

**SOLDIERS MAY QUALIFY UNDER VETERANS' PREFERENCE ACT EVEN IF
THEY HAVE NOT RECEIVED FINAL DISCHARGE**

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In Soberick v. Salisbury Township Civil Service Commission, 874 A.2d 155 (Pa. Commw. 2005), the Commonwealth Court held that a military reservist who had not received his final discharge from the Marine Corps and was under a continuing service obligation to the Marines still qualified as a “soldier” under the Veterans’ Preference Act, 51 Pa.C.S. § 7101 *et seq.* In that case, the soldier at issue, Frankenfield, had enlisted in the Marine Corps for a six-year active reserve commitment with two years’ inactive reserve. He was called up to active duty after the September 11 terrorist attacks, and served eleven (11) months and three (3) days of active duty before receiving an honorable discharge and reassignment to the reserves. Notably, he received a document indicating that his was not a “final discharge,” and his reserve obligation did not terminate until 2008.

Upon his reassignment to the reserves, Frankenfield took a civil service examination administered by the Salisbury Township Civil Service Commission (“Commission”) in response to a vacant patrol officer position with the Township. He requested, and was granted, veterans’ preference, which added ten points to his exam score. *See* 51 Pa.C.S. § 7103(a). The addition of those ten points gave Frankenfield the second-highest score of all candidates who took the exam.

Salisbury operates under the First Class Township Code, 53 P.S. § 55101 *et seq.*, which mandates that vacancies are to be filled by creating a list of “eligibles,” of those with the top three scores on the exam. Normally, the candidate with the highest score would be awarded the position. However, under the Veterans’ Preference Act, the municipality is required to hire a “soldier” if his name is on the “eligibles” list. Because Frankenfield was the only candidate with veteran’s status on the eligibility list, he was hired for the position.

Soberick, a non-veteran candidate who received the highest score on the exam, appealed the veterans’ preference award. The Civil Service Commission determined that Frankenfield was a “soldier” entitled to preference under the Veterans’ Preference Act. Soberick appealed to the Court of Common Pleas for Lehigh County, which also found in favor of Frankenfield based on the plain language of the Veterans’ Preference Act. That language, the Court reasoned, does not require an honorable discharge following completion of one’s entire service obligation in order to trigger the veterans’ preference requirements.

Soberick appealed to the Commonwealth Court, relying on Sicuro v. City of Pittsburgh, 684 A.2d 232 (Pa. Commw. 1996) to argue that Frankenfield is not a “soldier” under the Act. The Court in Sicuro held that applicants who complete only reserve training are not entitled to veterans’ preference. Soberick’s argument was that because Frankenfield did not receive an honorable discharge following completion of his entire military service obligation, his discharge was not a final discharge.

The Commonwealth Court began its analysis of whether Frankenfield was a “soldier” by referencing the language of the Veterans’ Preference Act, which defines “soldier” as follows:

[A] person who served or hereafter serves in the armed forces of the United States . . . during any war or armed conflict in which the United States engaged and who was released from active duty under honorable conditions, other than from periods of active duty for training, or with an honorable discharge from such service, or a person who so served or hereafter serves in the armed forces of the United States . . . and who has an honorable discharge from such service. . .

51 Pa.C.S. § 7101.

The Court, in relying on the legislative intent of the Act, considered Section 7102(a) of the Act, which provides that preference credits in civil service examinations are to be awarded to a soldier “for the discipline and experience represented by his military training and for the loyalty and public spirit demonstrated by his service for the preservation of his country.” The Court found that the statute only requires that an individual serve in the armed forces and receive an honorable discharge in order to receive veterans’ preference, and that it is “beyond dispute” that Frankenfield fulfilled these requirements. Soberick, 874 A.2d at 158. The Court refused to “insert an unexpressed requirement that an individual complete his entire service obligation before qualifying as a soldier under the act.” Id. Thus, the Court held that Frankenfield is a “soldier” under the Act.

Under Soberick, a reservist or any other soldier can be considered a “veteran,” even if he or she has not completed a full service obligation. Although the Court did not develop a clear rule regarding who is a “soldier” and who is not, it stressed that the Act is a “formal recognition of the value” of “significant military service.” Id. at 159. Frankenfield’s military service was eleven months and three days. Other candidates for positions qualifying under the Veterans’ Preference Act may have more or less active duty experience. However, Soberick makes clear that granting veterans’ preference to these candidates, even if they have not yet met their full service obligation, “benefits the public,” as long as they have performed “significant military service.” Id.