENTION: Leo B. Crabbs, Jr., Special Assistant

Dear Sir:

Your recent letter requesting an official opinion of this department regarding the eligibility of a certain individual for the Missouri World War I bonus reads in part as follows:

"This claimant sent in his application in June of 1923 at which time he was advised by this office that the time limit for filing applications for the bonus expired December 31, 1922. His application form was not examined or acted upon at that time but was placed with many others of a similar status in a 'Too Late' file.

"On May 11, 1925 he was paid the New York State bonus in the amount of \$136.00.

"Laws of Missouri, 1925 (page 127), extended the time for filing applications effective April 22, 1925. Claimant's original application was then stamped 'Received and Registered, April 22, 1925, Mo. Soldiers' Bonus Com.' and placed in line for processing. It was examined and sent to the Missouri Soldiers' Bonus Commission recommending disapproval on July 8, 1925. It was disapproved by the Commission and the claimant so notified on August 21, 1925, for the reason that claimant was a non-resident, his service during the war having been accredited by the War Department to the State of New York. This decision of the Missouri Bonus Commission bears the notation that claimant had been paid the New York State bonus at the time the Commission examined his claim.

The Adjutant General's Office
Attention: Leo B. Crabbs, Jr.

"Claimant now alleges he is eligible for the bonus on the grounds that he had not received the New York State bonus when he sent in his application in June, 1923.

"The question arises as to the date when his eligibility should be determined, whether as of the date he sent in his application in June, 1923 or as of the date his application was laid before the Missouri Soldiers' Bonus Commission for approval or disapproval on July 8, 1925."

The only question presented here is whether eligibility is to be determined as of the date of the filing of the application or as of the date of the determination of the claim.

A similar question was before the Court in the case of Dahlin v. Missouri Commission for the Blind, 262 S.W. 420, wherein there was the question of whether a petitioner's eligibility should be determined as of the date of his application or the date the application was passed on by the commission. It was held at l.c. 421, 422 that:

"* * *The question is raised as to the time at which the extent of vision of the applicant is to be determined. Is it the day of filing the application, or the date of the examination by the oculist, or the date the application is passed on by the commission, or the date of the trial in the circuit court on appeal from the commission? The first authoritative determination of the facts is made when the commission passes on the application. We see no reason why the commission should be bound to any date prior to the date of its determination. While the statute provides that the beginning of the pension shall be from the filing of the application, it is apparent that changes in the condition of the applicant as to any of the qualifications necessary to entitle a party to a pension might take place after the filing of the application which change might prevent its allowance.

The Adjutant General's Office
Attention: Leo B. Crabbs, Jr.

"In addition to the question of the degree of sight possessed by the applicant, there are property and other qualifications. An applicant might not be subject to any of these disabilities when the application was filed, or when examined by the oculist, but might be subject thereto when the application is passed on by the commission. In that event, the commission ought, and we think could, under the law, reject the application. Some one or more of these disabilities might be present when the application is filed, but not present when passed upon by the commission. In that event, it would seem that as to the commission the condition at the time of the hearing before the commission should be the proper date at which to determine the facts as to the eligibility of the applicant. Suppose, on the evidence sent to the commission by the probate judge, it should appear that the applicant was eligible, but the commission should learn of other testimony which would show the applicant not eligible. We think that on proper notice to the applicant the commission could secure the attendance of witnesses, and hear further testimony, or, if they should think it advisable, require further examination by approved oculists before passing upon the application. We see no reason why the circuit court could not follow the same course. Our conclusion is that the condition of the applicant at the time of the hearing is to govern, and this applies to both the commission and the circuit court."

We believe the above decision is controlling in the instant case. As stated there by the Court, "some one or more of these disabilities might be present when the application is filed, but not present when passed upon by the commission." Here too, a disability might be present at the time of the determination of the claim, while not present at the time of the application for same. Therefore, since no statutory authority can be found which would warrant holding the date of application to be the date of determination of eligibility, it is our opinion that in view of the above eligibility is to be determined as of the date the claim is considered and ruled upon.

The Adjutant General's Office
Attention: Leo B. Crabbs, Jr.

CONCLUSION

It is therefore the opinion of this department that eligibility for the Missouri World War I bonus is to be determined as of the date the claim is considered and ruled upon, and not as of the date of the filing of the application for same.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

RHV:ba