



PRICE DANIEL
ATTORNEY GENERAL

R-219

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

April 4, 1947

Hon. D. C. Greer
State Highway Engineer
Texas Highway Department
Austin 26, Texas

Opinion No. V-114

Re: Authority of the Highway Department to pay medical aid and compensation to a Texas State Guard Officer, where no record of a medical examination is found in the files of the Adjutant General.

Dear Sir:

Your request is based upon the following facts and related questions:

"We have a report of injury to a Texas State Guard Officer, reported to have occurred on November 26, 1946.

"Although the man claims to have been examined after S. B. 135, 48th Legislature became effective, no record of same can be found in the files of the Adjutant General. According to Attorney General Opinion No. 0-5355, dated July 1, 1943, we have no authority to cover the injured.

"In the case of this particular guardsman it so happens that he did take an examination for commission in the Texas National Guard in August, 1946, and the record is on file with the Adjutant General.

"Do we have authority to pay medical aid and compensation to this injured man? Can we give any recognition to this examination which was given for another organization?"

The answer to your first question is controlled by the provisions of Article 5891b of Vernon's Civil Statutes, which provides for compensation benefits for members of the Texas State Defense Guard and for the administration of the act by the State Highway Department.

From Section 2 of said Article, we quote:

"'Member' shall mean every person in the Texas Defense Guard. Provided that no person shall be classified as a 'member' under this Act nor be eligible to any compensation benefits under the terms and provisions of this Act until he shall have submitted himself first to a physical examination by a regularly licensed physician or surgeon, designated or accepted by the Texas Defense Guard to make such an examination, and until as a result of such examination, all physical defects existant at the time of the examination have been noted and recorded. After his separation, either by discharge, resignation, or otherwise from the Texas Defense Guard, no person shall be classified as a member under this Act or be entitled to any compensation benefits thereunder."

The injured officer claims to have submitted to the required examination, but no such record is on file with the Adjutant General. This gives rise to a strong presumption against the officer's claim, but it does not bar recovery, if, in fact, the officer did submit to the required examination. Before authorizing the officer's claim, the officer should furnish you with adequate proof of the required physical examination together with the results thereof noted and recorded at the time of the examination. Failing in this, the claim should be denied, because the officer has not qualified as a "member" as that term is defined in the quoted statute.

The fact that the claimant took an examination for a commission in the Texas National Guard in August, 1946, can be given no weight. There is no provision in the entire Act which expressly or impliedly permits an examination for a commission in the Texas National Guard to be a substitute for, or in lieu of, the examination specifically provided for in Section 2, subsection 2, supra. The Texas Defense Guard is entirely different and separate from the Texas National Guard. This is specifically provided for in Article 5391a, Sec. 1(b), as follows:

"Such forces shall be a part of the active militia and a component of the military forces of Texas and shall be additional to and distinct from the National Guard and shall be known as the Texas State Guard: * * *"

From the foregoing, it follows that the Texas State Guard Officer is not eligible for medical aid and compensation under the Texas State Guard Compensation Act, unless adequate proof of the required physical examination is made by the injured officer to the Highway Department.

SUMMARY

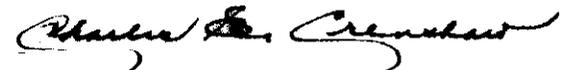
1. An injured State Guard Officer, who has no record of a physical examination on file with the Adjutant General, is not entitled to medical aid and compensation under Article 5891b V. C. S. unless such officer furnishes adequate proof of the required physical examination, together with the results thereof noted and recorded at the time of the examination.

2. A physical examination for a commission in the Texas National Guard, recorded in the files of the Adjutant General, does not qualify an injured Texas State Guard Officer as a "member" entitled to medical aid and compensation under Article 5891b, V. C. S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Charles E. Crenshaw
Assistant

APPROVED APR. 4, 1947



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ATTORNEY GENERAL

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