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THE TAX COURT COMMITTEE ON OPINIONS
3/21/16 - Corrected defendant attorney name

FISHER, KRYSTAL & DAVID,	:	TAX COURT OF NEW JERSEY DOCKET NO: 014080-2014 007736-2015
Plaintiffs,	:	
v.	:	
CITY OF MILLVILLE,	:	
Defendant.	:	

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: March 21, 2016

Todd W. Heck for plaintiffs
(Testa, Heck, Scrocca & Testa, P.A., attorneys).

Brock D. Russell for defendant.

CIMINO, J.T.C.

The issue in this case is whether plaintiff taxpayer,[1] a veteran who suffers from a service-connected 100% disability, meets the legislatively imposed requirements for a personal residence tax exemption.

This matter comes before this Court on cross-motions for summary judgment. The parties have set forth a joint statement of material facts, the pertinent parts of which are incorporated into

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[1] There are actually two plaintiffs in this matter, military veteran Krystal Fisher and her husband David Fisher, co-owner of the residence. For convenience and clarity, the court will solely refer to plaintiff Krystal Fisher.

this opinion. It goes without saying that our Supreme Court has indicated that summary judgment provides a prompt, business-like and appropriate method of disposing of litigation in which material facts are not in dispute. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 530 (1994). Additionally, cross-motions for summary judgment demonstrate to the court the ripeness of the matter for adjudication. Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 177 (App. Div. 2008).

Plaintiff, Krystal Fisher, enlisted for active duty in the United States Army on June 4, 2002. At the time of enlistment and during all times relevant to this decision, the United States military was engaged in Operation Enduring Freedom, otherwise colloquially referred to as the War on Terror. From the date of her enlistment until March of 2003, plaintiff trained for active deployment to Afghanistan as part of the Combat Aviation Brigade within the Third Infantry Division. In October of 2002, while training at Fort Leonard Wood in Missouri, the plaintiff fell from a two-story building during a training exercise and sustained numerous injuries. At the time, these injuries did not preclude her from continuing to serve. However, these injuries eventually resulted in Ms. Fisher being 100% permanently disabled.

Despite the injuries sustained, plaintiff completed her training at Fort Leonard Wood and was thereafter transferred to her active duty station at Fort Stewart, Georgia, where she

continued to serve from March 12, 2003 through December 28, 2003 as part of the Rear Detachment for the portion of her Unit deployed in Afghanistan.

Plaintiff's duties while part of the Rear Detachment included shipping weapons, food, clothing and processed supplies for the overseas portion of her unit; keeping inventory logs of weapons utilized by her unit, including checking in and out each weapon; retrieving, processing, and formalizing reports for her unit overseas as to their military police activities; assembling protective shield units for Humvee military vehicles utilized in overseas combat; performing military police duties at Fort Stewart, a staging base; and participating in prisoner of war camp studies and simulations at Fort Stewart along with the development of prisoner camp protocols to be utilized overseas. Moreover, while stationed at Fort Stewart, plaintiff continued to train for potential deployment to Afghanistan as part of the military police.

After being declared 100% permanently disabled as a result of military service, plaintiff and her husband submitted an application to the City of Millville for a disabled veteran's property tax exemption pursuant to N.J.S.A. 54:4-3.30. This statutory provision provides a tax exemption for the dwelling house of a veteran declared to be 100% disabled if certain military service requirements are met. The Millville City Tax Assessor issued a notice of disallowance of plaintiff's claim for the

disabled veteran's property tax exemption on June 26, 2014. The stated basis for the Assessor's disallowance of the exemption was the requirement in the former administrative regulation of the Director of the Division of Taxation found at N.J.A.C. 18:28-1.1 that required a minimum of 14 days of service in the actual "combat zone." [2] [3]

The plaintiffs' appealed the matter to the Cumberland County Board of Taxation which denied the appeal. Thereafter, a timely appeal was made to this court.

As initially ratified, the 1947 New Jersey Constitution provided that:

> [a]ny citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service, in time of war in any branch of the Armed Forces of the United States . . . who has been or shall be declared by the United States Veterans Administration . . . to have a service-connected disability, shall be entitled to such further deduction from taxation as from time to time may be provided by law. N.J. Const., art. VIII, § 1, ¶ 3 (1947).

In 1948, the Legislature "provided by law" that a veteran suffering a disability declared by the United States Veterans Administration to have a total or 100% permanent disability sustained through military service shall be exempt from taxation

[2] The 14 days can be reduced if the injury occurred in the combat zone. That is not at issue in this case.

[3] The regulation expired September 18, 2013. 38 N.J.R. 3915 (August 14, 2006), 43 N.J.R. 1203 (May 2, 2011).

on his or her residence. N.J.S.A. 54:4-3.30(a); L. 1948, c. 259, § 1(a). This section is part of a larger legislative enactment which implemented the Constitutional provision discussed.

The Constitution was thereafter amended in 1953 to provide not only an exemption in time of war but also "other emergency as, from time to time, defined by the Legislature." In full, this Constitutional provision now reads:

> [a]ny citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service, in time of war or other emergency as, from time to time, defined by the Legislature, in any branch of the Armed Forces of the United States . . . who has been or shall be declared by the United States Veterans Administration . . . to have a service-connected disability, shall be entitled to such further deduction from taxation as from time to time may be provided by law. N.J. Const., art. VIII, § 1, ¶ 3 (emphasis added).

The legislative enactment of 1948 noted above was amended in 1971 to incorporate the definition of "active service in time of war" as defined by another related enactment, N.J.S.A. 54:4-8.10, pertaining to a property tax deduction (versus a full exemption) for certain non-disabled veterans. N.J.S.A. 54:4-3.33a, L. 1971, c. 398, § 2. Prior to 1971, the Legislature did not indicate that the full exemption provision applied to veterans who served in conflicts that were not officially declared wars.[4] The related

[4] The last time that the United States officially declared War by Act of Congress was in 1942. H.R.J. Res. 321, 77th Congress, 2d Sess., 56 Stat. 307 (1942).

enactment, N.J.S.A. 54:4-8.10, sets forth a number of "other emergencies" in which the military has been engaged throughout the years. Thus, the Legislature after some twenty years of silence as to this issue, exercised its constitutionally granted authority in 1971 to define "other emergency" to apply to disabled veterans of conflicts not officially declared as wars.

As set forth in greater detail below, the statute has been periodically amended to include "other emergencies" that have arisen over time. Earlier Legislatures were much more generous in conferring the exemption. Only service during the time of the conflict, not a specific type of duty was necessary. See, e.g., L. 1952, c. 231, § 1 (Korean Conflict); L. 1972, c. 166, § 4 (Vietnam Conflict). Generally, this broadness continued until amendment in 1991.[5]

In 1991, the Legislature departed from its all-encompassing approach which only required service during a conflict. Instead, the Legislature started tightening the standard for entitlement to the exemption. Thus, when the Legislature amended the statute in 1991 to include service in Lebanon (1982)[6], Grenada (1983), Panama

[5] The requirements for United States military service in Russia from April 6, 1917 to April 1, 1920 seemingly contained a geographic requirement. L. 1969, c. 286, § 1.

[6] Dates in parenthesis are the inception dates of the respective conflicts.

(1989) and Desert Storm/Shield (1990), the Legislature tightened the standard for entitlement in those conflicts to include not only a time of service limitation, but also a geographic limitation as well. L. 1991, c. 390, § 7.[7] In other words, more than military service during the time of conflict is necessary. Instead, the Legislature mandated that the service occur in the corresponding geographic region of the conflict. Moreover, the Legislature also imposed a 14-day length of service in the specified geographic region. Id. Thus, 1991 marked the beginning of a series of Legislative amendments which narrowed the number of veterans eligible for the benefit.

In 1998, the Legislature tightened and narrowed the class of eligible veterans by requiring service in "direct support" of the military operation. The 1998 amendment included Operation Restore Hope (Somalia, 1992) and Operation Joint Guard/Endeavor (Bosnia, 1995). L. 1998, c. 49, § 2. For both of these military operations, the Legislature chose once again to set forth geographic limitations, as well as the 14-day length of service. Notably, the "direct support" provision was only specified for Operation

[7] The amendments in 1991 and thereafter did not change the standards set for conflicts already included by the Legislature.

Joint Endeavor/Guard (Bosnia 1995), but not Operation Restore Hope (Somalia 1992).[8]

Two subsequent legislative amendments in 2003 and 2005 also contained a geographic requirement as well as a direct support requirement. These amendments added Operation Northern/Southern Watch (Iraq no fly zone, 1992), Operation Iraqi Freedom (2003) and Operation Enduring Freedom (2001) to the list. L. 2003, c. 197, § 5; L. 2005, c. 64, § 5. For a veteran's service to qualify, the Legislature required for all three of these operations either service in a specific geographic area or in the general theater of operation. The Legislature also required the service member provide direct support and set forth a minimum 14-day length of service.

In this case, the language of the statutory provision that defines the service in the applicable military operation is as follows:

> Operation "Enduring Freedom", on or after September 11, 2001, who served 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 in such active service 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

[8] When the statute was amended in 2001 to include the much earlier 1958 Lebanon Crisis, the requirement of direct support was not included. L. 2001, c. 127, § 6. It is unclear whether the requirement was absent because eligible conflicts immediately subsequent to the 1958 Lebanon crisis did not require "direct support" (i.e., Vietnam, Lebanon (1982), Grenada, Panama).

> operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.
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> [N.J.S.A. 54:4-8.10 (emphasis added).]

Thus, over time with successive military actions, the Legislature chose to tighten the qualifying requirements for the exemption. Setting forth a geographic requirement, a minimum length of service time of 14 days, as well as the later provision of "direct support," evinces the intent of the Legislature to reduce the number of service members which would otherwise be eligible for the tax exemption if only a time of service limitation was imposed.

The plaintiff has argued that Operation Enduring Freedom, otherwise known as the War on Terror, is not confined to a specific geographic area, but rather is worldwide as demonstrated by the terrorist attacks on both New York City and Washington, D.C. The plaintiff points to the provision of the legislative enactment that generally requires participation in the "theater of operation" rather than a specific geographic area. However, in addressing the mandate of the Legislature, this court need not decide the nature and extent of the "theater of operation" for Operation Enduring Freedom until this court decides whether plaintiff provided "direct support" in the "theater of operation." Stated otherwise, the overriding issue in this case is whether the

service of plaintiff was in "direct support" of Operation Enduring Freedom. Without "direct support" by plaintiff, the issue of defining the theater of operation is moot. It cannot be overemphasized that the statutory provision in question does not merely require "support," but more specifically requires "direct support".

Previously in Wellington v. Township of Hillsborough, 27 N.J. Tax 37 (Tax 2012), this court dealt with the issue of whether a taxpayer served "in the theater of operation" as well as in "direct support of that operation." Id., at 50. Mr. Wellington suffered injuries when handling chemical agents collected from the battlefield while serving at a laboratory in the United States. In particular, Mr. Wellington's military service took place at a Navy weapons laboratory in California where he examined chemical agents recovered from the battlefield in Iraq and transported to the United States for analysis. Id., at 41. The court found that Mr. Wellington was indeed entitled to benefits because he was no less endangered by Iraqi chemical weapons at his laboratory in California than were the service members who encountered these enemy agents on the battlefield. Id. Thus, in Wellington, the court concluded that the injury sustained in the testing of these hazardous chemical agents was in direct support of the military operation. It is without doubt that the service member in

Wellington was acting in direct support of that military operation.[9]

Conversely, in the case at hand, Ms. Fisher completed her training at Fort Leonard Wood and was thereafter transferred to her active duty assignment at Fort Stewart, Georgia where she continued to serve from March 12 through December 20, 2003 as part of the Rear Detachment for the portion of her unit deployed in Afghanistan. As set forth in more detail previously, her Rear Detachment duties included administrative duties which she performed on behalf of members of her unit which were deployed. Her duties also included securing the base and readying equipment for dispatch. In addition, while at Fort Stewart, Ms. Fisher continued to train for potential deployment to Afghanistan as part of the military police.

It is undisputed that Ms. Fisher was never directly exposed to the dangers or the potential dangers of the battlefield. While a Rear Detachment does indeed provide support to a deployed unit, such as managing materials and facilities, and even providing support to families who have been left behind, the activities of the Rear Detachment generally do not rise to the level of "direct

[9] The court in Wellington also determined that the geographic requirement was met since the statute did not narrow the area of service to a strict geographic region, but rather broadly included service in the "theater of operation." Id. at 49.

support" which the Legislature envisioned necessary to satisfy the requisites of exemption from taxation.[10]

The direct support requirement can be satisfied by the service member's exposure to danger, not whether the member handled materials that are ultimately shipped to a dangerous locale. The Legislature certainly did not intend the "direct support" requirement to be merely dependent upon the final destination of materials which a service member handles. That could lead to absurd results. For example, two service members could be serving side by side at the same base shipping the same materials. One service member could be shipping materials to Europe and the other to Afghanistan. If the ultimate destination of the materials were the determining factor for "direct support," that would result in one service member being entitled to the exemption while the other would not. The thrust of the "direct support" requirement is not to differentiate based upon the destination of materials handled by the service member, but rather whether the service member herself (or himself) is exposed to danger. This comports with the goal of reading a statute to avoid an anomalous or absurd result.

[10] As to a discussion of Rear Detachment duties, see, U.S. Army Europe, Reg. 600-8-108 (Oct. 22, 2009). Rather than rely upon a general understanding or assumption of what constituted plaintiff's Rear Detachment duty, the court directed the parties to supplement the record as to plaintiff's Rear Detachment duties. The parties provided a joint stipulation of facts describing her duties which is discussed in this opinion.

Walcott v. City of Plainfield, 282 N.J. Super. 121, 127 (App. Div. 1995); Reisman v. Great American Recreation, Inc., 266 N.J. Super. 87, 96 (App. Div. 1992).

It must be noted that exposure to danger is not the sole consideration for direct support. For example, it is an open issue not before this court whether the remote operator of a drone aircraft is in direct support. Conversely, the activities of those in the Rear Detachment are generally far enough removed that even if considered "support," such service does not rise to the level of "direct support".

While military service at any time and in any context should and must be commended, the Legislature in adopting subsequent provisions regarding veteran's tax exemptions obviously intended to draw the exemption eligibility line somewhere. Over the years, the Legislature has made the requirements of qualifying service more exacting as successive military operations were added to the statute. In so doing, the Legislature required not merely "support" but "direct support". Moreover, the requirement of "direct support" was added along with other requirements which simply did not exist for earlier conflicts. In earlier conflicts, veterans serving during the requisite time period of the conflict regardless of location or days of service could potentially qualify (i.e., Korean Conflict, Vietnam Conflict).

The Legislature explicitly set forth a more comprehensive definition in an apparent attempt to narrow the scope of veterans eligible for exemption. "The primary task for the court is to effectuate the legislative intent in light of the language used and the objects sought to be achieved. The court fulfills this role by construing a statute in a fashion consistent with the statutory context in which it appears." Merin v. Maglaki, 126 N.J. 430, 435 (1992). The Legislature's underlying rationale for narrowing eligibility is unclear, whether it be economic or otherwise. This court need not be so concerned with the underlying rationale, but rather only the Legislature's explicit narrowing of eligibility over the course of subsequent military operations. In other words, while the underlying rationale for the narrowing is opaque, the intent of the Legislature to effectuate a narrowing is not.

The Legislature could have chosen to allow disabled veterans of later conflicts, such as Operation Enduring Freedom which is at issue here, to qualify by sole fact of their service during the time of the military operation. This had been the case in earlier conflicts such as the Vietnam and Korea conflicts where a veteran only had to be serving during the requisite time. Instead, starting with legislative enactments in 1991 and continuing through 2005, the Legislature narrowed eligibility criteria. Roughly speaking, for conflicts arising during the 1950's through

the 1970's, only service during the time of conflict was required. For conflicts in the 1980's through the early 1990's, the Legislature added a geographic requirement. In other words, the service member had to serve in the specified region of the conflict. Starting with military conflicts from 1995 onward, the Legislature mandated not only a geographic requirement, but a direct support requirement as well. Thus, the long arc of legislative enactments reveals a narrowing path of eligibility rather than a broadening.

While Ms. Fisher's circumstances are indeed compelling, the legislative decision to narrow benefits to veterans of later conflicts to those in "direct support" cannot be ignored by this court. Accordingly, this court is compelled by law to deny the exemption status.

This interpretation of the Legislature's intent is in accordance with the fundamental Constitutional mandate that all property owners shall pay their share according to uniform rules and assessed according to the same standard of value. N.J. Const. art. VIII, § 1, ¶ 1(a). While it is true that the Constitution provides for a disabled veteran's exemption, it was left to legislative enactments to define the scope of the exception as to undeclared wars. Likewise, "[t]ax exemption statutes are strictly construed, and the burden of proving entitlement to an exemption is on the party seeking it". Abunda Life Church of Body, Mind and

Spirit v. City of Asbury Park, 18 N.J. Tax 483, 485 (App. Div. 1999)(citing New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177-78 (1996), cert. den., 520 U.S. 1241 (1997); Princeton University Press v. Borough of Princeton, 35 N.J. 209, 214 (1961). "[A]ll doubts are resolved against those seeking the benefit of a statutory exemption. . .". Chester Borough v. World Challenge, Inc., 14 N.J. Tax 20, 27 (Tax 1994)(quoting Teaneck Township v. Lutheran Bible Ins t., 20 N.J. 86, 90 (1995)). Thus, in light of the Legislature's decision to narrow eligibility with successive conflicts, if there is to be any doubt as to the applicability of the exemption, such doubt must be resolved in favor of denying the exemption.

As noted, the Assessor relied upon the former N.J.A.C. 18:28-1.1, a Director's regulation interpreting the statute at issue. However, the appropriateness or even the applicability of said regulation need not be considered here since the decision herein is based upon the applicable statutory language. Parenthetically, the regulation in question seemed to be a regulatory attempt to narrow eligibility for service members involved in the earlier conflicts which only set forth a time of service requirement without any geographic limitation (i.e., Korean Conflict). As noted previously, subsequent enactments of the Legislature not only imposed time of service requirements, but minimum length of

service geographic requirements, as well as the direct support provision.

For the foregoing reasons, the City's motion for summary judgment is granted. The Taxpayer's motion for summary judgment is denied.