

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Jeffrey Machado,
Petitioner

Docket No. VS-21-0238

December 20, 2024

v.

Executive Office of Veterans' Services
(f/k/a Dep't of Veterans' Services),
Respondent

Appearance for Petitioner:

Dana Montalto, Esq.
Daniel L. Nagin, Esq.
Legal Services Center of Harvard Law School
122 Boylston St.
Jamaica Plain, MA 02130-2246

Appearance for Respondent:

Alexandra Ford, Esq.
Executive Office of Veterans' Services
600 Washington St., 7th floor
Boston, MA 02111

Appearance for Implied Intervenor

Steve Patten, Director
Peabody Dept. of Veterans' Services
City Hall
24 Lowell St.
Peabody, MA 01960

Administrative Magistrate:

Mark L. Silverstein, Esq.

SUMMARY OF DECISION

Veterans' Benefits Appeals - Dismissal - Mootness - M.G.L. c. 115 veterans' benefits -

Eligibility - Definition of "veteran" - HERO Act, St. 2024, c. 178, § 48 - Expanded definition of "veteran" for Chapter 115 benefits eligibility purposes - Veteran's current benefits eligibility and payment of benefits to him.

Petitioner's appeal challenging the prior denial of M.G.L. c. 115 benefits to him based upon the prior definition of "veteran" recited at M.G.L. c. 115, § 1 and M.G.L. c. 4, § 7, cl. 43rd, is dismissed as moot, upon the parties' joint motion to dismiss, in view of (1) the enactment of St. 2024, c. 178 (the HERO Act), § 48 expanding the definition of "veteran" for Chapter 115 benefits eligibility purposes; (2) EOVS's confirmation that, per this new definition of "veteran," the petitioner now qualifies for Chapter 115 benefits; and (3) payment to the petitioner of the Chapter 115 benefits for which he was eligible.

DECISION—ORDER OF DISMISSAL

Background

Petitioner Jeffrey H. Machado is a United States Army Veteran with more than three years of service, between 2011 and 2014, including his voluntary re-enlistment in 2012 and his deployment to Afghanistan as part of the Army's "Quick Deployment Force." Mr. Machado and his unit responded to a "daisy chain" improvised explosive device (IED) that killed four soldiers, and shortly afterward, he was extracted and evacuated with other soldiers wounded by an "improvised explosive device" (IED) in the same area of Afghanistan. He received the Combat Infantry Badge, Afghanistan Campaign Medal with Campaign Star, and the NATO Medal, for his service in Afghanistan. He also developed PTSD and depression related directly to the IED-related incidents to which his unit responded, and experienced significant difficulty in transitioning from combat duty when he was redeployed to the United States in August 2013. As a result of this difficulty, Mr. Machado was discharged by the Army in late 2014 "under other than honorable conditions," according to his service discharge document (U.S. Department of Defense Form DD-214). Most important, this was *not* a dishonorable discharge.

Mr. Machado appealed the May 26, 2021 decision of the Massachusetts Department of

Veterans' Services (DVS; now the Executive Office of Veterans' Services, EOVS) affirming the denial of his application for M.G.L. c. 115 state veterans' benefits by the Peabody Department of Veterans' Services (Peabody DVS) on the ground that, based upon the service discharge shown on his Form DD-214, Mr. Machado did not meet the definition of "veteran" for Massachusetts veterans' benefits eligibility purposes recited at the time by M.G.L. c. 4, § 7, cl. 43rd, which Chapter 115, § 1 references. At that time, M.G.L. c. 4, § 7, 43rd cl. 43rd defined "veteran," in pertinent part, as "(1) any person, (a) whose last discharge or release from his wartime service as defined herein, was *under honorable conditions*. . . ." (Emphasis added). In his appeal of the DVS Decision, Mr. Machado claimed that he should be granted Chapter 115 benefits because his service discharge was not dishonorable.

I began the prehearing conference in this appeal on July 8, 2021. The parties informed me during the conference that Mr. Machado was one of the plaintiffs in a federal court class action seeking upgraded discharges, and was also seeking similar relief via an appeal to the Army Discharge Review Board. The parties agreed to stay adjudication here temporarily pending the outcome of his Discharge Review Board appeal, because a discharge upgrade, if granted, would likely establish Mr. Machado's eligibility for M.G.L. c. 115 veterans' benefits. I ordered the agreed-upon temporary stay and did not complete the prehearing conference. *See Order Following Prehearing Conference and re Temporary Stay* (Jul. 12, 2021). Based upon the parties' status reports through June 2023, I issued several orders continuing the temporary stay.

During the summer of 2024 the legislature passed, and the Governor signed, St. 2024, c. 178, entitled "An Act Honoring, Empowering, and Recognizing Our Service Members and Veterans" (the "HERO Act"), which became effective on August 8, 2024. The HERO Act's many provisions included a section amending the earlier definition of "veteran" appearing at

M.G.L. c. 4, § 7, cl. 43rd, to which M.G.L. c. 115, § 1 referred and that the DVS regulations applied. *See* 108 C.M.R. § 3.02. Per the HERO Act's definition, "veteran" now "includes a person who is determined to be a veteran according to the United States Department of Veterans Affairs."¹ Under this definition of veteran, a person who served in active military service, as Mr. Machado did, and who was discharged or released from such service "under conditions other than dishonorable," as Mr. Machado was, would meet the definition of "veteran" for M.G.L. c. 115 benefits eligibility purposes.

On August 23, 2024, EOVS advised Mr. Machado's counsel in this appeal that, based upon the HERO Act's new definition of "veteran," which "better aligns with the federal government's definition, and . . . expand[s] access to benefits to more veterans," the agency had determined, following a review of Mr. Machado's case, that he now met the definition of "veteran" applied by M.G.L. c. 115, § 1, and that EOVS intended to withdraw any further objection to his Chapter 115 benefits application. On October 28, 2024, the parties moved jointly to dismiss this appeal as having been resolved by (1) the HERO Act's expanded definition of "veteran" for Chapter 115 benefits eligibility purposes; (2) EOVS's withdrawal of any objection to Mr. Machado's application for Chapter 115 benefits based upon this new definition; (3) Peabody DVS's calculation of the Chapter 115 benefit for which Mr. Machado qualified as a

¹/ 38 U.S.C. § 101(2) defines "veteran" as a person who served in the active military, naval, air or space service, and who was discharged or released from such service "under conditions other than dishonorable." This includes active duty in the Army, Navy, Air Force, Marine Corps, Coast Guard and Space Force; as a commissioned officer of the Public Health Service, the National Oceanic and Atmospheric Administration, or the Coast and Geodetic Survey; and as a cadet in the U.S. Military, Air Force, or Coast Guard Academy, or as a midshipman at the U.S. Naval Academy. It also includes "active duty for training" and "inactive duty training" in the National Guard and Reserves, during which the person concerned was disabled or died from disease or injury incurred or aggravated in the line of duty. *See* 38 U.S.C. §§ 101(21) – (24).

veteran, an amount with which the parties agreed; (4) the payment of this benefit to Mr. Machado by the City of Peabody; and (5) his continuing eligibility as a veteran for Chapter 115 benefits if he requests them in the future.

In view of the HERO Act's expanded definition of "veteran" and what the parties' joint motion relates, the temporary stay of this appeal may now be lifted whether or not his federal discharge appeal remains pending; and this appeal may be dismissed without further notice, with Mr. Machado's qualification as a veteran for Chapter 115 benefits, and the payment to him by Peabody of the amount of benefits for which he qualified, noted. *See Elwell v. Executive Office of Veterans Services*, Docket No. VS-21-0565, Decision–Order of Dismissal (Mass. Div. of Admin. Law App., Aug. 30, 2024). I note, as well, that EOVS's August 23, 2024 determination that Mr. Machado was eligible as a veteran for Chapter 115 benefits, per the expanded definition of "veteran" recited by the HERO Act, superseded DVS's prior decision affirming the denial of Chapter 115 benefits to him.

Disposition

For the reasons stated above, the temporary stay of this appeal is lifted, and the appeal is dismissed as moot, pursuant to 801 C.M.R. § 1.01(7)(g)3. Mr. Machado's eligibility as a veteran for benefits pursuant to M.G.L. c. 115 is noted, as is Peabody's payment to him of the Chapter 115 benefits for which he qualified.

The parties are hereby advised that (1) pursuant to M.G.L. c. 115, § 2, further review of the decision may be had by any party upon application made to the Governor and Council within ten days after receipt of the decision; (2) whether or not an application for further review is made to the Governor and Council, the decision of the Division of Administrative Law Appeals, or the decision of the Governor and Council if an application for further review is made, is subject to

judicial review in accordance with the provisions of M.G.L. c. 30A, § 14; and (3) any such appeal must be instituted within 30 days of receipt of such decision and filed with the Superior Court Department of the Trial Court.

Each of the parties is hereby advised further that within ten days from the date on which this decision is mailed to it, it may file a motion to reconsider this decision, pursuant to 801 C.M.R. § 1.01(7)(a)(I), in order to “correct a clerical or mechanical error in the decision or a significant factor that [DALA or the Administrative Magistrate] may have overlooked in deciding the case.”

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: December 20, 2024