

Applicable Law and Discussion

Subsection A of § 23-7.4:1 establishes the VMSDEP, which provides the VMSDEP waiver to “qualified survivors and dependents” of military service members or veterans. It was originally known as the “War Orphan Program.”³ The VMSDEP waiver applies only to tuition and fees charged by public institutions of higher education or other public accredited postsecondary institutions granting a degree, diploma, or certificate. Section 23-7.4:1(A)(1) defines “qualified survivors and dependents” as:

the spouse or a child between the ages of 16 and 29 of a military service member who, while serving as an active duty member in the United States Armed Forces, United States Armed Forces Reserves, the Virginia National Guard, or Virginia National Guard Reserve, during military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or in any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a prisoner of war, or of a veteran who, due to such service, has been rated by the United States Department of Veterans Affairs as totally and permanently disabled or at least 90% disabled, and has been discharged or released under conditions other than dishonorable.

To summarize the statute, if the military member was killed or becomes missing in action or a prisoner of war “during” his or her covered military combat, the benefits of the statute apply. If he or she is disabled “due to” service in a covered military combat, the benefits apply.

Under the well-established rules of statutory construction, courts “determine the General Assembly’s intent from the words contained in the statute.”⁴ The Supreme Court of Virginia has stated repeatedly that “courts are required to apply the plain meaning of statutes, and . . . are not free to add language, *nor to ignore language*, contained in statutes.”⁵ The statute uses the phrases “as a result of a terrorist act” and “due to” covered military service with respect to the relationship between the injury sustained by the service member and their service. The phrases “as a result of” and “due to” are synonymous according to Merriam-Webster’s dictionary and mean “because of.”⁶

For a deceased, missing, or captured veteran, the language used by the General Assembly makes quite clear its intent to have only a limited class of survivors be entitled to benefits under the statute:

[A] military service member who, while serving as an active duty member . . . , *during* military operations against terrorism, *on* a peacekeeping mission, *as a result of* a terrorist act, or *in* any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a prisoner of war^[7]

Use of the terms “during,” “as a result of,” and “in” make it clear that the death, etc., must be in direct connection with the covered military combat, not just occurring apart from the combat but during the same time period.

³ See 2005 Va. Acts ch. 773.

⁴ *Williams v. Commonwealth*, 265 Va. 268, 271 (2003) (citing *Vaughn, Inc. v. Beck*, 262 Va. 673, 677 (2001); *Thomas v. Commonwealth*, 256 Va. 38, 41 (1998)).

⁵ *E.g.*, *Signal Corp. v. Keane Fed. Sys., Inc.*, 265 Va. 38, 46 (2003) (emphasis added).

⁶ See MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 357 (Frederick C. Mish et al. eds., 10th ed. 2001).

⁷ VA. CODE ANN. § 23-7.4:1(A)(1) (Supp. 2014) (emphasis added).

As to the dependents of disabled veterans who are entitled to benefits under the statute, there is an equally clear legislative intent to have only a limited class of beneficiaries:

[A] veteran who, *due to such service* [has been rated disabled by the United States Department of Veterans Affairs]^{8]}

The inclusion of the phrase “due to such service” limits the application of the VMSDEP waiver to dependents of veterans who became disabled or deceased *due to* active duty service in the covered military combat, not just during the time period of such combat.⁹

The General Assembly’s 2005 revisions to VMSDEP support the conclusion that the death or injury suffered by the service member must be directly connected to serving in covered military combat. The 2005 amendments to the statute revised the wording from “due to service during such periods” to “due to such service.”¹⁰ This revision clarified that the veteran’s disability had to have resulted from the service described in § 23-7.4:1(A)(1) and not just service during the time periods that these engagements were occurring. This conclusion is further substantiated by unsuccessful attempts during both the 2014 and 2015 General Assembly Sessions to revise the *Code* to extend VMSDEP benefits to the spouse or dependent of a veteran with at least a 90 percent disability, which disability need not have been caused by the veteran’s involvement during the covered military combat.¹¹

This interpretation is also consistent with the original title of the legislation, the “War Orphans Program,” in that the child of a military member would not be a “war orphan” if the military member died under circumstances unrelated to combat.

Conclusion

Accordingly, it is my opinion that in order for a surviving spouse or dependent to receive the VMSDEP tuition and fees waiver, the applicable military service member’s or veteran’s killed-in-action status, missing-in-action status, prisoner-of-war status, or 90-100% disability must have been caused directly by the veteran’s involvement in covered military combat.

⁸ *Id.*

⁹ The Attorney General, in interpreting the predecessor statute to § 23-7.4:1, opined that in order to qualify for benefits, a causal connection between disability and military service of parent was required. See 1987-1988 Op. Va. Att’y Gen. 350, 351.

¹⁰ 2005 Va. Acts chs. 773, 783.

¹¹ Senate Bill 303 (2014) and House Bill 2346 (2015), neither of which passed, both read in relevant part:

For the purposes of this subsection, “qualified survivors and dependents” means the spouse or a child between the ages of 16 and 29 of (i) a military service member who, while serving as an active duty member in the United States ~~Armed Forces~~ *armed forces*, United States Armed Forces Reserves, the Virginia National Guard, or Virginia National Guard Reserve, during military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or in any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a prisoner of war; or of (ii) a veteran who *served in the United States armed forces, United States Armed Forces Reserves, Virginia National Guard, or Virginia National Guard Reserve and*, due to such service, has been rated by the ~~United States~~ *U.S.* Department of Veterans Affairs as totally and permanently disabled or at least ~~90%~~ *90 percent* disabled, and has been discharged or released under conditions other than dishonorable.