



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

July 27, 1976

The Honorable Charles L. Morris      Opinion No. H-853  
Executive Director  
Veterans Affairs Commission      Re: Disabled veterans  
P. O. Box 12277, Capitol Station      employment preference.  
Austin, Texas 78711

Dear Mr. Morris:

You ask for an opinion concerning the service credit granted to persons who, in applying for state employment requiring a competitive examination, establish the existence of a service-connected disability. Specifically, you ask whether eligibility for the credit is limited to persons having a disability of ten per cent or more as established by records of the Veterans Administration.

Article 4413(31), V.T.C.S., specifies the honorably discharged military personnel who qualify for a preference in state employment over other applicants for the same position having no greater qualification. Section 3 of article 4413(31) provides, in part:

In all public departments, commissions, boards and other governmental agencies and public works of this State which now require or may hereafter require a competitive examination under a Merit System or Civil Service Plan of either or both selecting and promoting employees, such person who is otherwise eligible and qualified for and entitled to preference under this Act, who shall have been so examined and shall have attained at least the minimum required score for such test or tests, shall have a service credit amounting

to ten (10) points added to the earned rating, and a service credit amounting to five (5) additional points shall be added to the earned rating of each such person who has a service-connected disability which has been or may be established by official records, which records such disabled person shall furnish to the person or persons whose duty it is to fill the position or employment applied for. . . . (Emphasis added).

It should be noted that the provision above does not specify a minimum percentage of disability required before the veteran qualifies for the additional five-point preference.

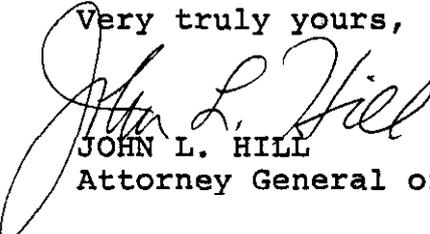
Federal law prescribes a minimum of ten per cent (10%) disability for purposes of compensation, 38 U.S.C. §§ 314, 334, 355, but sets no such minimum amount for preference for United States Civil Service positions. "Disabled veteran" is defined in 5 U.S.C. § 2108 as an individual who has served on active duty, been honorably discharged, and "has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension . . . ." (Emphasis added). Under 5 U.S.C. § 3309, a disabled veteran (regardless of percentage of disability) is granted ten additional points above his earned rating on a competitive exam, as opposed to five points for a veteran who has no disability. Under 5 U.S.C. § 3313, for certain competitive positions, the names of veterans having a compensable disability (i.e. a disability of ten per cent or more) are placed on appropriate registers ahead of all other applicants -- including any veterans having a disability rated at less than ten per cent. The latter provision, however, is apparently the only statute which distinguishes degrees of disability for purposes of preference eligibility; the significance is that a disabled veteran whose disability is rated less than ten per cent is, nonetheless, considered disabled, when so certified by the Veterans Administration. See e.g. Handbook for Veterans Benefit Counselors H-27-73-1, at page V-2-1.

The Texas statute, article 4413(31), section 3, requires only that "official records" establish the existence of a service-connected disability in order for the veteran to be entitled to the additional five point credit on the Merit System or Civil Service Plan earned rating. The language does not require that the disability reach the ten per cent level required for compensation from the federal government. Since the federal government certifies disability in ten per cent increments for compensation purposes, a veteran who has a service-connected disability which does not reach the level of ten per cent would be certified for those purposes at zero, even though for other purposes he is recognized as being disabled. A service-connected disability rated at zero per cent for compensation purposes which is, nonetheless, certified as a service-connected disability by official records, qualifies the veteran for the five point credit. Thus, neither the Merit System Council nor any other agency may limit the five point credit to veterans having disabilities rated at ten per cent or more.

S U M M A R Y

Any service-connected disability established by official records entitles a person otherwise qualifying for preference under article 4413(31), V.T.C.S., to an additional five point credit on his earned rating on a competitive Merit System or Civil Service Plan exam. Such credit may not be limited to veterans whose disabilities are rated at ten per cent or more by the Veterans Administration.

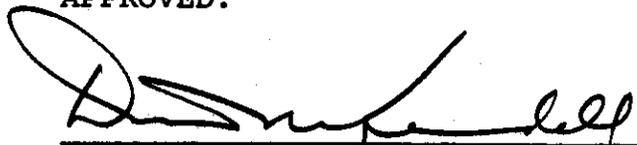
Very truly yours,



JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

jwb