We have also found that, with regard to cases involving the question of whether or not notice was given within the time limited by an insurance policy, the weight of authority is to the effect that notice must actually be received, not merely mailed, within the prescribed time. No cases in New Jersey are to be found on the general subject, with the exception of cases involving "filing" of a paper or pleading with a court. (Poetz v. Mix, supra).

In view of the foregoing, it is our opinion that the Unsatisfied Claim and Judgment Fund Board may not accept as timely notice under N. J. S. A. 39:6—65, a notice bearing a postmarked date which is within thirty days after an accident, but which is not actually received by the Unsatisfied Claim and Judgment Fund Board within said thirty day period.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

csj;b

JULY 13, 1955.

MR. STEVEN E. SCHANES,
Administrative Secretary,
Public Employees' Retirement System,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 29.

DEAR MR. SCHANES:

You have asked our opinion as to whether a holder of a "Discharge from Draft" should be entitled to be treated as a veteran under Chapter 15A of Title 43, the Public Employees' Retirement Act. You have attached to your request for an opinion letters from several state employees who hold such documents, as well as a photostatic copy of such a document issued on September 5, 1918 to Mr. Anthony F. Vitoritto, who is now a state employee.

We are advised that this type of document was issued during World War I, but not thereafter. In World War I, a person drafted into military service was sent to an army camp where he underwent a medical examination. In the event he failed to pass such medical examination, he was returned to civilian life, and given a "Discharge from Draft".

We have considered the photostatic copy of the document which you have furnished us concerning Mr. Vitoritto. It is specifically entitled "Discharge from Draft", and although it states that the holder of same "is hereby discharged from the military service of the United States by reason of defective vision", a footnote at the bottom thereof states as follows:

> "This form will be used for discharge of aliens and alien enemies and of men rejected on account of physical unfitness, dependency, etc.
>
> It will not be used in cases of men who have been accepted for military service and are subsequently discharged."

N. J. S. A. 43:15A—6 (1) provides that the term "veteran" shall mean "any officer, soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States, and has or shall be discharged or released therefrom under conditions other than dishonorable" in certain stated times of war.

In view of the clear language to be found in the footnote on the Discharge from Draft quoted above, it appears that the holder of such a document cannot be regarded as having been in the "active military service of the United States", and therefore, cannot be held to be a "veteran" within the meaning of N. J. S. A. 43:15A—6 (1).

In the letter from Mr. Vitoritto which you have sent us, he states:

> "I wrote to the Department of the Army and they have advised me that 'Those men who were inducted into the military service during World War I, under the provisions of the Selective Service Act, were in the military service of the United States from the date ordered to report.'"

We have obtained a copy of the letter from which the excerpt was quoted by Mr. Vitoritto. Same was addressed to Mr. Vitoritto's attorney by the commanding officer of the Military Personnel Records Center of the Office of the Adjutant General of the Department of the Army, and is herewith quoted in full:

"Mr. Michael Felcone,
Counsellor at Law,
217 East Hanover Street,
Trenton 8, New Jersey.

Dear Mr. Felcone:

> "Reference is made to your letter of 14 March 1955 requesting information as to whether Anthony Frank Vitoritto, who was discharged from draft, is considered a veteran of World War I.
>
> "Those men who were inducted into the military service during World War I, under the provisions of the Selective Service Law, were in the military service of the United States from the date ordered to report. However, unless accepted for service by the military authorities upon arrival at camp, they were only entitled to a certificate of discharge from draft. The certificate of discharge from draft was adopted by the Department of Army as the appropriate form of certificate to be furnished to registrants discharged after induction, but before acceptance by the military authorities. It is, however, under the circumstances described, an honorable separation from the military service.
>
> "The Department of the Army has never attempted to define the term 'veteran' and deals with it only in connection with an Act of Congress wherein the term has been defined insofar as it pertains to the specific Act. The question as to whether an individual is entitled to rights and privileges extended to veterans under some particular laws or regulations is one for decision by the agency charged with the administration thereof.

Sincerely yours,

DAVID H. ARP,
Colonel, AOC,
Commanding".

A careful reading of the above-quoted letter leaves no doubt that the holder of a Discharge from Draft may be considered as having been discharged or released from his obligation to serve "under conditions other than dishonorable" as required by N. J. S. A. 43:15A—6 (1), but it furnishes no support to a claim that the holder of such discharge from duty may be regarded as having been a "soldier . . . who has served in the active military service of the United States" as further required by N. J. S. A. 43:15A—6 (1).

Mr. Vitoritto's letter which you have sent us also bases his asserted right to be recognized as a veteran upon an Attorney General's opinion of November 23, 1920. We have read this opinion, and find that it deals with the rights of a holder of a Discharge from Draft under chapter 298 of the laws of 1920, which gave certain preferential treatment with regard to a Civil Service examination to "an honorable discharged soldier, sailor, or marine of the United States, having been in the military or naval service of the United States in any war in which this country has been engaged."

The Attorney General's opinion to which reference is made deals chiefly with the question as to the nature of the discharge, i.e., whether it is honorable or dishonorable. We quote the following from that opinion:

> "A discharge from draft . . . casts no reflection upon the applicant, as under the circumstances, there was no attempt to evade military service upon the part of the applicant, but the applicant was discharged for reasons over which he had no control, and under the construction placed upon what constitutes military service by the War Department of this State and the United States, the applicant is honorably discharged from military service whether he actually participated in the war or was discharged after his induction for a cause which is not dishonorable.
>
> "Military service as used in the Federal Statutes was construed by our United States Court, In Re Burns Fed. 796, as to include the Volunteer Army of the United States. It differs from the expression 'actual military service' which has been construed by the United States Supreme Court as meaning actual participation in war where the life of the individual is placed in jeopardy.
>
> "I am, therefore, of the opinion that the term 'honorable discharge' as used in this statute being construed when read in conjunction with the balance of the section would take in an applicant who produces a released certificate entitled Discharge from Draft. . . ."

It is important to bear in mind that there was no requirement under the statute considered in the above-quoted opinion that the applicant have had "active military service" as is required by N. J. S. A. 43:15A—6 (1) in order to constitute a person a veteran. As a matter of fact, the opinion takes care to point out that "actual military service" was not required. It should also be pointed out that by chapter 84 of the laws of 1942 (R. S. 11:27—1, as amended), the definition of the term "veteran" in the Civil Service Title was amended so as to require service "in the active military or naval service of the United States," thereby adding a requirement of "active" service not theretofore present.

In view of all the foregoing, it is our opinion that the holder of a Discharge from Draft cannot be regarded as a veteran within the meaning of N. J. S. A. 43:15A—6 (1), since he was not in the active military service of the United States in time of war.

Very truly yours,
GROVER C. RICHMAN, JR.,
Attorney General.
By: CHARLES S. JOELSON,
Deputy Attorney General.

csj;b