

GENERAL COUNSEL'S OPINION, VETERANS ADMINISTRATION-Op. G.C. 6-87

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SUBJECT: Character of Discharge: Juvenile Offenses as  
Moral Turpitude

QUESTION PRESENTED: May a person adjudged a "juvenile offender" for an act that would if committed by an adult constitute a felony, who receives an undesirable discharge because of such act, be precluded from receiving veterans' benefits under the moral-turpitude proscription of 38 C.F.R. § 3.12(d)(3)?"

COMMENTS: For reasons that follow, the answer is yes."

The facts are these. The claimant served in the Army from June 30, 1956, until receiving an undesirable discharge on June 26, 1957, the claimant's 18th birthday. The military records show that the claimant was issued the discharge for the offenses of burglary, larceny, housebreaking, and narcotics (for unauthorized possession and use thereof). For such offenses the claimant could, under State law, have been convicted of a felony. Instead, the claimant was adjudicated a juvenile offender and committed to the custody of the State youth authority.

"Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. 38 U.S.C. § 101(2). Section 3.12 of title 38, Code of Federal Regulations, contains the criteria to be applied to determine whether a discharge or release is to be considered under other than honorable conditions. In this regard section 3.12(d)(3) states that a discharge or release for an offense involving "moral turpitude" will be considered to have been issued under dishonorable conditions.

In order to resolve the issue presented, it is necessary to consider whether, within the meaning of the law, the offenses for which the claimant was discharged involved moral turpitude, and if so, whether the claimant's being adjudged a juvenile offender for those acts will excuse those offenses. The opinion request suggests that section 3.12 provides a standard to the effect that, for VA benefit purposes, an offense cannot involve moral turpitude unless it results in the conviction of a felony. For reasons to be discussed, this office does not subscribe to that interpretation.

The provision which could cause confusion in this regard is the following explanatory statement contained in section 3.12(d)(3) concerning the meaning of moral turpitude: "This includes, generally, conviction of a felony." This statement, added to the VA Regulations in 1963, was intended to expand the terminology "moral turpitude." See Transmittal Sheet 278, January 4, 1963. It was designed to provide that the conviction of a felony, for the offense resulting in discharge, would be considered by the VA as facie evidence that the offense was one involving moral turpitude. Id. Accordingly, the provision must be viewed as creating a rebuttable presumption, for VA character-of-discharge determinations, that a felonious act was one involving moral turpitude. The regulatory provision does not, however, restrict the meaning of moral turpitude to offenses resulting in conviction of a felony.

Some interpretations of earlier veterans' benefit laws could be seen as implying that an offense did not involve moral turpitude unless it resulted in the conviction of a felony. See, e.g., Op. G.C. 41-51 (1951); 67 Op. G.C. 162 (1932); and 23 Op. G.C. 94 (1923). However, it is the opinion of this office that this is not the correct view. While it would be difficult to envision an act that constitutes a felony as not involving moral turpitude, we believe it is the nature of the offense and not its statutory classification or the degree of punishment that determines whether moral turpitude was involved. Viewed in this light, VA administrative determinations concerning character of discharge are not to be confined by the definitions of "felony" that are contained in the various criminal statutes. Neither are Agency determinations bound by defenses contained in the various statutes that mitigate the punishment for offenses committed, for example juvenility, though it is appropriate to take such defenses into account.

A precise definition of the term "moral turpitude" is elusive. See, e.g., dissenting opinion in Jordan v. De George, 341 U.S. 223, 232 et seq. (1951). Nevertheless, the term is one of long standing in the law generally and in veterans' benefit law in particular. See, e.g., Pub. L. No. 65-175 (1918). Accordingly, it must be addressed. Ballentine's Law Dictionary, 815 (3d ed. 1969) defines moral turpitude in part as follows: "Baseness, vileness, or depravity in the private and social duties which a man

owes to his fellowmen or to society in general . . . .  
Something immoral in itself irrespective of the fact that  
it is punished by law(emphasis supplied . Said  
differently, it is an act that is inherently wrong. The  
problem of interpretation is that there is not universal  
agreement concerning what acts are inherently wrong.  
However, while there are some apparent inconsistencies,  
there appears to be a common thread running through most  
court decisions, as well as textual definitions, regarding  
this terminology that permit us to enunciate a workable  
definition.

Corpus Juris Secundum, Criminal Law § 8, enumerates acts  
wrong in themselves to be murder, rape, arson, burglary,  
larceny, breach of the peace, forgery, and the like.  
In the Jordan case, supra at, 229, the Supreme Court declared  
that fraud has consistently been regarded as  
having the "contaminating component" of moral turpitude.  
The trafficking in illegal drugs involves moral turpitude.  
People v. Young, 732 P.2d 1208, 1210 (Col. 1987), and cases  
cited therein. The illegal use of drugs has been found to  
involve moral turpitude. E.g., Matter of Discipline of Hopp,  
376 N.W.2d 816 (S.D. 1985). On the other hand, it  
has been held that the mere possession of controlled  
substances, absent fraud, deceit, or other elements  
involving harm to a specific victim, does not involve moral  
turpitude. See In re Chase, 702 P.2d 1082, 1089 (Or. 1985),  
but see the strong dissenting opinions therein.  
Manslaughter -resulting from driving unlicensed, knowingly  
with defective vision, has been held to involve moral  
turpitude. In re Alkow, 415 P.2d 800, 802 (Cal. 1966).

The common thread running through opinions deciding cases  
in which moral turpitude has been found, as well as textual  
definitions, is that the offense is a willful act calculated  
to cause harm or loss or that can reasonably be expected to  
do so. Therefore, this office adopts the following defini-  
tion for VA benefit determinations: Moral turpitude is the  
element of a willful act committed without justification or  
legal excuse which gravely violates accepted moral standards  
and which, by reasonable calculation, would be expected to  
cause harm or loss to person or property.

The offenses for which the claimant was discharged were  
burglary, larceny, housebreaking, and narcotics. The  
investigation report supporting the undesirable discharge  
reflected the following: One February 5 and 6, 1957,

4. Op. G.C. 6-87

the claimant broke into two commercial establishments and attempted to break into another. Two searches of the claimant on February 7, 1957, found the claimant to be in possession of various items of stolen property (such as jewelry, controlled drugs, and hypodermic syringes).e The second search disclosed that the claimant had consumed barbiturates to the point of being unable to perform duty. On January 11, 1957, the claimant broke into two private residences and stole various items, and earlier, on January 7, 1957, the claimant had broken into an office and stolen stamps, medical equipment, and drugs.

It must be concluded that the foregoing acts were willful, ones which by reasonable calculation would be expected to cause harm or loss to the person or property of several

persons, including the claimant. Accordingly, these acts for which the claimant was discharged involved moral turpitude. But may these acts be excused, for veterans' benefit purposes, because of the juvenility of the claimant at the times the offenses were committed? It is the opinion of this office that they cannot.

As mentioned, State laws that permitted the claimant to be punished as a juvenile offender instead of a felon are not controlling. In 1966 the Ninth Circuit had opportunity to address this issue with a bit different slant. That case was before the court to review a Board of Immigration Appeals decision upholding a deportation order. The order was based, in part, upon an alien's conviction at age 18 by the State of Oregon of the crime of petty larceny, an offense for which he could have, under Oregon law, been treated as a juvenile offender but was not. The Ninth Circuit refused to permit the discretionary power of the State to control the administrative determination, and upheld the finding of the Immigration and Naturalization Service that the offense committed involved moral turpitude. The court therein declared: "Certainly an 18-year-old can have moral turpitude." Morasch v. Immigration and Naturalization Service, 363 F.2d 30 (9th Cir. 1966).

It is not necessary here to delve into a theory of whether a person might, at some tender age, commit such acts without knowing they are inherently wrong and thereby be excused. The claimant in this case was, at the time the offenses were committed, nearly 18 years old. The claimant was, under the law, considered to be of a level of maturity sufficient

to perform military service, a duty which, if performed correctly, required integrity and commitment to responsibility. Accordingly, the Adjudication Officer could properly find that the claimant was well of an age to be morally accountable for the described actions. The claimant surely knew that the claimant's acts of burglary, larceny, and drug abuse would cause harm or loss to others as well as to the claimant. It therefore must be concluded that the claimant was discharged for offenses involving moral turpitude, and the claimant's classification as a juvenile offender cannot, for veterans' benefit purposes, serve to excuse the claimant's actions. Accordingly, the claimant's discharge must be construed as having been under other than honorable conditions. The foregoing assumes, of course, that the Adjudication Officer finds the facts to be as presented.

HELD: In summary, an offense will, for veterans' benefit purposes, be considered to involve moral turpitude if it is willful, gravely violates accepted moral standards, is committed without justification or legal excuse, and, by reasonable calculation, would be expected to cause harm or loss to person or property. While the conviction of a felony creates a rebuttable presumption that an offense involved moral turpitude, the absence of such conviction does not absolve an offense from the taint of moral turpitude. Finally, the fact that a criminal justice system has the discretion to treat the one who has committed such act as either a juvenile offender or criminal is, of itself, irrelevant. The test is whether the offender knew or should have known the act was inherently wrong.

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NOTE: This opinion was released in the form of a letter to the VA District Counsel, Muskogee, Oklahoma, on July 27, 1987.