

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Roderick Newsome,

Petitioner,

v.

Department of Veterans' Services,¹

Respondent.

Docket No.: VS-22-0358

CONSOLIDATED WITH

James Travers,

Petitioner,

v.

Department of Veterans' Services,

Respondent.

Docket No.: VS-22-0359

Appearance for Petitioners:

Scott D. Pitta, Esq.

Appearance for Respondent:

Matthew Deacon, Esq.
Mark Yankopoulos, Esq.
Kevin P. McMahon, Esq.

Administrative Magistrate:

John G. Wheatley

¹ The Department of Veterans' Services was effectively replaced by the newly created Executive Office of Veterans' Services pursuant to legislation that went into effect on March 1, 2023. See St. 2022, c. 144.

SUMMARY OF DECISION

The petitioners are not eligible for the annuity provided by G. L. c. 115, § 6B, because they do not satisfy the military service requirement under G. L. c. 4, § 7, Forty-third, as necessary to qualify as “veterans” who are eligible for that benefit under the provisions of G. L. c. 115, §§ 6A & 6B.

DECISION

The petitioners, Roderick Newsome and James Travers, appeal the decisions of the Department of Veterans' Services to deny their applications for the disabled veterans' annuity benefit provided by G. L. c. 115, § 6B. Their appeals were consolidated for further proceedings with the consent of the parties, and the matter is now before me on the parties' cross-motions for summary decision.

BACKGROUND

The following facts are undisputed, pursuant to the parties' Stipulation of Uncontested Facts dated December 8, 2022.

1. Roderick Newsome served eleven months and fourteen days in the United States Army, three months and sixteen days of which were served on active duty for training. The remainder of his service was in inactive status in the reserves. (Stip. ¶ 9.)
2. James Travers served nine months and fifteen days in the United States Army, six months and nine days of which were served on active duty for training. The remainder of his service was in inactive status in the reserves. (Stip. ¶ 10.)
3. The petitioners each received an honorable discharge from the U.S. Army. (Stip. ¶ 11.)
4. Both petitioners were discharged from the military due to medical conditions that the Department of Veterans' Affairs has rated as compensable, service-connected disabilities. They are receiving disability compensation at the 100% disabled rate. (Stip. ¶¶ 12, 13.)

5. Both petitioners are residents of the Commonwealth of Massachusetts. (Stip. ¶ 14.)

Mr. Newsome's Application

6. On December 29, 2020, Roderick Newsome applied for the annuity payable to disabled military veterans pursuant to G. L. c. 115, § 6B. (Stip. ¶¶ 1, 2.)

7. On July 16, 2021, the Department of Veterans' Services ("DVS") denied his application. (Stip. ¶ 2.)

8. On August 3, 2021, Mr. Newsome filed a timely appeal with DVS. (Stip. ¶ 4.)

9. A DVS hearing officer upheld the denial of Mr. Newsome's application. The hearing officer concluded that Mr. Newsome's military service did not satisfy the criteria necessary to be considered a "veteran" for purposes of establishing eligibility for the annuity. (Stip. ¶¶ 4, 18.)

10. The decision was issued on July 25, 2022, but was not transmitted to the petitioner until August 18, 2022. (Stip. ¶ 4.)

11. On August 23, 2022, Mr. Newsome filed a timely appeal of DVS's decision to DALA. (Stip. ¶ 5.)

Mr. Travers's Application

12. On February 22, 2021, James Travers applied for the annuity payable to disabled military veterans pursuant to G. L. c. 115, § 6B. (Stip. ¶ 3.)

13. On May 20, 2021, DVS denied Mr. Travers's application. (Stip. ¶ 3.)

14. On May 29, 2021, Mr. Travers filed a timely appeal with DVS. (Stip. ¶ 6.)

15. A DVS hearing officer upheld the denial of Mr. Travers's application for the same reasons as he did for Mr. Newsome's application, noted above. (Stip. ¶¶ 6, 18.)

16. The decision was issued on July 25, 2022, but was not transmitted to the petitioner until August 18, 2022. (Stip. ¶ 6.)

17. On August 23, 2022, Mr. Travers filed a timely appeal of DVS's decision to DALA. (Stip. ¶ 7.)

DISCUSSION

Members of the armed forces who have suffered a service-connected disability may apply for an annuity benefit payable under G. L. c. 115, § 6B. To be eligible for this annuity, an applicant must be a "veteran," meaning: (1) a person who has performed service as defined by G. L. c. 4, § 7, Forty-third, (2) "whose last discharge or release from the armed forces of the United States was under other than dishonorable conditions," and (3) who is a Massachusetts resident. G. L. c. 115, § 6A. It is undisputed that the petitioners meet the second and third of these requirements.

The pertinent issue, therefore, is whether the petitioners performed service as defined in G. L. c. 4, § 7, Forty-third. That statute, under the definition of veteran, describes three forms of qualifying military service:

"Veteran" shall mean (1) any person . . . who . . . served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty . . . for not less than 90 days active service, at least 1 day of which was for wartime service; provided, however, than any person who so served in wartime and was awarded a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 90 days of active service; (2) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946 . . .; (3) any person . . . who . . . served in the army, navy, marine corps, coast guard, or air force of the United States for not less than 180 days active service; provided, however, that any person who so served and was awarded a service-connected disability or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 180 days of active service.

The first two forms of service, under subparagraphs (1) and (2), involve certain wartime service and service in armed conflict, which the petitioners concede are irrelevant in their case.

Under the third provision (subparagraph (3)), service in the armed forces with at least 180 days in active service qualifies for veteran status. “Active service,” however, is defined to exclude “active duty for training in the army national guard or air national guard or active duty for training as a reservist in the armed forces of the United States.” *Id.* The petitioners’ service on active duty for training as reservists in the U.S. Army, therefore, does not satisfy the 180-day active service requirement under subparagraph (3).

The petitioners do not dispute that their service on active duty for training does not qualify as “active service”; rather, they argue that they are exempt from the 180-day active service requirement due to having a service-connected disability. They argue that their service-connected disabilities qualify them as veterans under the last sentence of the definition of veteran under G. L. c. 4, § 7, Forty-third, under which they are deemed to be veterans “notwithstanding [their] failure to complete 180 days of active service.”

After a close examination of the governing statutes (G. L. c. 115, §§ 6A, 6B, and G. L. c. 4, § 7, Forty-third), DVS’s corresponding regulations (801 Code Mass. Regs. §§ 2.02, 3.02), and interpretive guidance from prior cases, I conclude that the petitioners do not satisfy the military services requirement under G. L. c. 4, § 7, Forty-third, as necessary to fall within the definition of “veteran” under G. L. c. 115, § 6A. An applicant claiming eligibility for Chapter 115 benefits based upon service in the armed forces of the United States must have served in “active service” in the armed forces to qualify under subparagraph (3), quoted above, ordinarily for a minimum of 180 days. “Active service” does not include the petitioners’ service in active duty for training purposes, which the statute expressly excludes from active service as used in clause forty-third. The exception afforded to those who have been awarded a service-connected disability relieves the applicant of the 180-day minimum service requirement, but does not alter the nature of the service required to qualify as a veteran under subparagraph (3), i.e., active service in the armed

forces. Because their only active service was for training purposes as reservists in the U.S. Army, the petitioners do not satisfy the active service requirement under G. L. c. 4, § 7, Forty-third, and therefore they are not eligible to receive the disabled veterans' annuity benefit provided by G. L. c. 115, § 6B.

The Appeals Court's decision in *Greeley v. Civil Service Commission*, 1 Mass. App. Ct. 746 (1974), is particularly instructive and supports the above interpretation of the statute. At issue *Greeley* was the proper construction of the wartime service requirement in subparagraph (1) of the definition of veteran under a prior version of G. L. c. 4, § 7, Forty-third (as amended through St. 1968, c. 531).² The language of the prior version of the statute at issue, which I have set forth in the margin below, was substantially identical to the wartime service provision of the current version of the statute, with only minor, immaterial differences (e.g., changing "ninety" to "90").³ Like the petitioners in the present case, the petitioner in *Greeley* argued that he was excused from the 90-day active service requirement under the wartime service provision because he was awarded a service-connected disability and was therefore "deemed to be a veteran notwithstanding his failure to complete ninety days of active service." *Id.* at 753. The Appeals Court rejected the petitioner's interpretation, reasoning that the statute's exception for "failure to

² Subparagraphs (2) and (3) were added to the definition of "veteran" after the Appeals Court's decision in *Greeley*. As such, there was no subparagraph (1) under the version of the statute in effect at the time of that decision.

³ The prior version of G. L. c. 4, § 7, Forty-third, at issue in *Greeley* provided, in pertinent part:

"Veteran" shall mean any person . . . who . . . served in the army, navy, marine corps, coast guard, or air force of the United States for not less than ninety days active service, at least one day of which was for wartime service, provided, that any person who so served in wartime and was awarded a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete ninety days of active service.

complete ninety days of active service” implies that “the thing not completed has already been begun.” *Id.* In other words, the court construed the exception to apply to those whose active service was cut short due to the disability, and not to those “who performed no ‘active service’” whatsoever. *Id.*

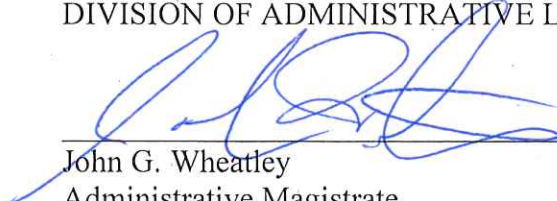
The same reasoning applies here. The exception provided under subparagraph (3) uses identical language to the exception at issue in the *Greeley* case. The petitioners therefore do not fall within that exception because they did not perform any “active service” within the meaning of G. L. c. 4, § 7, Forty-third. Accord *Nelson v. Woburn Retirement Bd.*, CR-07-224, 2007 WL 2580413, at *1 (DALA Aug. 17, 2007) (“A disability sustained during active duty for training does not qualify the Petitioner for veteran’s status.”); *Samara v. Teachers’ Retirement Bd.*, CR-97-506 (CRAB Aug. 21, 1998) (member injured while on active duty for training as reservist in the Marine Corps did not qualify as a veteran under G. L. c. 4, § 7, and was therefore ineligible to purchase retirement service credit as a veteran).

CONCLUSION AND ORDER

For the foregoing reasons, the respondent’s motion for summary decision is allowed and the petitioners’ motion is denied. The decisions of the Department of Veterans’ Services denying the petitioners’ applications for the annuity benefit under G. L. c. 115, § 6B, are hereby **affirmed.**

DIVISION OF ADMINISTRATIVE LAW APPEALS

AUG 24 2023



John G. Wheatley
Administrative Magistrate