

PROCESSING OF DENIALS OF INTERMENT

1. PURPOSE: This notice announces a revision to current National Cemetery Administration (NCA) processing of denials of interment in Department of Veterans Affairs (VA) national cemeteries.

2. BACKGROUND:

Currently, denials of requests for interment in VA national cemeteries are handled at the cemetery level, and information about denials is not always forwarded to the Office of Field Programs in Central Office. In some cases veterans (or their dependents) may initially have been determined to be ineligible based upon the information presented to the cemetery director when, after review of specific circumstances or legal review of information, they would be considered eligible. Examples of determinations that have required research and interpretation include:

a. **Time-In-Service Requirement/Character of Discharge:** Such determinations can present difficult issues. A DD-214 showing less than 24-months consecutive service for an enlisted person entering service after September 7, 1980, or as an officer after October 16, 1981; or a DD-214 showing a dishonorable character of service might be viewed as not requiring review beyond the cemetery level prior to denial. Yet in both instances, further review could determine that the individuals are eligible for burial. In the first instance, if the individual served honorably for less than 24 consecutive months, but meets one of the exceptions to minimum active service requirements set out in 38 United States Code (U.S.C.) 5303A(3) or 38 Code of Federal Regulations (CFR) § 3.12a(d), the individual will likely be eligible for burial. In the second instance, if the individual had multiple periods of service with an honorable character of discharge for the first period of service, the individual will likely be eligible for burial regardless of the subsequent dishonorable discharge. VA Office of General Counsel Precedent Opinion 61-91 (July 17, 1991) provides further information about discharge conditions (available electronically at www.va.gov/ogc, "Precedent Opinions").

b. **Specific Aspects of the Law:** Some eligibility determinations that might initially appear to be denials may, due to certain nuances of the law governing veteran status, result in approval for burial when reviewed with assistance of the Office of General Counsel. Cemetery directors and staff are not expected to know every possible special consideration under law. A recent situation involved a member of the National Guard who was performing full time duty in the National Guard under Title 32 of the United States Code (U.S.C.), and who died while on duty. It initially appeared that the individual was not eligible for burial as he was performing duty under U.S.C. Title 32, and therefore serving under the control of the State Governor, as opposed to being called into active Federal service under U.S.C. Title 10 (Department of Defense). The Office of Field Programs was informed of the proposed denial. A review of the military orders by VA's Office of General Counsel revealed that the individual was serving in a duty status that qualified under 38 U.S.C. § 101(22)(C) as active duty for training at the time of death. Based on this information NCA was able to approve the burial.

3. CHANGE TO POLICY/PROCEDURES:

a. With the publication of this notice, all proposed denials of requests for interment will be forwarded from the cemetery to the MSN office for review.

(1) *No proposed denial will be returned to the family instructing them to seek adjudication. Once NCA receives a request for burial, it is NCA's responsibility to seek adjudication if necessary. MSN and cemetery staff are encouraged to seek a decision from the local Veterans Benefits Administration or Regional Office (RO) if there appears to be a need for adjudication (see NOTE below).*

(2) *No family will be informed that burial is denied until the Office of Field Programs has concurred in the denial recommendation.*

b. If the MSN office determines that the decedent is eligible for interment, the cemetery director will be informed that the request should be approved.

NOTE: *Each MSN and Cemetery Director shall establish a rapport with the nearest VA RO to facilitate a quick (48 hours or less) turnaround for adjudication to determine eligibility when a denial of burial is contemplated. If the MSN receives a determination from the adjudication officer authorizing burial, the cemetery director should be informed and the process ends at the MSN level. If the adjudication officer denies burial eligibility, the request and adjudication determination will be forwarded as in paragraph c. below to the Office of Field Programs for concurrence prior to notification of the family or funeral home.*

c. If the MSN office determines that the decedent is not eligible, the Office of Field Programs must be notified immediately by telephone at 202-273-5226.

(1) The MSN office will be given a point of contact name and telephone number, and a facsimile (fax) number for sending a Sensitive Case Advisory with copies of all pertinent information, including name and telephone number of the primary NCA point of contact (MSN or cemetery staff), and name and telephone number of the primary contact for the family or funeral home. (The fax cover sheet should be addressed to the specified Office of Field Programs point of contact and marked as SENSITIVE and URGENT.)

(2) The Office of Field Programs point of contact will review the proposed denial and confer with the Office of General Counsel, if necessary, before responding to the MSN office with a determination to either concur in the denial or to authorize the burial.

d. The Office of Field Programs will incorporate this guidance into an NCA handbook.

4. RESPONSIBLE OFFICE: NCA, Office of Field Programs, 810 Vermont Avenue, NW, Washington, DC 20420, is responsible for the contents of this notice.

5. RESCISSION: None.

6. EXPIRATION: This notice will expire April 2004; however, the information contained within will remain in effect until incorporated into an NCA Handbook on eligibility.

/s/
Steve L. Muro
Director
Office of Field Programs

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