COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

One Ashburton Place – Room 503
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KEVIN SHEA,
Appellant

v.

CASE NO. E-11-337

HUMAN RESOURCES DIVISION,
Respondent

Appellant's Attorney:

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Commissioner:

Paul M. Stein[1]

DECISION ON MOTIONS FOR SUMMARY DECISION

The Appellant, Kevin Shea, (hereinafter "Shea" or "Appellant"), pursuant to MASS. GEN. LAWS ch. 31, § 2(b), is appealing the Commonwealth of Massachusetts Human Resources Division's (hereinafter "HRD") October 17, 2011 denial of his request to amend his preference status to "Disabled Veteran." The Appellant filed a timely appeal with the Civil Service Commission (hereinafter "Commission") on November 29, 2011. A pre-hearing was held on December 20, 2011. Both parties moved for summary decision, pursuant to 801 CMR 1.01(7)(h) of the Standard Adjudicatory Rules of Practice and Procedure, and submitted briefs on February

[1] The Commission acknowledges the assistance of Law Clerk Beverly J. Baker, Esq. in the drafting of this decision.

17, 2012. The Commission heard oral argument on the parties' motions for summary decision on February 27, 2012 and a digital audio recording of the motion hearing was made.

The issue presented involves the meaning of the term "veteran" as defined in Massachusetts Law. HRD contends that the Appellant does not qualify as a veteran due to his "uncharacterized" military discharge after sustaining a disabling injury during basic training. The Commission concludes that HRD's interpretation conflicts with the plain meaning of the statute, which the Commission construes to require HRD to grant the Appellant the disabled veteran status he seeks.

FINDINGS OF FACT

Based on the submissions of the parties and the argument at the motion hearing, the following facts appear to be undisputed:

1. The Appellant served in the Army from March 6, 2003 until April 30, 2003, a total of fifty-six days. The Appellant was stationed in Fort Knox, Kentucky. (Appellant Exhibit 2)

2. During the Appellant's basic training, the Appellant incurred an injury to his left ankle. This injury, in addition to the stressors associated with military training, aggravated and permanently worsened a prior condition which was the result of a fracture/dislocation on June 25, 1999 and ankle arthritis. (Appellant Exhibit 3)

3. The Appellant was subsequently discharged from service on April 30, 2003, due to failed medical/physical procurement standards, pursuant to Army Regulation (hereinafter "AR") 635-200, para. 5-11. (Appellant Exhibit 2)

4. On the Appellant's Certificate of Release or Discharge from Active Duty (DD 214), his Character of Service is "uncharacterized." (Appellant Exhibit 2)

5. Following the Appellant's discharge from the Army, on August 8, 2007 the Department of Veterans Affairs granted the Appellant a service-related disability of ten percent from May 1, 2003 and twenty percent from June 25, 2007. (Appellant Exhibit 3)

6. On April 25, 2009, the Appellant took and passed the examination for Police Officer (Examination Number 8265). (Respondent Exhibit A)

7. On March 16, 2010, HRD established the eligible list for Police Officer from the 2009 examination. (Respondent Exhibit B)

8. As of October 2, 2011, the Appellant's name appears on the following Police Officer eligible lists as a civilian: Malden, Medford (resident), and Winchester. (Appellant Exhibit 1)

9. On April 24, 2010, the Appellant took and passed the examination for Firefighter (Examination Number 4813). (Respondent Exhibit A, F)

10. On December 1, 2010, HRD established the eligible list for Firefighter from the 2010 examination. (Respondent Exhibit G)

11. As of October 2, 2011, the Appellant's name appears on the following Firefighter eligible lists as a civilian: Malden, Medford (resident), and Winchester. (Appellant Exhibit 1)

12. On or about October 7, 2011, the Appellant requested "Disabled Veteran" status for all eligible lists on which his name appears. Along with the Modify Preferences & Skills form, the Appellant submitted his Certificate of Release or Discharge from Active Duty (DD 214) and documentation of his service-related disability from the Department of Veterans Affairs in support of his request. (Appellant Exhibit 4; *see also* Appellant Exhibit 2, 3)

13. On or about October 17, 2011, HRD denied the Appellant's request to change his status from "Civilian" to "Disabled Veteran," because the Appellant's character of service was "uncharacterized." (Appellant Exhibit 5)

CONCLUSION

The sole issue to be determined is whether the Appellant is a "veteran" as defined by MASS. GEN. LAWS ch. 4, § 7, cl. 43rd. Provided that the Appellant qualifies as a veteran under this statute, there is no dispute that the Appellant would therefore be considered a "disabled veteran" pursuant to MASS. GEN. LAWS ch. 31, § 1. There are no questions regarding the Appellant's disability or his service.

The term "veteran" is discussed and defined in multiple instances within the General Laws. "Disabled veteran" is defined in MASS. GEN. LAWS ch. 31, § 1 as follows:

> "Disabled veteran", any veteran, *as defined in this section*, who (1) has a continuing service-incurred disability of not less than ten per cent based on wartime service for which he is receiving or entitled to receive compensation from the veterans administration or, provided that such disability is a permanent physical disability, for which he has been retired from any branch of the armed forces and is receiving or is entitled to receive a retirement allowance, or (2) has a continuing service-incurred disability based on wartime service for which he is receiving or is entitled to receive a statutory award from the veterans administration. (Emphasis added).

According to MASS. GEN. LAWS ch. 31, § 1, a "veteran" is, *inter alia*:

> [A]ny person who:
> (1) *comes within the definition of a veteran appearing in the forty-third clause of section seven of chapter four . . . .* A veteran shall not include 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. (Emphasis added).

Massachusetts GEN. LAWS. ch. 4, § 7, cl. 43rd states, in pertinent part:

> "Veteran" shall mean (1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days active service, at least 1 day of which was for wartime service; *provided, however, than [sic] 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,

> and who has received honorable discharges from the United States Coast Guard, Army, or Navy; (3) any person (a) whose last discharge from active service was under honorable conditions, and who (b) 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. . . .
>
> None of the following shall be deemed to be a "veteran":
> (a) Any person who at the time of entering into the armed forces of the United States had declared his intention to become a subject or citizen of the United States and withdrew his intention under the provisions of the act of Congress approved July ninth, nineteen hundred and eighteen.
> (b) Any person who was discharged from the said armed forces on his own application or solicitation by reason of his being an enemy alien.
> (c) Any person who has been proved guilty of wilful [*sic*] desertion.
> (d) Any person whose only service in the armed forces of the United States consists of his service as a member of the coast guard auxiliary or as a temporary member of the coast guard reserve, or both.
> (e) *Any person whose last discharge or release from the armed forces is dishonorable.* . . . . (Emphasis added).

It is HRD's position that in order for the Appellant to be a "veteran" under MASS. GEN. LAWS ch. 4, § 7, cl. 43rd (1), he must satisfy both elements (a) and (b). HRD concedes that the Appellant is excused from the requirement of having served not less than ninety (90) days, set forth in element (b), by the language of the "provided, however" clause, which states: "provided, however, than [*sic*] 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 . . . ." HRD maintains that, while this clause serves to modify element (b), it does not alter element (a) in any way. It is HRD's view that because the Appellant did not receive an honorable discharge, and therefore, does not satisfy element (a) of the statute, he does not qualify as a veteran.

The Appellant acknowledges that MASS. GEN. LAWS ch. 4, § 7, cl. 43rd (1) sets forth two requirements to be a "veteran," contained in subsections (a) and (b) of the statute. The Appellant does not deny that under most circumstances, both elements (a) and (b) must apply. Rather, it is the Appellant's position that the "provided, however" clause carves out an exception having independent meaning and significance. The Appellant submits that because he was awarded a service-connected disability and meets all the criteria of this proviso, element (a) is not applicable.

Under the rules of statutory construction, "[i]t is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms. *Commonwealth v. Boe,* 456 Mass. 337, 347-48 (2010) (internal citations omitted). "When there is such a plain and rational meaning to be applied, we are obligated to apply it, rather than set off on an interpretative quest . . . . A basic tenet of statutory construction is to give the words their plain meaning in light of the aim of the Legislature, and when the statute appears not to provide for an eventuality, there is no justification for judicial legislation." *Alves' Case*, 451 Mass. 171, 176 (2008) (*quoting Walsh v. Bertolino Beef Co.,* 16 Mass. Workers' Comp. Rep. 151, 154 (2002) (internal citations omitted)). It is the task of this Commission to "read and apply [the law] in a way which yields an effectual and harmonious piece of legislation compatible with the legislative goals that motivated its passage." *Worcester v. Civil Serv. Comm'n,* 18 Mass. App. Ct. 278, 280, *rev. den.*, 392 Mass. 1104 (1984) (*quoting Power v. Secretary of the Dept. of Community Affairs,* 7 Mass. App. Ct. 409, 413 (1979)). "To do this, we look first to the language of the statutes, and in the absence of uncertainty or ambiguity, we need go no further." *Worcester v. Civil Serv. Comm'n,* 18 Mass. App. Ct. at 280. "Where . . . a statute contains

seemingly conflicting language, a court must 'interpret [it], if possible, so as to make it an effectual piece of legislation in harmony with common sense and reason.'" *Wolfe v. Gormally*, 440 Mass. 699, 704 (2004) (*quoting Massachusetts Comm'n Against Discrimination v. Liberty Mut. Ins. Co.*, 371 Mass. 186, 190 (1976) (internal citations omitted)).

In accordance with the rules of statutory interpretation, we must begin our inquiry by examining the language of the statute. Massachusetts GEN. LAWS ch. 4, § 7, cl. 43rd (1)(a) explicitly states that in order to be a "veteran," one's last discharge or release from wartime service must have been "under honorable conditions." Because the various characterizations of military service, such as "under honorable conditions" have precise meanings based on military standards of performance and conduct, these terms should be construed in accordance with such meanings, pursuant to MASS. GEN. LAWS ch. 4, § 6. Army Regulation 635-200 defines an "honorable discharge" as: "a separation with honor . . . appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate." Army Regulation 635-200, para. 3-7(a), June 6, 2005 (RAR Sept. 6, 2011) (hereinafter "AR 635-200"). Another characterization of service is a "general discharge," which is "a separation from the Army under honorable conditions." AR 635-200, para. 3-7(b). A general discharge "may only be issued when the reason for separation specifically allows such characterization." *Id.* When a general discharge is allowed, it is issued to "a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge." *Id.* Based on the above definitions, there is no question surrounding the meaning of the phrase "under honorable conditions" as it appears in the statute.

Massachusetts GEN. LAWS ch. 4, § 7, cl. 43rd (1)(b) requires, in essence, service in the army for not less than ninety days active service, at least one day of which was for wartime service. There is no doubt as to the meaning of this portion of the statute.

The "provided, however" clause embodied in MASS. GEN. LAWS ch. 4, § 7, cl. 43rd states, in relevant part, 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 90 days of active service . . . ." (Emphasis added). With the use of the words "shall be deemed to be a veteran," this provision serves to supplement and expand the general definition of "veteran" to include a narrow group of individuals. The statute does not read, for instance, that a person who served in wartime and was awarded a service-connected disability shall be deemed to have served the requisite amount of time. Instead, the statute expressly sets forth that a person meeting the narrow conditions of the provision "shall be deemed a veteran." In addition, the statute does not state that a person who served in wartime and was awarded a service-connected disability *may* be deemed a veteran. When interpreting statutory language, the word "may" is typically considered permissive or discretionary, whereas the word "shall" is commonly construed as obligatory or mandatory. *See e.g., United States Gypsum Co. v. Exec. Office of Envtl. Affairs,* 69 Mass. App. Ct. 243, 250 (2007). By using this commanding language, the provision identifies a specific category of people who must be considered "veterans" and thus, provides an alternative method for a person to qualify as a "veteran" under the statute.

Both parties submit that because MASS. GEN. LAWS ch. 4, § 7, cl. 43rd is clear and unambiguous, the Commission must afford the statute its plain meaning. Yet, in doing so, HRD would have the Commission simply disregard the mandatory "shall be deemed a veteran"

language in the "provided, however" clause. Instead of addressing the plain meaning of the phrase "shall be deemed a veteran," HRD shifts the attention to the last words of the provision: "notwithstanding his failure to complete 90 days of active service." HRD argues that this language "provides an exception to *only* element (b)" because it "applies directly to element (b) and makes no attempt to waive or even modify element (a)." Resp't Br. 8. This argument is unpersuasive. While this provision may initially appear to merely address and modify the length of service requirement, this is likely the result of focusing on the final words, rather than viewing the provision in its entirety. In identifying the particular types of individuals that are deemed "veterans" within the "provided, however" clause, the Legislature specifically chose to include individuals who were "awarded a service-connected disability or a Purple Heart, or who died in such service *under conditions other than dishonorable* . . . ." (Emphasis added). Here, the "provided, however" clause not only directly addresses the nature of discharge and but it sets forth a more inclusive standard than the language in element (a). Furthermore, the existence of the "notwithstanding" language does not render the "shall be deemed a veteran" portion of the provision void. Nor does the "shall be deemed a veteran" language render the "notwithstanding" portion superfluous. Instead, it provides clarification with respect to the exact conditions that a person must satisfy under the proviso in order to be deemed a veteran. The "notwithstanding his failure to complete 90 days of active service" language modifies the service in the "any person who *so served* in wartime" (emphasis added) component of the statute; instead of requiring at least ninety days of active service, at least one day of which was for wartime service, the exception created by the "provided, however" clause only requires at least one day of wartime service, regardless of whether ninety days of active service have been completed or not.

A statute must "be construed 'so that effect is given to all its provisions, so that no part will be inoperative or superfluous.'" *Wolfe v. Gormally,* 440 Mass. 699, 704 (2004) (*quoting Bankers Life & Cas. Co. v. Comm'r of Ins.,* 427 Mass. 136, 140 (1998) (internal citations omitted)). HRD's reading of the statute, which urges that element (a) must apply in every situation, would place the "provided, however" clause's requirement for "conditions other than dishonorable" in conflict with the language found in element (a). If an honorable discharge is required under all circumstances, the "conditions other than dishonorable" language in the provision would be superfluous. Furthermore, to interpret the provision as HRD suggests would render the words "shall be deemed a veteran" meaningless. It would be improper for the Commission to construe MASS. GEN. LAWS ch. 4, § 7, cl. 43rd in a manner that would include unnecessary language where an interpretation in accordance with the plain meaning of the statute both avoids surplus and yields a rational result.

Interpreting MASS. GEN. LAWS ch. 4, § 7, cl. 43rd in accordance with the plain meaning of the language results in a harmonious statute that contains a general definition of the term "veteran" in addition to a narrow exception from the general rule, applicable only in certain circumstances, as set forth by the "provided, however" clause. A closer examination of the statute, including the grammar and punctuation selected by the Legislature, confirms that this interpretation is consistent with the legislative purpose and intent.

"We recognize that ordinarily, in the interpretation of statutes, 'matters of punctuation are not necessarily determinative,' as punctuation may represent a preference in style and not the considered judgment of the legislature, nor be indicative of legislative intent." *Taylor v. Burke,* 69 Mass. App. Ct. 77, 81 (2007) (*citing Globe Newspaper Co. v. Bos. Ret. Bd.,* 388 Mass. 427, 432 (1983)); *Commonwealth v. Maillet,* 400 Mass. 572, 578 (1987); *Comm'r of Revenue v.*

Dupee, 423 Mass. 617, 621 (1996)). "Punctuation, however, may be considered as an indication of the purpose of the legislation where different readings might result in ambiguity. *Taylor v. Burke*, 69 Mass. App. Ct. at 81; *see Greenough v. Phoenix Ins. Co.*, 206 Mass. 247, 252 (1910).

The "last antecedent rule" is a principle of statutory construction which may be used to resolve ambiguities in statutory language. "The last antecedent rule is a 'general rule of statutory as well as grammatical construction that a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation.'" *Taylor v. Burke*, 69 Mass. App. Ct. 77, 81 (2007) (*quoting Hopkins v. Hopkins*, 287 Mass. 542, 547 (1934)); *see also Barnhart v. Thomas*, 540 U.S. 20 (2003). According to Jabez Sutherland, the author of *Sutherland on Statutory Construction* and inventor of the rule, "[e]vidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma." Terri LeClercq, *Doctrine of the Last Antecedent: The Mystifying Morass of Modifiers*, 52 J. of the Legal Writing Inst. 2:81, 87 (1996) (*quoting* Jabez Sutherland, *Sutherland on Statutory Construction* § 267 (1st ed. 1891)). "If a string of antecedents is followed by a comma, that comma separates the modifier from the last antecedent and thus allows it to modify each of the antecedents." *Id.* This rule is known as the "independent clause doctrine." *See generally Barrett v. Van Pelt*, 268 U.S. 85 (1925).

In *Singer v. United States*, the United States Supreme Court faced a statutory construction issue involving the Selective Training and Service Act of 1940. *Singer v. United States*, 323 U.S. 338 (1945). The relevant portion of the statute contained seven offenses preceding the clause in question, the conspiracy clause, each set off by a comma. *Id.* Based on the punctuation of the statute, the Court determined that the conspiracy clause was an "independent

clause of a series not a part of the preceding clause" and therefore applied generally to all of the preceding clauses. *Id.* Similarly, the Court relied on this rule in *United States v. Ron Pair Enters., Inc.* and stated that a phrase "set aside by commas" and separated from the preceding clauses by conjunctive language "stands independent." *United States v. Ron Pair Enters.,* 489 U.S. 235, 241-42 (1989).

The Massachusetts Appeals Court also recognizes this grammatical rule: "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Bednark v. Catania Hospitality Grp., Inc.*, 78 Mass. App. Ct. 806, 813, *rev. den.,* 459 Mass. 1110 (2011) (*quoting Light & Power Co. v. Mor,* 253 U.S. 345, 348 (1920)). "The presence of a comma prior to the modifying clause . . . is some indication that the clause is meant to apply to more than just the immediate predecessor." *Bednark*, 78 Mass. App. Ct. at 813 (*citing* 2A Singer & Singer, *Statutes & Statutory Construction* § 47:33 (7th ed. 2007)).

It has been demonstrated that the use of a comma to separate a modifying clause from preceding clauses is sufficient to create an independent clause. Thus, it follows that a semicolon, which creates a higher degree of separation than a comma, comparable to that of a period, may also be utilized to create an independent clause. "The use of a semicolon usually indicates that each clause is intended to be independent." *Globe Newspaper Co. v. Bos. Ret. Bd.,* 388 Mass. 427, 432 (1983) (*citing Moulton v. Brookline Rent Control Bd.,* 385 Mass. 228, 231 (1982)). "The semicolon may . . . be used between short complete sentences, where the period would indicate more of a pause than the connection between the sentences renders necessary." *Moulton v. Brookline Rent Control Bd.,* 385 Mass. 228, 231-32 (*quoting* Marshall T. Bigelow, *Bigelow's Handbook of Punctuation* 22 (1901)).

The relevant portion of MASS. GEN. LAWS ch. 4, § 7, cl. 43rd is comprised of three numerical subsections separated by semicolons. Subsections (1) and (3) are very similar, the primary exception being that subsection (1) applies to wartime service not less than ninety days and subsection (3) simply applies to active service not less than 180 days. Both subsections (1) and (3) contain two elements, (a) and (b), and another provision that follows, separated from elements (a) and (b) by a semicolon and beginning with "provided, however."

Prior to the statutory amendments approved May 28, 2004 and enacted August 26, 2004, the "provided, however" clause was separated from the preceding clauses by a comma. While a comma is sufficient to create an independent clause, by substituting a semicolon in the amended language, the Legislature demonstrated an intent to unequivocally separate the provision from the preceding clauses. As an independent clause, the "provided, however" language applies to all antecedents: both elements (a) and (b) of MASS. GEN. LAWS ch. 4, § 7, cl. 43rd. The Legislature utilized the independent clause as a device to fit a discrete group of individuals into the general definition of "veteran."

HRD argues that when that statute was amended in 2004, the Legislature could have used a period to separate the provision from elements (a) and (b) of the statute. It is well established that a semicolon or even a comma will suffice to create an independent clause. Therefore, the fact that the Legislature did not use a period is inconsequential. It should be noted that the entire portion of MASS. GEN. LAWS ch. 4, § 7, cl. 43rd defining "veteran" is written as one long sentence, containing only a single period. The Legislature may have been reluctant to drastically alter the structure of the statute when the same result could be obtained simply with the use of a semicolon.

To interpret the "provided, however" clause as an exception from the general rules defining "veteran" and allowing an alternative method for an individual to qualify as a "veteran" is not only consistent with legislative intent, but also with common sense and reason.

It is the Army's task to determine the appropriate characterization of service an individual is to receive upon separation. In this enterprise, the Massachusetts Legislature must defer to the Army's rules and judgment. However, it is within the purview of the Massachusetts Legislature to decide what is necessary in order to qualify to receive certain benefits under state law. By requiring a discharge "under honorable conditions" in some circumstances and "under other than dishonorable conditions" in others, the Legislature recognizes not only that various types of discharges are possible, but that in different contexts, one type of discharge may be more appropriate than another.[2]

Military service is typically characterized as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions. AR 635-200, para. 3-4(1). However, for soldiers in entry-level status[3] at the time of separation, service will usually be "uncharacterized." AR 635-200, paras. 3-4(2), 3-9(a). Chapter five states "a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or *an uncharacterized description of service if in entry-level status*." AR 635-200, para. 5-1(a), emphasis added. Pursuant to chapter three, which deals with Character of Service/Description of Separation, Headquarters, Department of the Army (HQDA) may, on a case-by-case basis, determine that a "characterization of service as honorable

[2] For example, MASS. GEN. LAWS ch. 115, which deals with veteran's benefits, defines "veteran" for use in §§ 6A – 6C as "a person who has performed service as defined in clause Forty-third of section 7 of chapter 4 and whose last discharge or release from the armed forces of the United States was under *other than dishonorable conditions* and who is a resident of the commonwealth." (Emphasis added).

[3] For Regular Army Soldiers, entry-level status refers to the first 180 days of active duty. AR 635-200, Glossary, § II.

is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty . . . ." AR 635-200, para. 3-9(a)(2). Yet a characterization of under honorable conditions is "normally inappropriate for Soldiers separated under the provisions of paragraph[] . . . 5-11, as the Appellant was. AR 635-200, para. 5-1(b). Even if it may be technically possible for a soldier in entry-level status to earn an honorable discharge, in reality, it is highly improbable for an entry-level soldier, especially a soldier still in basic training, to be able to do so.

By creating the exception in the "provided, however" clause, the Legislature allows some leeway for unusual circumstances that may arise. With this exception, the Legislature acknowledges that a soldier may be unable to fulfill the requirements of elements (a) and (b) due to a service-connected disability, for example, yet still be worthy of being a "veteran" under the statute. As this exception is specifically intended to include individuals who were unable to serve ninety days, it follows that the Legislature would take into account that such individuals would still be in entry-level status and, as a result, would most likely have an uncharacterized description of service.

It should be noted that MASS. GEN. LAWS ch. 4, § 7, cl. 43rd expressly states in subsection (e) that "any person whose last discharge or release from the armed forces is dishonorable" may not be deemed a veteran. It is unmistakable that Legislature did not intend for an individual with a dishonorable discharge to receive benefits based on the advantages of being a veteran. However, the Legislature recognizes that a grey area exists between an honorable discharge and a dishonorable discharge and provides an alternate path for soldiers in this area to qualify as veterans, via the exception. If a discharge "under honorable conditions" was required in every

circumstance, there would be little need to expressly exclude soldiers who received a dishonorable discharge.

HRD conveys concern that interpreting the "provided, however" clause as having independent meaning will wipe out the honorable discharge requirement completely or render the "and" between elements (a) and (b) meaningless. The exception created by the "provided, however" clause does not diminish the general requirements for an individual to fit into the definition of "veteran" under the statute. The purpose of the exception is not to alter the general definition of veteran, but to offer an alternative method for individuals to qualify as veterans, under very specific circumstances. It is an accepted rule of statutory interpretation that:

> [W]here a provision, general in its language and objects, is followed by a proviso, . . . the proviso is to be strictly construed, as taking no case out of the provision that does not fairly fall within the terms of the proviso, the latter being understood as carving out of the provision only specified exception, within the words as well as within the reason of the former.

Lexington Edu. Assoc. v. Town of Lexington, 15 Mass. App. Ct. 749, 753, *rev. den.*, 389 Mass. 1104 (1983) (*citing Op. of the Justices,* 254 Mass. 617, 620 (1926) (*quoting* Endlich, *Interpretation of Statutes* 742)). In accordance with this principle, the language of the exception does not negate or undermine the statute's requirements found in elements (a) and (b). Rather, it serves to exempt a narrow group of individuals from these general requirements.

HRD expresses concern about the consequences should the Appellant be considered a veteran, specifically that the Appellant would be able to bypass "soldiers who earned their disabled veteran" status. Respt's Br. 8. The Appellant voluntarily enlisted with the Army during a period of war and this act of bravery should not be diminished because the Appellant sustained an injury during training. Whether a soldier has "earned" his or her status as veteran depends on whether a soldier meets the criteria of MASS. GEN. LAWS ch. 4, § 7, cl. 43rd. HRD claims that

granting the Appellant veteran status would affect the status of a significant number of veterans on various eligible lists for both police officer and firefighter. Respt's Br. 9-10. This is not a valid reason for HRD to continue to misapply the statute.

For the reasons stated above, the motion for summary decision of the appellant, Kevin Shea, is allowed. The motion for summary decision of HRD is denied. Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission orders HRD to take all actions necessary to grant the Appellant disabled veteran status on the current eligible list for Police Officer and Firefighter and on any such future eligible lists for which the Appellant qualifies after passing the appropriate examination.

If the towns of Malden, Medford, or Winchester have hired a Police Officer and/or Firefighter from a certification issued on or after October 7, 2011, and if the Appellant was not considered for appointment, but the Appellant would have been considered had he been granted disabled veteran status, then HRD is further ordered to place the Appellant's name on all future certifications issued to said towns for position(s) of Police Officer and/or Firefighter until such time as the Appellant receives at least one consideration for such position(s).

For the reasons stated above, the appeal of the Appellant, Kevin Shea, is hereby ***allowed.***

Civil Service Commission

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Paul M. Stein, Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman [no]; Ittleman [yes], Marquis [no], McDowell [yes], and Stein [yes], Commissioners) on June 28, 2012.

A true record. Attest:

_____

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:
Timothy D. Zessin, Esq. (for Appellant)
John Marra, Esq. (for HRD)