

CHAPTER 5

VETERANS AND DISABLED VETERANS PREFERENCE

Authority

N.J.S.A. 11A:2-6(d), 11A:4-1(e), 11A:4-8, 11A:4-9, 11A:5-1 through 11A:5-8, and 11A:5-15; and P.L. 2000, c. 127, P.L. 2005, c. 64, and P.L. 2007, c. 115.

Source and Effective Date

R.2008 d.216, effective July 1, 2008.
See: 40 N.J.R. 1407(a), 40 N.J.R. 4521(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 5, Veterans and Disabled Veterans Preference, expires on December 28, 2015. See: 47 N.J.R. 1375(a).

Chapter Historical Note

Chapter 5, Veterans and Disabled Veterans Preference, was adopted as R.1987 d.404, effective October 5, 1987. See: 19 N.J.R. 1018(a), 19 N.J.R. 1827(a). See, also, Title Historical Note prior to N.J.A.C. 4A:1.

Pursuant to Executive Order No. 66(1978), Chapter 5, Veterans and Disabled Veterans Preference, was readopted as R.1992 d.415, effective September 22, 1992. See: 24 N.J.R. 2495(a), 24 N.J.R. 3719(a).

Pursuant to Executive Order No. 66(1978), Chapter 5, Veterans and Disabled Veterans Preference, was readopted as R.1997 d.436, effective September 22, 1997. See: 29 N.J.R. 3103(a), 29 N.J.R. 4456(a).

Chapter 5, Veterans and Disabled Veterans Preference, was readopted as R.2003 d.113, effective February 13, 2003. See: 34 N.J.R. 3571(a), 35 N.J.R. 1407(c).

Chapter 5, Veterans and Disabled Veterans Preference, was readopted as R.2008 d.216, effective July 1, 2008. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 5, Veterans and Disabled Veterans Preference, was scheduled to expire on July 1, 2015. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. ELIGIBILITY

4A:5-1.1 Veterans preference

(a) The Adjutant General of the Department of Military and Veterans' Affairs is empowered by statute to make veterans preference eligibility determinations. See P.L. 2000, c.127. The provisions of this section are for informational purposes only.

(b) A person is entitled to veterans preference (abbreviated as "V") if he or she has been discharged or released from active United States military or naval service under conditions other than dishonorable; and:

1. Served at least 90 days in the active United States military or naval service and had been discharged under conditions other than dishonorable, during:

- i. World War I, between April 6, 1917 and November 11, 1918;
- ii. World War II, on or after September 16, 1940 and on or before December 31, 1946;
- iii. Korean Conflict, on or after June 23, 1950 and on or before January 31, 1955; or
- iv. Vietnam Conflict, on or after December 31, 1960 and on or before May 7, 1975;

v. The 90 day period must have begun on or before one of the ending dates above, and shall not include any period of education or training under the Army Specialized Training Program or the Navy College Training Program which was a continuation of a civilian course, nor any time spent as a cadet or midshipman at one of the service academies. During the period of the Vietnam conflict, the following are excluded: any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code; or any service performed pursuant to enlistment in the National Guard or the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve or Coast Guard Reserve.

2. Served in the Lebanon crisis on or after July 1, 1958, in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest;

3. Served in the Lebanon peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation, for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after September 26, 1982 and on or before December 1, 1987;

4. Served in the Grenada peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after October 23, 1983 and on or before November 21, 1983;

5. Served in the Panama peacekeeping mission or on board any ship actively engaged in patrolling the territorial

waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after December 20, 1989 and on or before January 31, 1990;

6. Served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for the Operation Desert Shield/Desert Storm mission for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after August 2, 1990;

7. Served in the Arabian peninsula and the Persian Gulf, and in direct support of Operation Northern Watch and Operation Southern Watch, for a period, continuously or in the aggregate, of at least 14 days, on or after August 27, 1992, but commencing on or before the date of inception of that operation, as proclaimed by the President of the United States, Congress or United States Secretary of Defense, whichever date of inception is earliest;

8. Served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for the Operation Restore Hope mission for a period, continuously or in the aggregate, of at least 14 days. The 14 days must have commenced on or after December 5, 1992, or on or after the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, and on or before March 31, 1994, or the date of termination as proclaimed by the President of the United States or the Congress, whichever date is latest;

9. Served in Operation Uphold Democracy in Haiti for a period of at least 14 days, continuously or in the aggregate, on or after September 19, 1994 and commencing on or before March 31, 1995, in Haiti or on board any ship actively engaged in patrolling the territorial waters of Haiti for that period, and received an Armed Forces Expeditionary Medal for such service;

10. Served in the Republic of Bosnia and Herzegovina for a period of 14 days, continuously or in the aggregate, on or after November 20, 1995, in direct support of Operation Joint Endeavor or Operation Joint Guard, commencing on or before June 20, 1998, and:

- i. Was deployed in that nation or in another area in the region;
- ii. Was on board a United States naval vessel operating in the Adriatic Sea; or
- iii. Operated in airspace above the Republic of Bosnia and Herzegovina;

11. Served in Operation Enduring Freedom in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days, on or after September 11, 2001 but commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation;

12. Served in Operation Iraqi Freedom in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days, on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of the operation, commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation;

13. Received a service-incurred injury or disability during a period in (b)1 above or while serving in a mission during a period and within the corresponding geographical area, as specified in (b)2 through 12 above, regardless of the length of service or, in the case of (b)9 above, regardless of receipt of an Armed Forces Expeditionary Medal;

14. Served in any army or navy of the United States allies in World War I between July 14, 1914 and November 11, 1918, or World War II between September 1, 1939 and September 2, 1945, provided he or she voluntarily enlisted in such service, was a United States citizen at the time of enlistment, did not renounce or lose United States citizenship, and was honorably discharged; or

15. Is the surviving spouse of a person entitled to veterans preference and has not remarried.

Amended by R.1992 d.415, effective October 19, 1992.

See: 24 N.J.R. 2495(a), 24 N.J.R. 3719(a).

Revised (a)1i through iv; added new (a)2.-5.; redesignated existing (a)2.-4. as (a)6.-8.

Amended by R.1997 d.436, effective October 20, 1997.

See: 29 N.J.R. 3103(a), 29 N.J.R. 4456(a).

In (a)2, extended the closing date of service in Lebanon from "February 26, 1984" to "December 1, 1987"; and in (a)3, changed the beginning date of service in Grenada from "October 25, 1983" to "October 23, 1983".

Amended by R.1999 d.55, effective February 16, 1999.

See: 30 N.J.R. 3880(a), 31 N.J.R. 533(a).

In (a), rewrote the introductory paragraph, inserted new 6 and 7, recodified former 6 through 8 as 8 through 10, and rewrote the new 8.

Amended by R.2002 d.89, effective March 18, 2002.

See: 33 N.J.R. 3725(a), 34 N.J.R. 1263(b).

Rewrote the section.

Amended by R.2005 d.18, effective January 3, 2005.

See: 36 N.J.R. 4198(a), 37 N.J.R. 45(a).

Rewrote the section.

Amended by R.2006 d.105, effective March 20, 2006.

See: 37 N.J.R. 4361(a), 38 N.J.R. 1429(a).

Added (b)7; recodified former (b)7 through (b)14 as (b)8 through (b)15.

Case Notes

Veteran's preference denied. *McHale v. Civil Service Comm'n.*, 178 N.J.Super. 371, 429 A.2d 373 (App.Div.1981) certification denied 87 N.J. 402, 434 A.2d 1081.

4A:5-1.2 Disabled veterans preference

(a) A person is entitled to disabled veterans preference (abbreviated as "DV") if he or she:

1. Receives or is entitled to receive, under United States Veterans Administration guidelines, compensation

for service connected disability of 10 percent or more arising out of military or naval service as provided in N.J.A.C. 4A:5-1.1(b);

2. Is the spouse of a person entitled to disabled veterans preference who:

- i. Is not employed by any jurisdiction operating under Title 11A, New Jersey Statutes; and
- ii. Waives any right to preference for the duration of the spouse's employment;

3. Is the surviving spouse of a person entitled to disabled veterans preference and has not remarried; or

4. Is a parent or surviving spouse of a person who would have been entitled to veterans preference under N.J.A.C. 4A:5-1.1 but who died while in service. The use of the preference by one such survivor shall suspend the right of any other so long as the first individual who uses the preference is employed by any jurisdiction operating under Title 11A, New Jersey Statutes.

Amended by R.2003 d.113, effective March 17, 2003.

See: 34 N.J.R. 3571(a), 35 N.J.R. 1407(c).

In (a)1, substituted "as provided" for "during any of the periods" and amended the N.J.A.C. reference.

4A:5-1.3 Filing for veterans or disabled veterans preference

(a) Veterans or disabled veterans preference shall apply prospectively from the date of the initial determination of the Adjutant General of the Department of Military and Veterans' Affairs or the date of the Adjutant General's determination from an appeal, as the case may be. See N.J.A.C. 5A:9-1.4.

(b) Veterans or disabled veterans preference is effective for all eligible lists for which an eligible has received a determination from the Adjutant General, as provided in (a) above, no later than eight days prior to the list's issuance date.

(c) For initial employment in the noncompetitive division and for promotion from the noncompetitive division to the competitive division, veterans or disabled veterans preference is effective on the date of the Adjutant General's determination, as provided in (a) above.

Repeal and New Rule, R.2002 d.89, effective March 18, 2002.

See: 33 N.J.R. 3725(a), 34 N.J.R. 1263(b).

Section was "Filing for veterans or disabled veterans preference".

Amended by R.2008 d.216, effective August 4, 2008.

See: 40 N.J.R. 1407(a), 40 N.J.R. 4521(a).

In (b), substituted "eligible lists for" for "examinations in" and "an eligible has received a determination from the Adjutant General" for "the closing date for applications falls on or after the Adjutant General's determination", and inserted ", no later than eight days prior to the list's issuance date".

SUBCHAPTER 2. USE OF PREFERENCE

4A:5-2.1 Open competitive examinations

(a) A list of eligibles who have passed an open competitive examination shall appear in the following order:

1. Eligibles entitled to disabled veterans preference in the order of their scores;
2. Eligibles entitled to veterans preference in the order of their scores;
3. Non-veteran eligibles (abbreviated as "NV") in the order of their scores.

(b) Whenever more than one eligible has the same score and same veterans status, the tie shall not be broken and they shall have the same rank.

(c) Whenever a disabled veteran or veteran is certified from an open competitive list and a regular appointment is to be made, the appointing authority shall first appoint disabled veterans and then veterans in the order of ranking. For example:

TEST SCORES		RANKED LIST OF ELIGIBLES		
Name and Status	Score	Name and Status	Score	Rank
John Green (NV)	90	Robert Brown (DV)	80	1
Charles Black (V)	85	Charles Black (V)	85	2
Mary White (V)	85	Mary White (V)	85	2
Robert Brown (DV)	80	John Green (NV)	90	3
Jane Silver (NV)	80	Jane Silver (NV)	80	4
Tom Gold (NV)	75	Tom Gold (NV)	75	5

Assuming all eligibles are interested in appointment, Robert Brown must receive the first appointment. The next vacancy must be filled by appointing either Charles Black or Mary White. Assuming Mary White is appointed, the next vacancy must be filled by appointing Charles Black. The next vacancy must be filled by choosing among John Green, Jane Silver and Tom Gold, in accordance with the "rule of three." See N.J.S.A. 11A:4-8.

(d) Appointing authorities are not required to give preference to disabled veteran or veterans when making a provisional appointment from an incomplete list. See N.J.A.C. 4A:4-1.5.

Administrative Correction to (d).

See: 23 N.J.R. 2500(c).

4A:5-2.2 Promotional examinations

(a) No distinction shall be made between disabled veterans and veterans in promotional examinations. Both are referred to as veterans in this rule.

(b) A list of eligibles who have passed a promotional examination shall appear in the order of their scores regardless of veteran or nonveteran status. However, when scores are tied, the names of veterans shall be listed first within each rank.

(c) When a single vacancy is to be filled from a promotional certification headed by a veteran, any veteran among the top three interested eligibles may be appointed in accordance with the "rule of three." See N.J.S.A. 11A:4-8. A non-veteran shall not be appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list. See N.J.A.C. 4A:4-4.7 for removal procedures.

(d) When a single vacancy is to be filled from a promotional certification headed by a nonveteran, any reachable eligible may be appointed in accordance with the "rule of three." See N.J.S.A. 11A:4-8.

(e) If there is more than one vacancy, and a veteran is ranked first on the certification as a result of the first appointment from the certification, then a veteran must be appointed to the next vacancy. If, as a result of the second appointment, another veteran heads the certification, then a veteran must be appointed to the third vacancy. This process shall be followed for each appointment that is made from the same certification.

(f) As an example, assume that the following represents the ranked order and status of interested eligibles which appear on promotional certifications for single vacancies:

1. Veteran 2. Non-Veteran 3. Non-Veteran

Veteran must be offered the appointment.

1. Veteran 2. Non-Veteran 3. Veteran

Either (1) or (3) must be offered the appointment.

1. Non-Veteran 2. Veteran 3. Non-Veteran

Either (1), (2) or (3) may be offered the appointment.

1. Veteran (Tied) 1. Non-Veteran 2. Non-Veteran

Veteran must be offered the appointment.

(g) As another example, assume that the following represents the ranked order and status of eligibles on the same promotional certification from which multiple vacancies must be filled:

1. Non-Veteran 2. Veteran 3. Veteran
4. Non-Veteran

Either (1), (2) or (3) may be offered the first appointment. If the non-veteran is appointed to the first vacancy, a veteran, initially ranked (2) on the promotional certification, would now be ranked (1). Another veteran, initially ranked (3) on the promotional certification, would be ranked (2). The certification now appears as follows:

1. Veteran 2. Veteran 3. Non-Veteran

Either (1) or (2) may be appointed to the second vacancy, but (3) may not be appointed.

Administrative Correction to (c).

See: 23 N.J.R. 2500(c).

Amended by R.2003 d.113, effective March 17, 2003.

See: 34 N.J.R. 3571(a), 35 N.J.R. 1407(c).

Rewrote the section.

Case Notes

Veteran's preference in regard to sex discrimination. *Ballou v. State Department of Civil Service*, 75 N.J. 365, 382 A.2d 1118 (1978).

4A:5-2.3 Veterans and disabled veterans preference in the noncompetitive division

In making appointments in the noncompetitive division, preference shall be given among qualified applicants to disabled veterans, then veterans.