

HB 2633, opposition of Les Alberque

From: Lester Alberque [mailto: ]  
Sent: Friday, August 03, 2012 5:07 AM  
To: Sen Boquist; Rep Esquivel; Rep Witt; Sen Burdick  
Subject: Clarification of veteran status in Oregon Revised Statute 408.225

Good morning,

In researching a veteran's issue, I was referred to the definition of a veteran as provided in Oregon Revised Statute 408.225. The portion that concerns me is the limitation "discharged or released from active duty under honorable conditions."

Legislative intent is unclear and should be clarified since, given the plain meaning of words in ORS 408.225, Oregon recognizes as a veteran only those "discharged or released under honorable conditions." This is the UHC discharge or GD (general discharge) and not the HD or honorable discharge, and it limits the benefits available to the veteran.

Because different levels of benefits are provided, I believe that ORS 408.225 should either be clarified to include both classifications or, if to be treated differently, the distinction should be made clear. In any event, the term honorable discharge should be included.

The following information may be helpful in distinguishing between the "under honorable conditions" and the "honorable discharge."

From Congressional Research Service – "Who is a Veteran – Basic Eligibility for Veterans"

Discharge Criteria:

The statutory definition of "veteran" requires that the individual be discharged or released from military service "under conditions other than dishonorable." There are currently five types of discharges issued by the military services: (1) honorable discharge (HD), (2) discharge under honorable conditions (UHC) or general discharge (GD), (3) discharge under other than honorable conditions (UOTHC) or undesirable discharge (UD), (4) bad conduct discharge (BCD), and (5) dishonorable discharge (DD)

From Wikipedia, Military Discharge:

In addition, service members are required to sign documents acknowledging that "substantial prejudice in civilian life" may be encountered under a general discharge. Despite this, some personnel think because the discharge is described as general under honorable conditions, it is as good as or the same as an honorable discharge. Concerning VA disability and most other benefits that is true; however, a general discharge may preclude participation in the GI Bill, service on veteran's commissions, and other programs where a fully honorable discharge is required.

Sincerely yours,

Lester Alberque, SMSgt, USAF (Ret)

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From: Lester Alberque [mailto: [REDACTED]]  
Sent: Friday, February 22, 2013 1:27 PM  
To: Sen Boquist  
Subject: RE: ORS revision clarifying honorably discharged veterans

I think you will find that the present ORS only recognizes one of the five classes of discharged veterans: discharged under honorable conditions and not honorably discharged.

ORS 407.090 only recognizes "For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions.

"We conclude that section 40 of the Act is clear and unambiguous. When setting forth the eligibility requirements for an Illinois Veteran Grant, the legislature used the term "honorably discharged" rather than "discharged under honorable conditions." The meaning of the term "honorably discharged" is clear. Only those armed forces personnel who perform their duties and behave properly as defined by the armed forces may be honorably discharged. It is equally clear that an individual who receives a general discharge under honorable conditions has not been honorably discharged. If the legislature had desired to make Illinois Veteran Grants available to those who received a general discharge under honorable conditions, it could have so specified." [Boylan v. Matejka, Appellate Court of Illinois]  
The reverse is true under ORS 407.090

"In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning.... We believe that an honorable discharge and a general discharge (under honorable conditions) are not "equal in value, force, amount, effect, or significance [Attorney General Opinion, Nebraska].

Regards,  
Les Alberque

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From: Ross Cheyenne  
To: [REDACTED]  
CC: Rep. Matthews; Rep. Doherty; Sen. Boquist  
Subject: House Bill 2633, defining "honorable conditions"  
Date: Thu, 28 Feb 2013 18:14:05 +0000

Mr. Alberque,

First, thank you for your patience while staff double-checked your concerns about the difference between “honorably discharged” and “discharged under honorable conditions.” The good news is that, unless I have misunderstood your concerns, I believe there may simply be a misunderstanding about the effect of the two phrases.

As you know, the phrase “discharged [...] under honorable conditions” is used in Oregon’s statutes (incorporated into the definition of “veteran” at ORS 407.090(1),(2) and 408.225(1)(e)). This phrase is broader than “honorably discharged,” to include all types of discharges that would be considered honorable – Honorable Discharge, General Discharge (also called General Under Honorable Discharge), and Non-Characterized Discharge – which is your wish, unless I am mistaken? From what you’ve written, it appears you may be attributing this broader effect to the other phrase; to the narrower phrase, “honorably discharged.” (Illinois, in the quote you provided, used the narrower phrase, “honorably discharged” and apparently excluded someone. Oregon would run the same risk of excluding someone, if our statutes were changed to use the narrower phrase.)

You are also aware of House Bill 2633, which, if it passes, will authorize the Oregon Department of Veterans’ Affairs to define “honorable conditions” via the agency’s rulemaking process. This will permit the agency to distinguish between the various types of discharges in agency rules (which have the force of law), but without altering the existing statutory definition of “veteran.”

Also, **House Bill 2633 is scheduled for a public hearing in the Senate Veterans Committee today, at 1:00 PM, in hearing room B, in the Capitol Building in Salem** – you would be most welcome, to appear and share your concerns with the Members in person, or to submit written materials for them consider, which would be included as part of the public record, if you are not able to appear.

So after all that, the short answer is, Oregon law is consistent with your wishes as far as I can tell – but please don’t hesitate to correct me sir, if I’ve misstated your concerns. Your strength of advocacy is appreciated – regardless of whether there is a misunderstanding or a difference of opinion – as is your service.

Respectfully,

Cheyenne Ross  
Committee Staff

Senate Veterans and Emergency Preparedness | Committee Services | Oregon State Legislature

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From: Lester Alberque [mailto: [REDACTED]]  
Sent: Thursday, February 28, 2013 11:43 AM  
To: Ross Cheyenne  
Subject: RE: House Bill 2633, defining "honorable conditions"

Dear Cheyenne Ross:

Thank you for your e-mail.

In short, I believe that the use of the "broader" term of "under honorable conditions" to include both the classifications "honorable discharge" and "under honorable conditions" is clearly inappropriate and may prove to have unintended consequences.

For this reason, I had suggested that the legislature obtain an Oregon AGO before acting.

From the Nebraska AGO:

“You have indicated that there is widespread practice within your department and the County Veterans Service Offices to treat a general discharge (under honorable conditions) the same as an honorable discharge, particularly for the purposes of determining a veteran's eligibility to receive a disbursement from the Nebraska Veterans' Aid Fund. In Nebraska, it is true that the administrative interpretation of a statute by an administrative department is given considerable weight, but not if the interpretation is clearly wrong....”

“We believe that the practice of treating a general discharge (under honorable conditions) as the equivalent to an honorable discharge is clearly wrong, and should be discontinued.”

“Based on the foregoing, we believe that there is no equivalent to an honorable discharge, and therefore that characterization of service should not be compromised by including a general discharge (under honorable conditions) as its equivalent when determining veterans' eligibility for Nebraska benefits.”

From No. 2-01-0787. Appellate Court of Illinois, Second District.

“Where the statutory language is unambiguous, we must interpret the statute according to its terms and may not consider other aids in construction”

“Only those armed forces personnel who perform their duties and behave properly as defined by the armed forces may be honorably discharged. It is equally clear that an individual who receives a general discharge under honorable conditions has not been honorably discharged. If the legislature had desired to make Illinois Veteran Grants available to those who received a general discharge under honorable conditions, it could have so specified.”

“Because the two types of discharge are not equivalent, we cannot say that the plain language of the statute expresses the intent to award grants to those persons who were generally discharged under honorable conditions. Rather, the plain language indicates an intent to limit the award of such grants to those who received honorable discharges. To hold otherwise would inappropriately enlarge the scope of the statute.”

It may be necessary to reconsider the proposed change to the broad definition of veteran and clearly delineate an “honorable discharge” from an “under honorable conditions” discharge rather than use the broader term. Otherwise, yet another revision may be necessary.

And I am puzzled why those involved do not realize the quite evident distinction between the two.

I am sorry if this might require revision of the present proposed change. It would seem that the inclusion of the term “honorable discharge” is a small one but I realize that it may necessitate the rethinking of various OARs involving veteran’s benefits.

Les

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From: Ross Cheyenne

To: [REDACTED]

Subject: RE: House Bill 2633, defining "honorable conditions"

Date: Fri, 1 Mar 2013 00:22:11 +0000

Sir – thank you for your reply – it looks like I misunderstood what you were getting at and got it backwards. I do have one clarifying question (to make sure I've got it right this time), and one further general question, if you don't mind:

To clarify: You want to keep General discharges (also called General Under Honorable discharges) separate and distinct from Honorable discharges, is that accurate? You do not want them lumped together?

And second, did you want your concerns to be included in the public record on House Bill 2633, and distributed to the Members of the Senate Veterans Committee? Today's hearing is concluded, but we will have another meeting on the bill next week, and any remarks you'd like to submit could be added at that time if you'd like. Just let me know. Thanks again for your patience.

Cheyenne

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From: Lester Alberque [mailto: ]  
Sent: Thursday, February 28, 2013 5:33 PM  
To: Ross Cheyenne  
Subject: RE: House Bill 2633, defining "honorable conditions"

Good afternoon, Cheyenne:

Yes. Because the "honorable discharge" is a separate and distinct discharge from the "(general) under honorable conditions" discharge, and these are quite different regarding rights and benefits, they are, and should be treated as, different discharges.

(The present Oregon statute does not use the qualifying word "general" )

A threshold question would be if these discharges could be considered equivalent, why does the the Department of Defense treat them differently? If the Oregon Attorney General were to prepare an Opinion, I would think that would be the first question to be investigated.

For example (I'd want to reverify this), an individual having an honorable discharge may reenlist in an active military service or the reserves. An individual having a "under honorable conditions" discharge may not reenlist in active military service or the reserves. (Waivers are possible under certain circumstances). The holder of the "under than honorable conditions" discharge is not entitled to the GI Bill (which I believe is now termed the Montgomery Bill). Curiously, I believe he can still receive Oregon state educational benefits since Oregon does not recognize the distinction between these discharges.

And yes, I think it would be desirable to have my concerns included in the public record on House Bill 2633. My prior e-mails and this one should explain my objections. In fact, if more generally known, I think this legislation might bring a significant veteran response.

Precisely why the legislature is considering HB 2633 without first obtaining an AGO (as did Nebraska) is difficult to understand.

Regards,  
Les