

DISCHARGE REQUIREMENTS FOR VETERANS' BENEFITS

A REPORT

ON

VETERANS' BENEFITS IN THE UNITED STATES

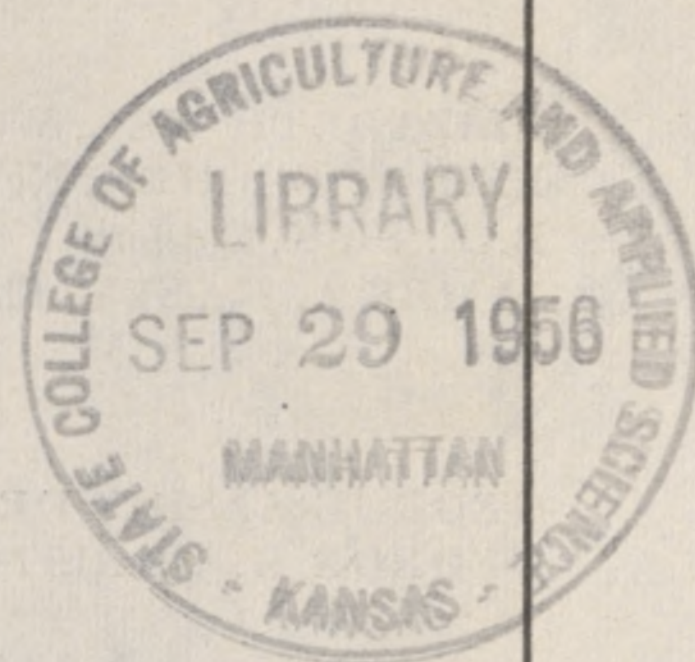
BY

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FOREWORD

This is the 12th and last of the staff reports on Veterans' Benefits in the United States prepared by the President's Commission on Veterans' Pensions.

These reports present the bulk of the factual material considered by the Commission. Its summation of the factual evidence and its recommendations were presented in the Commission's report to the President entitled "Veterans' Benefits in the United States: Findings and Recommendations" (April 1956). The staff reports subsequently released are to be regarded merely as working papers. They are mostly technical in character and are an effort to make generally available the factual information assembled by the Commission. As was described in the Commission's main report, many of these data have been obtained from special surveys and have never before been available.

Since some of the staff reports were published in several volumes, the Commission's work in all comprises 17 separate publications, all published through the cooperation of the House Committee on Veterans' Affairs, as follows:

Reports of the President's Commission on Veterans' Pensions

(Available at the Superintendent of Documents, Washington 25, D. C., at the price indicated)

| House Veterans' Affairs Committee Print No. | Title (Overall title: "Veterans' Benefits in the United States"—specific title below) | Staff report number | Date issued (1956) | Price |
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| 244 | The Historical Development of Veterans' Benefits in the United States. | I..... | May 9 | .60 |
| 262 | Veterans' Benefits Administered by Departments and Agencies of the Federal Government—Digests of Laws and Basic Statistics. | II..... | June 26 | 1.00 |
| 246 | State Veterans' Laws..... | III..... | May 16 | 1.00 |
| 261 | Veterans in Our Society: Data on the Conditions of Military Service and on the Status of the Veteran. | IV..... | June 21 | .40 |
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| 247 | Survivor Benefits for Service-Connected Deaths and Veterans' Insurance. | VII..... | May 22 | .55 |
| 281 | Compensation for Service-Connected Disabilities.. | VIII, pt. A..... | Aug. 3 | 1.00 |
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| 270 | Veterans' Loan Guaranty and Direct Loan Benefits. | IX, pt. C..... | July 3 | .35 |
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| 259 | Canadian Benefits for War Veterans—A Comparison with United States Veterans' Benefits. | XI..... | June 15 | .15 |
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FOREWORD

This is the first and last of the staff reports on American-British relations in the United States prepared by the American-British Commission on American-British relations.

The report presents the bulk of the factual material considered by the Commission. The summary of the factual evidence, and the recommendations were presented in the Commission's report to the President, dated July 1, 1946. The report is the first of a series of reports prepared by the Commission, and is the first of a series of reports prepared by the Commission, and is the first of a series of reports prepared by the Commission.

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DISCHARGE REQUIREMENTS FOR VETERANS' BENEFITS

INTRODUCTION

Prior to the Servicemen's Readjustment Act of 1944 there was no general standard of eligibility for veterans' benefits based upon the character of a person's discharge from the military service. Some laws had no such requirement, some required an honorable discharge, others required a discharge under honorable conditions and still others provided benefits for all persons not dishonorably discharged or not discharged because they had been found guilty of specific offenses.

The Servicemen's Readjustment Act of 1944 made ineligible for veterans' benefits based upon the period of service involved all persons discharged by reason of the sentence of a general court-martial and certain other persons discharged on specific grounds. The law also prescribed that a discharge or release from active service under conditions other than dishonorable shall be a prerequisite to entitlement to benefits provided by that act and Public Law No. 2, 73d Congress, as amended. This latter provision vested discretion in the Veterans' Administration to determine the entitlement to benefits of persons discharged from the services with discharges neither specifically honorable nor specifically dishonorable. The purpose of this study is to test the soundness of this concept.

CHAPTER I

HISTORICAL DEVELOPMENT OF DISCHARGE REQUIREMENTS PRIOR TO THE SERVICEMEN'S READJUSTMENT ACT OF 1944

The laws providing veterans' benefits are voluminous and complex. No attempt has been made to cite all of the laws or to point out all of the provisions of the laws referred to. An attempt, however, has been made to make a brief reference to the more important laws and to indicate the discharge requirements. Inasmuch as a number of benefits have been provided by Congress and the discharge requirements differ, the various laws are treated separately for each type of benefit.

VETERANS' SERVICE-CONNECTED COMPENSATION¹ BENEFITS SINCE 1862

The general pension law, act of July 14, 1862, provided that if any serviceman "has been, since the fourth day of March, eighteen hundred and sixty-one, or shall hereafter be, disabled by reason of any wound received or disease contracted while in the service of the United States and in line of duty, he shall, upon making due proof of the fact according to such forms and regulations as are or may be provided by or in pursuance of law, be placed upon the list of invalid pensions of the United States, * * *."

The rule followed under the precedents of the former Bureau of Pensions has been that a dishonorable discharge from the military service of the United States is no bar to a pension under the general pension law on account of a disability due to a wound or injury received, or disease contracted in the service in line of duty even though such dishonorable discharge was from the same period of service upon which the claim is based.² The pension is payable on account of disability due to a wound or injury received in line of duty, whether in time of peace or war and without regard to the character of discharge from service, since for disability thus incurred (always prior to discharge) there can be no forfeiture except as provided by the act of April 26, 1898,³ in case of desertion. Compensation is presently payable under the general pension law to veterans and dependents of veterans of the Indian, Civil, and Spanish-American Wars and of peacetime service prior to April 21, 1898.

The act of October 6, 1917,⁴ provided for the payment of compensation under section 300 thereof "for death or disability resulting from personal injury suffered or disease contracted in the line of duty" and section 308 further provided that "a dismissal or dishonorable or bad conduct discharge from the service shall bar and terminate all

¹ Under laws administered by the Veterans' Administration monetary benefits, other than retirement pay, for service-connected disability or death shall be designated "compensation" and not "pension" (act of July 9, 1946, 38 U. S. C. 700).

² 3 P. D. 137; 4 P. D. 225; 8 P. D. 321.

³ 30 Stat. 365.

⁴ Public Law No. 90, 65th Cong. 40 Stat. 398, 405, 407.

right to any compensation under the provision of this article." The act of June 25, 1918,⁵ added section 29 to the War Risk Insurance Act of September 2, 1914, as amended, barring the payment of compensation where the discharge or dismissal was on specified grounds. Section 29 of the War Risk Insurance Act, as amended,⁶ was repealed by the World War Veterans' Act, 1924,⁷ but the provisions thereof were included as section 23 of the latter act.

Section 23 of the World War Veterans' Act, 1924, as amended,⁸ provides in pertinent part as follows:

SEC. 23. The discharge or dismissal of any person from the military or naval forces on the ground that he was guilty of mutiny, treason, spying, or any offense involving moral turpitude, or wilfull and persistent misconduct, of which he was found guilty by a court-martial, or that he was an alien, conscientious objector who refused to perform military duty or refused to wear the uniform, or a deserter, shall bar all rights to any compensation under Subchapter II of this chapter, or any training, or any maintenance and support allowance under Subchapter IV of this chapter * * * *Provided, further,* That in case any person has been discharged or dismissed from the military or naval forces as a result of a court-martial trial, and it is thereafter established to the satisfaction of the Administrator of Veterans' Affairs that at the time of the commission of the offense resulting in such court-martial trial and discharge such person was insane, such person shall be entitled to the compensation and vocational training benefits under Subchapters II and IV of this chapter: *Provided, further,* That discharge or dismissal or finding of guilty for any of the offenses specified in this section shall not affect the payment of compensation or maintenance and support allowance for disabilities incurred in or aggravated by service in any prior or subsequent enlistment: *Provided, further,* That no compensation or insurance shall be payable for death inflicted as a lawful punishment for crime or military offense, except when inflicted by the enemy: *Provided, further,* That as to converted insurance the cash surrender value, if any, on the date of such death shall be paid to the designated beneficiary if living, or if there be no designated beneficiary alive at the death of the insured the said value shall be paid to the estate of the insured: *Provided, further,* That the discharge of a person for having concealed the fact that he was a minor at the time of his enlistment shall not bar him from the benefits of this chapter if his service was otherwise honorable: * * *

The World War Veterans' Act, 1924, except section 23 and certain other sections thereof,⁹ was repealed by Public Law No. 2, 73d Congress, March 20, 1933,¹⁰ but the former act was restored with limitations by Public Law No. 141, 73d Congress, March 28, 1934,¹¹ and, with amendments, is still in effect.

Public Law No. 2, 73d Congress, repealed all public laws granting compensation and other benefits to veterans and dependents of veterans for injury or disease incurred or aggravated in line of duty in the military or naval service (except so far as they relate to persons who served prior to April 21, 1898). The act, however, authorized the President to issue regulations providing for the payment of compensation and other benefits and to prescribe any other requirements as to entitlement as he should deem equitable and just. Regulations issued by the President in effect at the expiration of 2 years after the date of enactment of the act were to continue in effect unless thereafter changed by Congress.

⁵ Public Law 175, 65th Cong.; 40 Stat. 609, 610.

⁶ Sec. 15, Public Law 47, 67th Cong., August 9, 1921; 42 Stat. 152, sec. 1, Public Law 542, 67th Cong., March 4, 1923; 42 Stat. 1521.

⁷ Public Law No. 242, 68th Cong., June 7, 1924; 43 Stat. 607, 613, 629.

⁸ 38 U. S. C. 447.

⁹ Sec. 23 of the World War Veterans' Act, 1924, was saved from repeal by sec. 7, Public Law No. 2, 73d Cong., March 20, 1933; 38 U. S. C. 707.

¹⁰ 48 Stat. 8-12.

¹¹ 48 Stat. 509, 524-527.

Veterans Regulation No. 1 (a) promulgated pursuant to Public Law No. 2, 73d Congress, sets forth the eligibility requirements for payment of compensation for service-connected disability or death provisions requiring that the person be honorably discharged and that no compensation shall be paid if the disability is the result of the person's own misconduct. This continued to be required by Veterans Regulations until the enactment of the Servicemen's Readjustment Act of 1944.¹²

Public Law No. 269, 74th Congress, August 13, 1935,¹³ reenacted all laws in effect on March 19, 1933 (prior to Public Law No. 2, 73d Congress) granting compensation to veterans of the Spanish-American War, the Boxer Rebellion and the Philippine Insurrection, their widows and dependents.

PENSION LAWS SINCE 1892¹⁴

Indian Wars

The act of July 27, 1892,¹⁵ provided a pension to veterans of the Indian Wars, with 30 days or more service, who were honorably discharged. The act of March 3, 1927,¹⁶ granted a pension to veterans, with 30 days or more service, who were suffering from disability of permanent character, not the result of vicious habits which so incapacitated them for performance of manual labor as to render them unable to earn a support, or who had reached certain ages. In this act there was no discharge requirement. The act of March 3, 1944,¹⁷ amended the act of March 3, 1927, and eliminated the provision denying a pension if the disability resulted from vicious habits. Later acts increased pensions but none contained any discharge requirements.

Civil War

The act of June 27, 1890,¹⁸ provided a pension for veterans of the Civil War, with 90 or more days of service, who were honorably discharged therefrom and who are now or hereafter suffering from disability of a permanent character, not the result of vicious habits, which so incapacitated them for performance of manual labor as to render them unable to earn a support. Later acts increased and modified benefits but an honorable discharge remained a requirement.

War with Spain

The first of the service pension laws was the act of June 5, 1920,¹⁹ granting pensions to veterans of the Spanish-American War, Philippine Insurrection and Boxer Rebellion, with 90 days or more service, who were honorably discharged and who were suffering from disability of a permanent character, not due to vicious habits, which so incapacitated them for the performance of manual labor as to render them unable to earn a support. A later service pension law, the act of June 2, 1930,²⁰ continued the requirement of honorable discharge but contained no provision as to vicious habits. Public Law No. 2,

¹² Act of June 22, 1944, Public Law No. 346, 78th Cong.; 38 U. S. C. 697c.

¹³ 38 U. S. C. 368.

¹⁴ For a comprehensive summary of pension laws see House Committee Print No. 289, 83d Cong., 2d sess., entitled "Historical Development of Pensions for Veterans and their Dependents, October 8, 1954," printed for use of the Committee on Veterans' Affairs.

¹⁵ 38 U. S. C. 371.

¹⁶ Public Law No. 723, 69th Cong.

¹⁷ Public Law No. 245, 78th Cong.; 38 U. S. C. 381.

¹⁸ 26 Stat. 182.

¹⁹ Public Law No. 256, 66th Cong., 38 U. S. C. 351, 352.

²⁰ Public Law No. 299, 71st Cong., 38 U. S. C. 365, 365a, 365b, 365c.

73d Congress, March 20, 1933, repealed all public laws granting non-service-connected pensions to veterans of the Spanish-American War, Philippine Insurrection and Boxer Rebellion, and their dependents, but a year later Public Law 141, 73d Congress, March 28, 1934,²¹ reenacted all laws in effect on March 19, 1933, granting benefits to such veterans subject to certain limitations and deductions including a provision barring claims due to willful misconduct. No change as to the nature of discharge requirements was made in the service pension laws until the act of August 4, 1951,²² which provided that a discharge or release from active service under conditions other than dishonorable shall be a prerequisite.

Public Law No. 2, 73d Congress, as amended and supplemented by Veterans Regulations, provides alternate laws under which veterans of the Spanish-American War, Philippine Insurrection, and Boxer Rebellion can claim pensions. This system of laws provided a pension to veterans in active service 90 days or more before cessation of hostilities, who were honorably discharged. Willful misconduct was a bar. Honorable discharge remained an eligibility requirement until the enactment of the Servicemen's Readjustment Act of 1944.

World War I

The act of July 3, 1930,²³ provided a pension to veterans of World War I with 90 days or more of service who were honorably discharged. Willful misconduct constituted a bar. Public Law No. 2, 73d Congress, and Veterans Regulations implementing it,²⁴ originally required an honorable discharge but this was changed by the Servicemen's Readjustment Act of 1944.

World War II

The act of May 27, 1944,²⁵ was the same as the World War I Act, but shortly after its enactment the Servicemen's Readjustment Act of 1944 changed the discharge requirement.

HOSPITALIZATION²⁶

The first legislation for purely medical benefits applied to service-connected disabilities and is contained in the act of October 6, 1917,²⁷ which added such benefits to the compensation provided for death or disability resulting from personal injury or disease contracted in line of duty when on active service and not due to misconduct. Such benefits were barred in case of dismissal, dishonorable discharge or bad conduct discharge.²⁸

Section 13 of the act of August 9, 1921,²⁹ also providing medical benefits for service-connected disabilities, not only required that the injury or disease must have been incurred in line of duty on active service and not due to misconduct, but also required that the person must have been separated from the service under honorable conditions.

²¹ 38 U. S. C. 366, 367.

²² Public Law No. 108, 82d Cong.

²³ Public Law No. 522, 71st Cong., amending sec. 200, World War Veterans' Act, 1924; 38 U. S. C. 471.

²⁴ 38 U. S. C., chs. 12 and 12A.

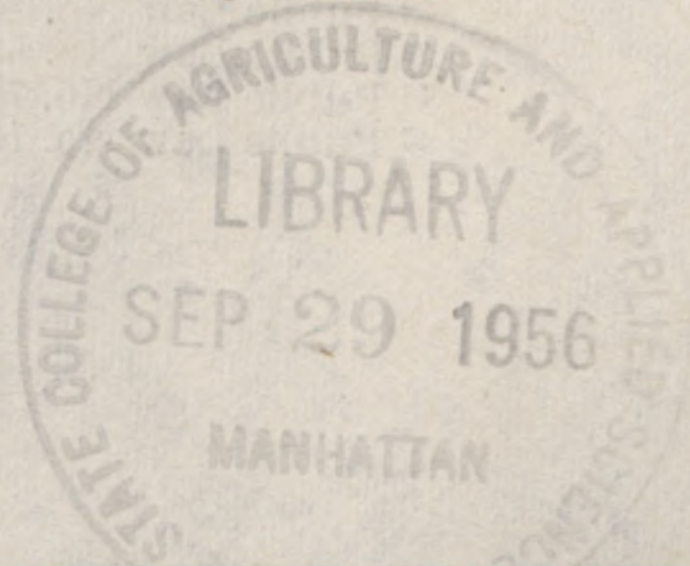
²⁵ Public Law No. 313, 78th Cong.

²⁶ For a summary of the laws relating to hospitalization by VA with special reference to discharge provisions, see pages 1873 to 1876, hearings before the Subcommittee on Hospitals of the Committee on Veterans' Affairs, House of Representatives, 83d Cong., 1st sess., on Entitlement of Veterans for Hospital Care and Treatment in VA Installations, July 8-10, 13-17, 20-21, 1953.

²⁷ Public Law No. 90, 65th Cong., sec. 302 (3).

²⁸ *Ibid.*, sec. 308.

²⁹ Public Law No. 47, 67th Cong.



Section 202 (9) of the World War Veterans' Act, 1924,³⁰ substantially reenacted the above provision except that the requirement concerning discharge was changed to not dishonorably discharged.

Section 202 (10) of the same act liberalized requirements regarding hospitalization for non-service-connected disabilities by providing that hospital facilities under the control of the Veterans Bureau shall be available for every honorably discharged veteran of certain wars including World War I for certain diseases regardless of whether such ailments and diseases are due to military service or otherwise. The section also authorized, so far as existing Government facilities permit, hospitalization to veterans of any war, military occupation or military expedition since 1897, not dishonorably discharged and without regard to the nature or origin of their disabilities, provided that preference to admission to any Government hospital shall be given to those veterans who are financially unable to pay their expenses.

Section 8 of the act of March 4, 1925,³¹ section 9 of the act of July 2, 1926,³² and section 15 of the act of July 3, 1930,³³ extended the benefits of the World War Veterans' Act but made no change in the eligibility requirement that the veteran be not dishonorably discharged.

Section 17 of Public Law No. 2, 73d Congress, March 20, 1933, repealed all public laws granting medical or hospital treatment or domiciliary care to veterans who served in or after the Spanish-American War, and section 6 authorized the Administrator of Veterans Affairs under such limitations as the President may prescribe and within the limits of existing Veterans' Administration facilities to furnish to veterans of any war domiciliary care where they are suffering with permanent disabilities, tuberculosis or neuropsychiatric ailments, and medical and hospital treatment for diseases or injuries. Veterans Regulation No. 6, March 31, 1933, specified domiciliary care and hospital care for honorably discharged veterans of any war in two categories (1) disabilities incurred in line of duty, and (2) veterans who served 90 days or more suffering with permanent disabilities or tuberculous or neuropsychiatric ailments which incapacitate them from earning a living and who have no adequate means of support.

The act of June 16, 1933,³⁴ amended section 6 of Public Law No. 2, 73d Congress, to include peacetime veterans for disabilities incurred in line of duty. Veterans Regulation No. 6 (a), July 28, 1933, amended the previous regulation to include peacetime veterans, honorably discharged for disabilities incurred in line of duty suffering from service-connected disabilities, and peacetime veterans, honorably discharged for disabilities incurred in line of duty after service of 90 days or more suffering from permanent disabilities or tuberculous or neuropsychiatric ailments, which incapacitate them from earning a living and who have no adequate means of support. Veterans Regulation No. 6 (b), January 19, 1934, made certain changes in the previous regulation but did not change the eligibility requirement of honorable discharge.

Section 29, act of March 28, 1934,³⁵ added a proviso to section 6 of Public Law No. 2, 73d Congress, providing that any veteran of

³⁰ Act of June 7, 1924; Public Law No. 242, 68th Cong.

³¹ Public Law No. 628, 68th Cong.

³² Public Law No. 448, 69th Cong.

³³ Public Law No. 522, 71st Cong.

³⁴ Public Law No. 78, 73d Cong.

³⁵ Public Law No. 141, 73d Cong.

any war who was not dishonorably discharged, suffering from disability, disease or defect who is in need of hospitalization or domiciliary care and is unable to pay for same shall be furnished necessary hospitalization or domiciliary care in any Veterans' Administration facility within the existing facilities irrespective of whether the disability, disease, or defect was due to service. Veterans Regulation No. 6 (c), June 30, 1934, took cognizance of the above law.

Section I of the act of August 23, 1935,³⁶ further amended section 6 of Public Law No. 2, 73d Congress, but did not change the proviso added thereto by section 29 of the act of March 28, 1934, relating to not dishonorably discharged. This eligibility requirement remained in effect until enactment of the Servicemen's Readjustment Act of 1944.

BURIAL ALLOWANCE

Section 3 of the act of March 4, 1923,³⁷ provided that where a veteran of any war dies after discharge or resignation from the service and does not leave sufficient assets to meet the expense of his burial and the transportation of his body, and such expenses are not otherwise provided for, the United States Veterans Bureau shall pay for burial expenses, a sum not exceeding \$100. No mention is made as to the character of discharge.

Section 201 (1) of the World War Veterans' Act, 1924,³⁸ was essentially the same as the act of March 4, 1923, and it did not mention character of discharge. However, this section was amended by section 7 of the act of March 4, 1925,³⁹ to provide burial expenses for a veteran of any war who was not dishonorably discharged.

Veterans Regulation No. 9 (a), as amended, promulgated pursuant to Public Law No. 2, 73d Congress, provided a burial allowance for honorably discharged veterans. This discharge requirement remained the law until the Servicemen's Readjustment Act of 1944.

MUSTERING-OUT PAY—BONUS—ADJUSTED COMPENSATION

World War I \$60 discharge bonus

Section 1406 of the act of February 24, 1919,⁴⁰ provided pay of \$60 (so-called bonus—in effect mustering-out pay) for veterans of World War I who resigned or were discharged under honorable conditions.

World War I adjusted compensation

The act of May 19, 1924,⁴¹ (Bonus Act) excluded any person separated under other than honorable conditions.

World War II mustering-out payments

The act of February 3, 1944,⁴² authorizing mustering-out payments specified, as a basis of entitlement that the veteran must have been discharged or relieved from active service under honorable conditions.

³⁶ Public Law No. 312, 74th Cong.

³⁷ Public Law No. 542, 67th Cong.; 42 Stat. 1523.

³⁸ Act of June 7, 1924, 43 Stat. 617.

³⁹ Public Law No. 628, 68th Cong.; 43 Stat. 1305.

⁴⁰ Public Law No. 254, 65th Cong.; 40 Stat. 1151.

⁴¹ Public Law No. 120, 68th Cong.; 38 U. S. C. 592.

⁴² Public Law No. 225, 78th Cong.; 38 U. S. C. 691a.

VOCATIONAL REHABILITATION—WORLD WAR I

The act of June 27, 1918,⁴³ initially authorizing vocational training predicated entitlement to training on the eligibility of veteran to receive compensation under the act of October 6, 1917, which barred persons dismissed or given bad conduct or dishonorable discharges. The act of July 11, 1919,⁴⁴ required a discharge under honorable conditions.

The World War Veterans Act, 1924, provided vocational rehabilitation benefits to resigned, discharged or furloughed veterans having a disability incurred, increased, or aggravated after April 6, 1917, and before July 2, 1921, in the military or naval service and not the result of his own willful misconduct. The provision is silent as to the character of discharge, but under section 23 of the act persons discharged or dismissed on specific grounds were barred from any maintenance or support allowance.

VOCATIONAL REHABILITATION—WORLD WAR II

The act of March 24, 1943,⁴⁵ amended Veterans Regulations No. 1 (a) to add a new part VII authorizing vocational rehabilitation for honorably discharged veterans of World War II who were disabled. This requirement as to discharge was changed by the Servicemen's Readjustment Act of 1944.

Most of the laws hereinbefore referred to are summarized in table I. From the table, it is readily apparent that prior to the Servicemen's Readjustment Act of 1944 discharge requirements varied considerably. For example, in the case of Civil War veterans, no discharge requirements are specified for compensation, whereas for a service pension the discharge must have been honorable. The same general observation may be made concerning veterans of World War I, who were barred from compensation when discharged or dismissed on specific grounds but were required to have an honorable discharge in order to draw a service pension. In connection with service pensions, it appears that the discharge requirements for that benefit have been generally higher than for compensation.

For some benefits, hospitalization and burial allowances, discharge requirements have at times been very broad, that is, such benefits were available to veterans who had not been dishonorably discharged. On the other hand, a discharge under honorable conditions was consistently required for bonus and mustering-out payments.

⁴³ Public Law No. 178, 65th Cong.; 40 Stat. 617.

⁴⁴ Public Law No. 11, 66th Cong.; 41 Stat. 158.

⁴⁵ Public Law No. 16, 78th Cong.; 57 Stat. 43.

TABLE 1.—Discharge requirements prior to Servicemen's Readjustment Act of 1944

| Compensation | Pensions | Hospitalization | Burial allowance | Bonus and mustering-out payments | Vocational rehabilitation |
|---|--|--|--|--|---|
| <p>1862, General Pension Law: None.</p> <p>1917, Act of October 7, 1917: Benefits barred by dismissal, bad conduct discharge or dishonorable discharge.</p> <p>1924, World War Veterans Act: Benefits barred when dismissal or discharge was on specific grounds.</p> <p>1933, Public Law 2, 73d Cong. and Veterans Regulations: Honorable discharge.</p> <p>1935, Public Law 269, 74th Cong. Reenactment of laws granting compensation to veterans of Spanish-American War, Boxer Rebellion, and Philippine Insurrection in effect before Public Law 2, 73d Cong.: None.</p> | <p>1892, Indian Wars: Honorable discharge.</p> <p>1927, Indian Wars: None.</p> <p>1944, Indian Wars: None.</p> <p>1890, Civil War: Honorable discharge.</p> <p>1920, Service pension laws, Spanish-American, Boxer Rebellion, and Philippine Insurrection: Honorable discharge.</p> <p>1930, Service pension laws: Honorable discharge.</p> <p>1933, Public Law 2, 73d Cong. and Veterans Regulations: Honorable discharge.</p> <p>1934, Public Law 141, 73d Cong.: Honorable discharge.</p> <p>1930, World War Veterans Act, 1924, as amended: Honorable discharge.</p> <p>1944, Public Law 313, 78th Cong.: Honorable discharge.</p> | <p>1917, act of October 7, 1917: Benefits barred by dismissal, bad conduct discharge or dishonorable discharge.</p> <p>1921, Public Law 47, 67th Cong.: Discharge under honorable conditions.</p> <p>1924, World War Veterans Act: Not dishonorably discharged.</p> <p>1930, Public Law 522, 71st Cong.: Not dishonorably discharged.</p> <p>1933, Public Law 2, 73d Cong. and Veterans Regulations: Honorable discharge.</p> <p>1934, Public Law 141, 73d Cong.: Not dishonorably discharged.</p> <p>1935, Public Law 312, 74th Cong.: Not dishonorably discharged.</p> | <p>1923, Public Law 542, 67th Cong.: None.</p> <p>1924, World War Veterans Act: None.</p> <p>1925, Public Law 628, 68th Cong: Not dishonorably discharged.</p> <p>1933, Public Law 2, 73d Cong. and Veterans Regulations: Honorable discharge.</p> | <p>1919, World War I \$60 bonus, Public Law 254, 65th Cong.: Honorable conditions.</p> <p>1924, World War I Adjusted Compensation Act, Public Law 120, 68th Cong.: Honorable conditions.</p> <p>1944, World War II mustering-out payments, Public Law 225, 78th Cong.: Honorable conditions.</p> | <p>1918, World War I, Public Law 178, 65th Cong.: Benefits barred by dismissal, bad conduct discharge or dishonorable discharge.</p> <p>1919, World War I, Public Law 11, 66th Cong: Under honorable conditions.</p> <p>1924, World War Veterans Act: Maintenance or support allowance barred by discharge or dismissal on specific grounds.</p> <p>1943, Public Law 16, 78th Cong.: Honorable discharge.</p> |

CHAPTER II

SERVICEMEN'S READJUSTMENT ACT OF 1944

The Servicemen's Readjustment Act of 1944¹ contains three provisions concerning the effect of the character of discharge upon veterans' benefits, which are of wide application. Section 300² bars four classes of discharged persons from all rights based upon the period of service from which he is so discharged under any laws administered by the Veterans' Administration except war risk, Government (converted), or national service life insurance. The classes of persons barred by this provision are:

(1) Any person discharged or dismissed by reason of the sentence of a general court-martial.

(2) Any person discharged on the ground that he is a conscientious objector, who refused to perform military duty or wear the uniform or otherwise to comply with lawful orders of competent military authority.

(3) Any person discharged as a deserter.

(4) Any officer whose resignation is accepted for the good of the service.

Section 300 further provides that in the case of any person whose rights are barred under this section, if it be established to the satisfaction of the Administrator that at the time of commission of the offense such person was insane, he shall not be precluded from the benefits to which he is otherwise entitled under laws administered by the Veterans' Administration.

Section 301 directed the establishment in the Army and Navy Departments of boards of review whose duties shall be to review, on their own motion or upon the request of a former service person, the type and nature of his discharge or dismissal, except a discharge or dismissal by reason of the sentence of a general court-martial. Such boards were authorized, except in the case of a discharge or dismissal by reason of the sentence of a general court-martial, to change, correct, or modify any discharge or dismissal, and to issue a new discharge in accord with the facts presented to the board, subject only to review by the Secretary of the Army or the Secretary of the Navy, respectively. This section also includes a 15-year time limitation for filing requests for review.

Section 1503³ prescribed that a discharge or release from active service under conditions other than dishonorable shall be a prerequisite to entitlement to benefits provided by this act⁴ or Public Law No. 2, 73d Congress, as amended.⁵

¹ Act of June 22, 1944, Public Law No. 346, 78th Cong.

² 38 U. S. C. 693g.

³ 38 U. S. C. 697c.

⁴ Act of June 22, 1944, Public Law No. 346, 78th Cong., provides for education and training, loan, and other readjustment benefits for World War II veterans.

⁵ Act of March 20, 1933, as amended, provides for hospitalization and domiciliary care, medical and dental treatment, compensation and pension, specially adapted housing, prosthetic appliances, and burial benefits.

Sections 300 and 301 as originally drafted were similar to section 23 of the World War Veterans Act, 1924,⁶ and did not bar any person discharged or dismissed by reason of a sentence of a general court-martial, but only barred persons discharged or dismissed upon conviction of certain specified offenses. Representatives of the Army and Navy recommended that both sections be amended to bar any person discharged or dismissed by reason of a sentence of a court-martial.^{7 8} The recommendations of the Army and Navy were followed in the bills recommended by the Senate and House committees, except the House committee used the words "general court-martial" instead of merely "court-martial."^{9 10} Apparently, the House committee made this change because it knew that a dishonorable discharge could be imposed only by a general court-martial. There was also some testimony before the committee that an inferior court-martial of the Navy could impose a bad-conduct discharge.⁷ The two bills initially passed by the Senate and the House of Representatives followed the recommendations of their respective committees, but the term "general court martial" was agreed upon by the conferees of the two Houses¹¹ and it appears in the act finally approved.

The phrase "discharge or release from active service under conditions other than dishonorable" as used in section 1503 was the subject of much testimony before the Senate and House committees and considerable discussion on the floor of the House and Senate, particularly the latter.^{7 8 12 13} Proponents of the phrase, both in and out of Congress, apparently believed that the services were issuing the so-called blue discharges (without honor), undesirable discharges, and bad-conduct discharges in some cases to persons who should not be deprived of veterans' benefits. Several examples were cited, among which are:

(1) Persons were administratively discharged on admission of desertion when evidence only establishes absence without leave.¹⁴

(2) Bedwetters issued blue discharges.¹⁵

(3) Navy issuing unfavorable discharges to persons tried and convicted by civil authorities, unfitness, fraudulent enlistment, or by reason of conviction by a special court-martial.¹⁶

(4) Wounded combat veterans issued blue discharges because of violation of regulations, absence without leave, and drunkenness after return to the United States.¹⁷

(5) Army issues blue discharge to persons who falsify their age and are subsequently discharged on request of parents.¹⁸

⁶ See ch. I.

⁷ Hearing before the Committee on World War Veterans Legislation, House of Representatives, 78th Cong., 2d sess., on H. R. 3917 and S. 1767, January, February, and March 1944.

⁸ Hearings before a subcommittee of the Committee on Finance, U. S. Senate, 78th Cong., 2d sess., on S. 1617, January, February, and March 1944.

⁹ H. Rept. No. 1418, 78th Cong., 2d sess., May 5, 1944.

¹⁰ Calendar No. 768, S. Rept. No. 755, 78th Cong., 2d sess., March 18, 1944.

¹¹ Rept. No. 1624, House of Representatives, 78th Cong., 2d sess., conference report to accompany S. 1767 June 12, 1944.

¹² Congressional Record, vol. 90, pt. 3, 78th Cong., 2d sess., pp. 3075-3077, 4332-4359.

¹³ Congressional Record, vol. 90, pt. 4, 78th Cong., 2d sess., pp. 4453-4455, 4537-4538.

¹⁴ Hearing before the Committee on World War Veterans Legislation, House of Representatives, 78th Cong., 2d sess., on H. R. 3917 and S. 1767, January, February, and March 1944, p. 190.

¹⁵ Ibid., p. 415.

¹⁶ Ibid., p. 415.

¹⁷ Ibid., p. 417.

¹⁸ Congressional Record, vol. 90, pt. 3, 78th Cong., 2d sess., pp. 3076-3077.

(6) Army issues blue discharge to persons who have not shown sufficient aptitude toward military service.¹⁹

(7) Undesirable discharges are at times issued through error and because it is an easy way of reducing personnel.²⁰

(8) Blue discharges given to physical misfits such as to a man with two right legs.²¹

The phrase "discharge or release from active duty under conditions other than dishonorable" was drafted by the Veterans' Administration,²² and was endorsed by the American Legion. A past national commander of the American Legion, testified that he recommended that phrase because the American Legion was seeking to protect veterans against injustice. The phrase "honorable discharge" should not be used because it has a definite meaning in each of the services and would not include discharges under honorable conditions. Moreover, the American Legion did not want the Army and Navy to judge who should get benefits granted by Congress but preferred to have the Veterans' Administration determine that matter based upon the facts in each case.²³ The words "under honorable conditions" were opposed because certain service discharges are called by that name and its use would make the bill inflexible.²⁴

The General Counsel for the Veterans' Administration testified that under laws prior to World I and even under some laws still in effect an honorable discharge was not required and that when the law required an honorable discharge there were provisions permitting benefits to veterans with other than honorable discharges if their services were otherwise honest and faithful. He also expressed the view that discharges "under honorable conditions" did not have the same meaning as discharges "under other than dishonorable conditions."²⁵

On the floor of the Senate, Senator Walsh of Massachusetts referred to a letter which Admiral Jacobs, Chief of the Bureau of Naval Personnel, had written to him regarding the bill. In the letter, the admiral stated that he did not approve of the phrase "discharged under other than dishonorable conditions" which he said had been substituted in the bill for the original phrase "discharged under honorable conditions." In the Navy, dishonorable discharges are imposed only by sentence of general court-martial, but a summary court-martial may give a bad-conduct discharge in cases where it is clearly shown that the individual is not fit to be retained in the service because of habitual drunkenness, theft, or repeated absences without leave. The Navy also has an undesirable discharge which may be issued administratively and permits the discharge of a person who repeatedly commits petty offenses, a habitual shirker or a person of unclean habits.

Admiral Jacobs gave as his considered opinion that persons with dishonorable discharges, bad-conduct discharges or undesirable discharges should be excluded from the benefits for veterans and that the bill, as amended in the committee, would extend veterans' benefits to persons so discharged. He also expressed the fear that this action might have a detrimental effect on morale by removing the incentive

¹⁹ Ibid, p. 3076.

²⁰ Ibid, p. 4348; Congressional Record, vol. 90, pt. 4, 78th Cong., 2d sess., p. 4454.

²¹ Congressional Record, vol. 90, pt. 4, 78th Cong., 2d sess., p. 4454.

²² Congressional Record, vol. 90, pt. 3, 78th Cong., 2d sess., p. 3077.

²³ Hearings before Committee on World War Veterans Legislation, House of Representatives, 78th Cong., 2d sess., on H. R. 3917 and S. 1767, January, February, and March 1944, pp. 415, 416.

²⁴ Ibid, p. 420.

²⁵ Ibid, p. 419.

to maintain a good service record. He concluded his letter with a recommendation that the bill be amended so that a discharge under honorable conditions would be necessary to constitute eligibility and a statement that he had communicated with officials of the War Department and Veterans' Administration relative to this proposal and had obtained their concurrence.

Senator Clark of Missouri stated that Admiral Jacob's objections were carefully considered, both in the Subcommittee on Veterans' Affairs of the Finance Committee and in the full committee itself, and the committee amended the provision in order to give the Veterans' Administration some discretion in the matter. Senator Clark then pointed out that the bill as originally drafted used the phrase "other than dishonorable discharge" and that under such an eligibility requirement the door would be opened to various offenders who deserved a dishonorable discharge, but who were issued blue discharges because the Army wanted to get rid of them and did not want to take the trouble to try them by court-martial. Senator Clark further stated that under the phrase "discharge under other than dishonorable conditions" the Veterans' Administration would have discretion to consider as dishonorable the service of persons who were issued blue discharges if their service had in fact been dishonorable.²⁶

Representatives of the Army and Navy who appeared before the House committee expressed opposition to the phrase "discharge under conditions other than dishonorable" and recommended the phrase "discharge under honorable conditions."²⁷ A representative of the Army also said that honorable discharges are given to minors who falsify their ages to enlist and that paragraph 55b, AR 615-360, January 1, 1944, prescribes an honorable discharge (WD AGO Form No. 55) for soldiers who are discharged for being inept, lack of adaptability and enuresis except when a board of officers finds to the contrary based upon other factors.²⁸ A Navy representative said that the Army, Navy, Marine Corps, and Coast Guard were working together with the end in view of adopting common discharges and that results could be expected soon.^{29 30}

The views of the Senate and House committees respecting the nature and type of discharges a person should have to be eligible for veterans' benefits are set out in their respective reports.^{9 10} The Senate report¹⁰ states with regard to section 1603³¹ (sec. 1503 of the approved act), that the purpose of the section was to provide a uniform basic entitlement contingent upon the type of release from active service. To be entitled to any veterans' benefits prescribed by this act or Public Law No. 2, 73d Congress, a veteran must have been discharged or released from service under conditions other than dishonorable. This eligibility provision would remove a discrepancy in existing law which has been found to be highly undesirable, that is the provision of sec-

⁹ H. Rept 1418, 78th Cong., 2d sess., May 5, 1944.

¹⁰ Calendar No. 768, S. Rept. 755, 78th Cong., 2d sess., March 18, 1944.

²⁶ Congressional Record, vol. 90, pt. 3, 78th Cong., 2d sess., pp. 3076, 3077.

²⁷ Hearings before the Committee on World War Veterans Legislation, House of Representatives, 78th Cong., 2d sess., on H. R. 3917 and S. 1767, January, February, and March 1944, pp. 294, 301, 302.

²⁸ Ibid, p. 293.

²⁹ Ibid, p. 302.

³⁰ The current directive of the Department of Defense on discharges is dated August 2, 1948. See ch. IV

³¹ As recommended by the Senate Committee, sec. 1603 read as follows: "A discharge or release from active service under conditions other than dishonorable shall be a prerequisite to entitlement to veterans' benefits provided by this Act or Public Law No. 2, 73d Cong., as amended."

tion 6, Public Law No. 2, as amended (Public Law No. 312, 74th Cong.; 38 U. S. C. A. 706) relating to hospitalization whereby a veteran not dishonorably discharged may be entitled to hospitalization benefits. In practice this permits most unworthy cases to be hospitalized, often to the detriment of persons honorably discharged or discharged under conditions other than dishonorable. The hospital facilities of the Veterans' Administration should be maintained for veterans whose service was honest and faithful or otherwise meritorious.

Further, the report states that the provision will correct hardships under existing laws requiring honorable discharge as a prerequisite to entitlement. Many persons who have served faithfully and even with distinction are released from the service for relatively minor offenses, receiving a so-called blue discharge if in the Army, or a similar discharge without honor in the Navy. It was the opinion of the committee that such discharges should not bar entitlement to benefits otherwise granted unless the offense was such, as for example, those mentioned in section 300 of the bill as to constitute dishonorable conditions. A dishonorable discharge is effected only pursuant to a sentence of court-martial, but in some cases, offenders are released without immediate apprehension. In such cases benefits should not be afforded as the conditions are not less serious than those giving occasion to dishonorable discharge.

The report of the House committee³² states that section 1503³³ of its bill amends section 1603 as passed by the Senate and, as amended, requires a discharge or release from active service under honorable conditions as a prerequisite to entitlement to benefits under this act or Public Law No. 2, 73d Congress, as amended, but adds a liberalizing provision to the effect that except as to persons dishonorably discharged, benefits to which a person otherwise would be entitled but for a discharge under other than honorable conditions may be awarded if his service is shown to be otherwise meritorious, honest, and faithful. It was the view of the committee that generally a discharge under honorable conditions should be required as basic entitlement to benefits; but testimony of representatives of the service departments, veterans organizations and the Veterans' Administration showed that instances occur where after long and faithful or otherwise extremely meritorious service a person may receive a discharge other than honorable because of some infraction of the regulations or rules, perhaps in a period of furlough immediately prior to discharge, or for a civil rather than a military offense. If such offense occasions dishonorable discharge, or its equivalent, benefits should not be payable. Except upon dishonorable discharge recognition should be given meritorious, honest and faithful service.

The House and the Senate passed the bills recommended by their respective committees but the Senate version was adopted by the conferees³⁴ and became law.

It is important to note that the legislation discussed above was enacted 6 years before the Uniform Code of Military Justice³⁵ which

³² H. R. Rept. 1418, 78th Cong., 2d sess., May 5, 1944.

³³ As recommended by the House committee, sec. 1503 read as follows: "A discharge or release from active service under honorable conditions shall be a prerequisite to entitlement to veterans' benefits provided by this act or Public Law No. 2, 73d Cong., as amended: *Provided*, That, except as to a person dishonorably discharged, benefits to which a person would be entitled, but for a discharge under other than honorable conditions shall not be denied if his service was otherwise meritorious, honest and faithful."

³⁴ Rept. No. 1624, House of Representatives, 78th Cong., 2d sess., conference report to accompany S. 1767, June 12, 1944.

³⁵ Act of May 5, 1950, Public Law No. 506, 81st Cong. (50 U. S. C. 551-741).

authorizes a bad-conduct discharge to be imposed by a general court-martial and by a special court-martial when a complete record of the proceedings and testimony before the court has been made.³⁶ The appellate procedure, including review by a board of review in the Department concerned, the right to petition the United States Court of Military Appeals for a grant of review, the right to gratuitous counsel, and the right to petition for a new trial, is identical for cases involving a bad-conduct discharge (regardless of whether such discharge is imposed by a general or special court-martial) and cases involving a dishonorable discharge imposed by a general court-martial.³⁷

Inasmuch as section 300 of the Servicemen's Readjustment Act bars from veterans' benefits, based upon the service involved, any person discharged by reason of a sentence of a general court-martial, any person discharged with bad-conduct discharge pursuant to a sentence of general court-martial comes within its provisions. On the other hand, any person discharged with a bad-conduct discharge pursuant to a sentence of a special court-martial (unless convicted of certain acts as a conscientious objector or convicted of desertion) is not barred by section 300, but his eligibility for veterans' benefits rests with the Veterans' Administration under the provisions of section 1503.

Similarly, any person discharged with a bad-conduct discharge pursuant to a sentence of a general court-martial may not request review by the departmental boards of review set up under the provisions of section 301, whereas any person so discharged pursuant to a sentence of a special court-martial (unless convicted of certain acts as a conscientious objector or convicted of desertion) has that right.

To summarize, sections 300 and 1503 of the Servicemen's Readjustment Act were designed by Congress to lay down rules of eligibility for veterans' benefits based upon the nature and type of discharge issued to military and naval personnel on their release from active duty. There was no problem for persons honorably discharged or for those dishonorably discharged pursuant to a sentence of a general court-martial. The former were clearly eligible and as to the latter there was general agreement as to their ineligibility. The problem centered around persons who had been issued blue, undesirable or bad-conduct discharges which were neither specifically honorable nor specifically dishonorable. It was claimed that the services were rather free in issuing such discharges, particularly the blue and undesirable discharges, and that in many instances such discharges were given to persons whose faults were relatively minor and who should not be deprived of veterans' benefits.

The Congress did not want to use the words "honorably discharged" or "discharged under honorable conditions," because it was felt that such an eligibility requirement was too restrictive. Neither did Congress want to use the words "not dishonorably discharged" because such words would have been too broad and opened the door to persons who were administratively discharged for conduct that was in fact dishonorable. The controversy was finally resolved by adopting the words "conditions other than dishonorable." The meaning of this phrase is not defined but it is clear that persons discharged honorably or under honorable conditions are eligible and that persons issued dishonorable discharges pursuant to sentence of a general court-

³⁶ UCMJ, arts. 18 and 19.

³⁷ UCMJ, arts. 18, 19, 65, 66, 67, 70-73.

martial are ineligible. The eligibility of persons discharged with other types of discharges was left to a determination by the Veterans' Administration based upon the pertinent facts, except since the effective date of the Uniform Code of Military Justice, persons issued bad-conduct discharges pursuant to a sentence of a general court-martial are barred from any veterans' rights based upon the period of service from which they were so discharged.

The eligibility of veterans of the Korean conflict and their dependents for benefits are subject, in general, to the requirement that the veteran's discharge or release from active duty be under conditions other than dishonorable.^{38 39} There is one exception, however, which should be noted. Under the Veterans Readjustment Assistance Act of 1952³⁷ a veteran must be discharged or released from active service "under honorable conditions" to be eligible for mustering-out payments, whereas for the other benefits provided by this act, to wit, education or training, loans, unemployment compensation, job counseling, and employment placement entitlement is conditioned on a discharge or release from active duty "under conditions other than dishonorable." Committee reports do not shed any light on the reasons for the different requirements of this act other than to state that the provision dealing with mustering-out payments is identical to World War II coverage.^{40 41}

³⁸ Public Law No. 28, 82d Cong., May 11, 1951.

³⁹ Public Law No. 550, 82d Cong., July 16, 1952.

⁴⁰ Report No. 1943, 82d Cong., 2d sess., May 16, 1952, to accompany H. R. 7656.

⁴¹ S. Res. No. 1824, calendar No. 1754, 82d Cong., 2d sess., June 25, 1952, to accompany H. R. 7656.

CHAPTER III

VETERANS' ADMINISTRATION REGULATIONS

Veterans' Administration regulations¹ provide that to be entitled to compensation or pension under Veterans Regulation No. 1 (a) as amended, the period of active service upon which a claim is based must have been terminated by discharge or release under conditions other than dishonorable, that is, benefits under Public Law No. 2, 73d Congress and Public Law 346, 78th Congress, are barred when the person was discharged under dishonorable conditions. When the discharge or separation from active military service was for (1) mutiny, (2) spying or (3) an offense involving moral turpitude or willful and persistent misconduct the requirement of "dishonorable discharge" will have been met; provided however, that where service was otherwise honest, faithful, and meritorious, a discharge or separation other than dishonorable because of the commission of a minor offense will not be deemed to constitute discharge or separation under dishonorable conditions. The regulation also sets forth the provisions of section 300 of Public Law 346, 78th Congress,² under which benefits under any laws administered by the VA are barred, as to the particular period, to persons discharged or dismissed by reason of the sentence of a general court-martial; or is discharged for certain acts as a conscientious objector or as a deserter or in case of an officer when his resignation has been accepted for the good of the service, unless it be established to the satisfaction of the Administrator that the person was insane at the time of commission of the offense.

Other VA regulations³ provide that under section 1503, Public Law 346, 78th Congress, the acceptance of an undesirable discharge to escape trial by general court-martial will bar the person so discharged from benefits under Public Law No. 2, 73d Congress, as amended, and Public Law 346, 78th Congress, as amended. This regulation further states that an undesirable discharge issued because of homosexual acts or tendencies generally will be considered as under dishonorable conditions and a bar to entitlement under Public Law No. 2, 73d Congress, as amended, and Public Law 346, 78th Congress, as amended. It is further prescribed that a determination as to character of discharge by an adjudicating agency will be binding upon the Veterans' Administration in all subsequent adjudications and may be reversed only in accord with the rules enunciated in VA Regulations 1009 (A) (B) (C) and (D).⁴ Contemplated reversal

¹ VA Regulations 1064.

² See ch. II of this report.

³ VA Regulations 1064 Con., Claims—Trans. Sheet 119.

⁴ This regulation provides in pertinent part that no rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board or by an appellate authority except where such reversal or amendment is clearly warranted by a change in the law or by a specific change in interpretation thereof by an authoritative VA agency, provided, however, that a rating board may reverse or amend a decision by the same or other rating board where such reversal or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in the file at the time the prior decision was rendered. Whenever a rating board may be of the opinion that a revision or an amendment of a previous decision is warranted on the facts of record at the time the decision was rendered, a difference of opinion being involved rather than a finding of clear and unmistakable error, the complete file will be forwarded to the Deputy Administrator for Veterans' Benefits.

of a prior determination which would result in reduced or discontinued compensation or pension payments will require the same notice to the claimant provided by VA Regulation 1009 (D) in severance of service-connection, subject to the same exceptions outlined therein.

An adjudication procedure manual⁵ issued by the VA contains instructions that in those instances where the discharge is not specifically honorable, general, or dishonorable and was issued administratively or pursuant to the sentence of a special or summary court-martial, the adjudicator will prepare a memorandum to the authorization officer⁶ containing a summary of his findings and conclusions as to whether the discharge was under dishonorable conditions and hence a bar to the receipt of benefits from the VA or was under other than dishonorable conditions and hence is not a bar to the receipt of such benefits. If the latter, the memorandum, when approved by the authorization officer, will be accepted by the rating board as authority to proceed with the case. If the former, the adjudicator will also prepare and submit to the authorization officer for approval a formal disallowance. In the exceptional case where the rating board disagrees with the action of the authorization officer, the chairman of the board will refer the matter by written memorandum to the adjudication officer or the assistant adjudication officer having jurisdiction, whose decision on the matter will be final, subject to the usual appeal procedure. Information is also furnished as to the various types of discharges issued by the services, as follows:

| Types of discharges | Character of discharges | Given by— |
|--|---|---|
| Honorable (DD Form 256 series)----- | Honorable----- | Administrative action. |
| General (DD Form 257 series)----- | Under honorable conditions--- | Do. |
| Undesirable (DD Form 258 series)----- | Under conditions other than dishonorable. | Do. |
| Bad conduct (DD Form 259 series)----- | -----do----- | Sentence of general or special court-martial. |
| Dishonorable (DD Form 260 series)----- | Dishonorable----- | Sentence of general court-martial. |

The instructions further state that the effects of an honorable or a general discharge are identical and entitle the person so discharged to full rights and benefits. The undesirable discharge and bad conduct discharge may or may not deprive the person so discharged of veterans' benefits and will require determination by the Veterans' Administration in each individual case. A dishonorable discharge deprives the individual of all veterans' benefits and may operate to deprive him of civil rights. In another paragraph⁷ procedural steps are prescribed for obtaining from the services reports of investigations and records of trial by court-martial when such records are necessary for adjudicative action. This section points out that in view of section 300, Public Law 346, 78th Congress, any discharge, even though not a dishonorable discharge, issued by reason of a sentence of a general court-martial bars the person so discharged from all benefits administered by the Veterans' Administration, except when insanity at the time of the commission of the offense is alleged; hence general court-martial records of trial and allied papers should not be obtained unless insanity at time of offense is alleged.

⁵ Department of Veterans Benefits, VA Manual M8-5 revised October 1, 1954, par. 6.

⁶ If the veteran is living the case is normally adjudicated in a regional office. If the veteran is dead and the claim is for death compensation the claim is normally adjudicated in a district office.

⁷ Change 5, May 11, 1955, Department of Veterans' Benefits, VA Manual M8-5, par. 20.

CHAPTER IV

DEPARTMENT OF DEFENSE DIRECTIVES

A directive of the Department of Defense, dated August 2, 1948,¹ prescribed the types and characteristics of service discharges in substance as follows:

| Type of discharge | Reasons for discharge | Governing factors and considerations |
|--|--|--|
| Honorable----- | <ol style="list-style-type: none"> (1) Expiration of enlistment. (2) Convenience of the Government. (3) Dependency-hardship. (4) Minority. (5) Disability. | <p>Excellent service, no convictions by general court-martial and not more than one by special court-martial, provided that regardless of previous record a person decorated, awarded, or commended for certain creditable conduct is entitled to an honorable discharge if his record subsequent to the creditable conduct so entitle him. Also a person discharged as a result of disability incurred in line of duty and resulting from enemy action shall normally be given an honorable discharge regardless of his previous record.</p> |
| General (under honorable conditions). | <ol style="list-style-type: none"> (1) Expiration of enlistment. (2) Convenience of the Government. (3) Dependency-hardship. (4) Minority. (5) Disability. (6) Inaptitude. (7) Unsuitability. | <p>Issued to a person whose conduct and performance of duty have been satisfactory but not sufficiently deserving or meritorious to warrant an honorable discharge. Discharges for inaptitude will be effected when it is determined the person does not possess the required degree of adaptability for military life after reasonable efforts have been made to find a place for him in keeping with his abilities and qualifications. Discharges for unsuitability will be effected to rid the services of persons considered unsuitable because of:</p> <ol style="list-style-type: none"> (1) Psychiatric or neurological handicaps, enuresis, personality defects and disorders subject to the physical and mental standards established by the Munitions Board and approved by the Secretary of Defense; and (2) Other good and sufficient reason when determined by administrative process. <p>Persons will not be recommended for discharge for inaptitude or unsuitability in lieu of punishment. If doubt exists as to the existence of a mental or physical disability as a cause of inaptitude or unsuitability the person shall be brought before a board of medical examiners. Before making or recommending a discharge for inaptitude or unsuitability, the commanding officer shall investigate the case after giving the person concerned an opportunity to make a statement.</p> |
| Undesirable (under conditions other than honorable). | Unfitness----- | <p>A person may be discharged for unfitness only after he has already demonstrated that he is totally unfit for further retention by reason of:</p> <ol style="list-style-type: none"> (1) Habits or traits or character manifested by antisocial or amoral trends, chronic alcoholism, criminalism, drug addiction, pathological lying, sexual perversion, homosexuality, or misconduct; (2) unclean habits; (3) repeated petty offenses; (4) habitual shirkers; and (5) recommended for discharge by a board of medical examiners, not because of a physical or mental disability, but because of personality disorders or defects, or are classified as having "no disease" by the board and their records of service reveal that they frequently have been in a disciplinary status because of infraction of regulations and commission of offenses and/or it is clear that their complaints are unfounded and are made with intent to avoid service. |

¹ Memorandum dated August 2, 1948, addressed to Secretaries of Army, Navy, and Air Force with enclosure.

| Type of discharge | Reasons for discharge | Governing factors and considerations |
|--|--|--|
| Undesirable—Continued | | Before recommending such a discharge each case shall be thoroughly investigated. The person concerned shall be informed of the contemplated action and the reasons therefor, and shall be given an opportunity to appear and present any facts or make a statement in his own behalf. If any doubt exists as to the existence of a mental or physical disability as the cause of unfitness the person shall be brought before a board of medical examiners. A person shall not be discharged for unfitness in lieu of punishment. |
| Do..... | Misconduct..... | A person may be discharged for misconduct for any of the following reasons: (1) Desertion, or absence where trial is barred by statute of limitations; (2) desertion or absence where trial is not barred by statute of limitations but person is physically or mentally incompetent to stand trial although competent at time of desertion or absence; (3) a person convicted by civil authorities for a felony; and (4) fraudulent enlistment, provided that the enlistment of a minor with false representations as to age, or without consent, will not alone be considered a fraudulent enlistment. |
| Bad conduct (under conditions other than honorable). | Sentence of general or special court-martial (Army and Air Force), or summary court-martial (Navy, Marine Corps, and Coast Guard). | Approval of sentence. |
| Dishonorable..... | General court-martial..... | Do. |

Another directive of the Department of Defense, dated October 11, 1949,² lays down certain policies respecting the disposition of homosexuals. Its principal provisions, insofar as pertinent here are as follows:

1. Homosexuals should not be permitted to serve in the Armed Forces in any capacity.

2. Each of the services should set up a review board at departmental level to insure uniform action.

3. Because the administrative problems of the services differ, the administrative details of implementing the policies outlined below are at the option of the services:

(a) Homosexuals are divided into three categories with instructions as to disposition, as follows:

(1) Class I covers those cases accompanied by assault or coercion or any homosexual act with a child under the age of consent. Trial by general court-martial is mandatory.

(2) Class II covers those cases wherein personnel have engaged or attempted to engage in one or more homosexual acts which do not fall in class I above. Ordinarily administrative separation will be effected under conditions other than honorable, but if the person resists such separation or if competent military authority believes trial warranted, the person may be brought to trial before a court-martial.

(3) Class III covers those rare cases where personnel only exhibit, profess, or admit homosexual tendencies and evidence is

² Memorandum dated October 11, 1949, addressed to Secretaries of Army, Navy, and Air Force, subject: Discharge of Homosexuals From the Armed Forces.

lacking to prove specific acts. Administrative separation will be effected and the type of discharge issued will depend upon all attendant facts and circumstances.

On August 3, 1955, the Department of Defense also issued a directive concerning persons with juvenile and youthful offender records.³ In pertinent part this directive provides that when a person denies such a record at time of enlistment and it is discovered thereafter, an investigation will be made. All facts and circumstances in the case will be obtained from the appropriate civil authorities and the person, after being advised of his rights under article 31, UCMJ, will be afforded an opportunity of making a statement. Such a person may be retained in the service or discharged. If discharged, it will be for unsuitability under honorable conditions unless circumstances are such as to warrant a lower type of discharge, in which case a discharge by reason of misconduct (fraudulent enlistment) may be issued.

³ Department of Defense Instruction No. 1304.6, dated August 3, 1955, Subject: Enlistment and Discharge of Individuals With Juvenile and Youthful Offender Records.

CHAPTER V

SERVICE LAWS, REGULATIONS, AND PRACTICES

The laws and regulations heretofore considered show that the Veterans' Administration has discretion to determine whether or not a person is entitled to veterans' benefits in two classes of cases, namely, those involving persons with bad conduct discharges imposed by special courts-martial and those involving persons with undesirable discharges. The extent of these discretionary powers is illustrated by the fact that during the period July 1, 1952-June 30, 1954, there were about 85,000 bad conduct and undesirable discharges issued by the services, constituting approximately 2.6 percent of the total number of separations during that period.

A bad conduct discharge is a punitive discharge authorized by the Uniform Code of Military Justice¹ which, since May 31, 1951, has applied to all of the services and it may be imposed by a general or a special court-martial. The offenses punishable by a bad conduct discharge are prescribed in the Table of Maximum Punishments contained in the Manual for Courts-Martial, United States, 1951, which manual likewise applies to all of the services. It is a less severe punishment than dishonorable discharge and is designed as a punishment for bad conduct rather than as a punishment for serious offenses of either a civil or military nature although such a discharge may be imposed for any offense punishable by a dishonorable discharge,² for any offense not punishable by a bad conduct discharge or a dishonorable discharge upon proof of 2 or more previous convictions and for 2 or more offenses, neither of which is punishable by either type of discharge when the authorized confinement for such offenses is 6 months or more.³ Offenses commonly punished by a bad conduct discharge imposed by a special court-martial include various types of assaults, absence without leave for more than 60 days, escape from confinement, insubordinate conduct, larceny, misbehavior of a sentinel, and related offenses.

The Code and the Manual for Courts-Martial also specify in detail the rights of an accused and the trial and appellate procedure that will be followed in cases involving a bad conduct discharge. These, of course, are identical for each of the services. On the other hand, there are differences in the policies of the services as to the type of court-martial which normally will be utilized in the trial of persons accused of offenses punishable with a bad conduct discharge.

In all of the services, both general and special courts-martial may impose bad conduct discharges. In the Army, however, since 1952 special courts-martial have been used for this purpose only in excep-

¹ The act of May 5, 1950; 50 U. S. C. 551-741.

² MCM U. S. 1951, par. 76a (7), p. 123.

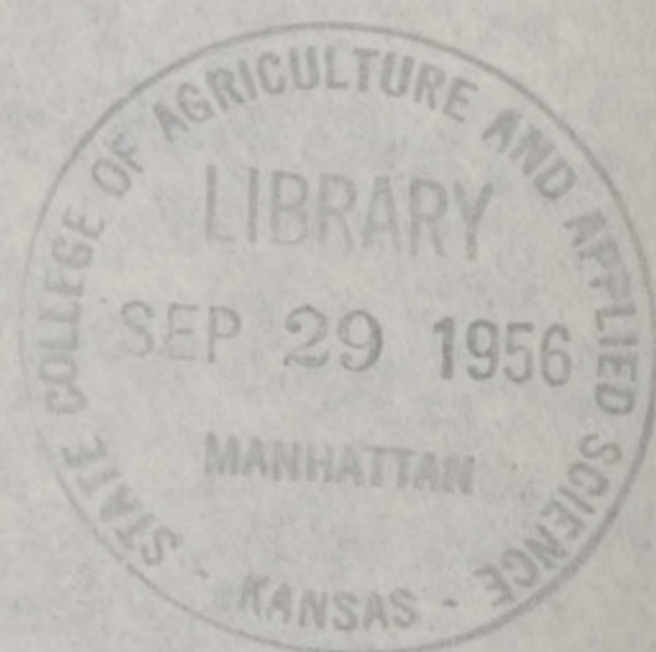
³ Ibid., par. 127c, p. 228.

UNDESIRABLE DISCHARGES

Note: The data in this table does not purport to be all inclusive; it merely points out some of the significant criteria.

Table 2.

| | ARMY | NAVY | MARINE CORPS | AIR FORCE | COAST GUARD |
|-------------------------------|---|--|---|---|--|
| REASONS AND GOVERNING FACTORS | <p>1. <u>Homosexuality</u></p> <p>a. Class I. If successful prosecution is not feasible, disposition will be as in Class II case.</p> <p>b. Class II. If person states in writing that he is willing to accept undesirable discharge or is recommended for such a discharge by a board of officers convened under AR 635-89 (Homosexuals) or AR 615-368 (Unfit) (AR 635-89)</p> <p>c. Class III. If person states in writing that he is willing to accept either a general or an undesirable discharge as determined by the major commander or is recommended for an undesirable discharge by a board of officers convened under AR 635-89 (Homosexuals) or AR 615-368 (Unfit) (AR 635-89)</p> | <p>1. <u>Homosexuality</u></p> <p>a. Class I. Trial by court-martial.</p> <p>b. Class II. Persons who state in writing that they will accept undesirable discharge.</p> <p>c. Class II and III. When Dept. of Navy determines an undesirable discharge</p> | <p>1. <u>Homosexuality</u> Same as Navy. (SECNAV INST. 1620.1, 5 June 1953)</p> | <p>1. <u>Homosexuality</u></p> <p>a. Class I. Trial by general court-martial, unless administrative action is authorized by Secretary of AF.</p> <p>b. Class II and III. If person, in writing, waives appearance before board of officers and agrees to accept discharge which may be undesirable or is recommended for such a discharge by a board of officers convened under AFR 35-66 (AFR 35-66)</p> | <p>1. <u>Homosexuality</u></p> <p>a. Class I. Trial by court-martial.</p> <p>b. Class II. Trial by court-martial unless person applies in writing for an undesirable discharge.</p> <p>c. Class III. Administrative separation; type of discharge to reflect all attendant facts and circumstances (Chapter 12, Personnel Manual)</p> |
| | <p>2. <u>Misconduct</u></p> <p>a. Fraudulent entry. Concealment of true citizenship, conviction by civil court, involving confinement exceeding one year, youthful offenders sentenced to confinement exceeding one year, desertion or AWOL from prior service or other disqualifications except minority.</p> <p>b. Absence without leave and desertion, trial waived. Persons charged with AWOL or desertion in cases punishable by DD or BCD, but trial deemed inappropriate because of physical unfitness.</p> <p>c. Deserters from Spanish-American War and World War I whose trial is deemed inadvisable and peacetime deserters whose trial is barred by Statute of Limitations.</p> <p>d. Conviction by civil court. Initially convicted by civil court or adjudged youthful offenders for commission of a felony. (AR 615-366)</p> | <p>2. <u>Misconduct</u></p> <p>a. Fraudulent entry. A person who has perpetrated a fraudulent enlistment except a minor who makes false representations as to his age.</p> <p>b. A person who has deserted and has not been brought to trial.</p> <p>c. A person convicted by civil authorities or consular court. (C-10313)</p> | <p>2. <u>Misconduct</u></p> <p>a. Fraudulent entry. Deliberate misrepresentation or concealment of a material fact, including police record, juvenile record, previous service involving separation under other than honorable conditions and physical defects, provided the enlistment of a minor with false representation as to age will not alone constitute a fraudulent enlistment.</p> <p>b. Desertion and trial not barred by Statute of Limitations, where person is not physically or mentally competent to stand trial, although competent at time of desertion.</p> <p>c. Desertion and trial barred by Statute of Limitations.</p> <p>d. Conviction by civil authorities of a criminal offense punishable by death or imprisonment for more than one year. (Para. 10278)</p> | <p>2. <u>Misconduct</u></p> <p>a. Fraudulent entry. Knowingly making false representation of material fact or deliberately concealing same, including concealment of civil court record, prior service making him ineligible for enlistment, citizenship and medical defects, except minors who falsify age or consent of parents (AFR 39-21)</p> <p>b. Absentees and Deserters. Deserters and absentees whose trial is barred by the Statute of Limitations, physically and mentally unfit absentees and deserters, and World War I deserters whose trial is deemed inadvisable (AFR 39-23)</p> <p>c. Conviction by civil court of an offense punishable by death or imprisonment for more than one year. AFR 39-22)</p> | <p>2. <u>Misconduct</u></p> <p>a. Fraudulent entry. Concealment of desertion from Armed Forces of U. S., concealment of separation from Armed Forces of U. S. with a form of discharge not entitling person to reenlist, concealment of a criminal or police record, or concealment of any other material fact except minority. The enlistment of a minor with false representation as to age or without consent will not alone be considered as a basis for discharge for fraudulent enlistment.</p> <p>b. Desertion without trial. Trial barred by Statute of Limitations, or when trial deemed inadvisable.</p> <p>c. Trial and conviction by civil court which results in sentence to confinement in a jail or penitentiary for any period regardless of suspension or probation. (Chapter 12, Personnel Manual)</p> |
| | <p>3. <u>Resignations</u></p> <p>a. In lieu of board action for unfitness. When recommendation of board is based upon unfitness under AR 615-368.</p> <p>b. For good of the service. When person is triable by court-martial for an offense punishable by DD or BCD, or if a person is under a suspended sentence of DD or BCD.</p> <p>c. In lieu of separation under Military Personnel Security Program.</p> <p>d. In lieu of separation for homosexuality. (AR 615-367)</p> | | | <p>3. <u>Resignations for the good of the Service.</u></p> <p>When a person's conduct has rendered him triable by court-martial for an offense punishable by a punitive discharge. (AFR 39-15)</p> | |
| | <p>4. <u>Unfitness</u></p> <p>a. Gives evidence of habits or traits of character manifested by antisocial or amoral trend, chronic alcoholism, criminalism, drug addiction, pathological lying, homosexuality, sexual perversion or misconduct.</p> <p>b. Unclean habits, including repeated venereal infection.</p> <p>c. Repeated minor offenses, not warranting trial by CM.</p> <p>d. Habitual shirkers.</p> <p>e. Behavior, activities or associations which tend to show that the person is not reliable or trustworthy.</p> <p>f. Recommended for discharge by a disposition or medical board of medical examiners or other competent medical opinion, not because of a physical or mental disability, but because he possesses a psychopathic personality disorder or defect, or is classified as having "no disease" by the board and his record of service shows frequent disciplinary actions because of infractions of regulations and commission of offenses, and/or it is clearly evident his complaints are unfounded and made with intent of avoiding service. (AR 615-368)</p> | <p>3. <u>Unfitness</u></p> <p>Substantially the same as in the Army, except homosexuality and e. (-10312)</p> | <p>3. <u>Unfitness</u></p> <p>Substantially the same as the Army except e. (Para. 10277)</p> | <p>4. <u>Unfitness</u></p> <p>Substantially the same as the Army, except homosexuality and e. (AFR 39-17)</p> | <p>3. <u>Unfitness</u></p> <p>Substantially the same as the Army, except homosexuality and e. (Chapter 12 Personnel Manual)</p> |
| | <p>5. <u>Military Personnel Security Program</u></p> <p>If retention is inconsistent with the interests of National Security. (AR 604-10)</p> | <p>4. <u>Military Personnel Security Program</u></p> <p>If retention is inconsistent with the interests of National Security. (SECNAV INST. 5521.6, 23 June 1954)</p> | <p>4. <u>Military Personnel Security Program</u></p> <p>If retention is inconsistent with the interests of National Security. (SECNAV INST. 5521.6, 23 June 1954)</p> | <p>5. <u>Military Personnel Security Program</u></p> <p>If retention is inconsistent with the interests of National Security. (AFR 35-62)</p> | <p>4. <u>Disloyalty</u></p> <p>When determined by Secretary of the Treasury. (Chapter 12, Personnel Manual)</p> |



UNDESIRABLE DISCHARGES

Table 3.

Note: The data in this table does not purport to be all inclusive; it merely points out some of the significant criteria.

| | ARMY | NAVY | MARINE CORPS | AIR FORCE | COAST GUARD |
|-----------|--|--|---|--|---|
| PROCEDURE | <p>1. <u>Homosexuality</u> a. Class II. If person refuses to sign statement that he will accept an undesirable discharge, he will be recommended for court-martial or brought before a board of officers convened under either AR 635-89 (Homosexuals) or AR 615-368 (Unfit). (AR 635-89; AR 615-368) If person signs statement, a full report including statement of person concerned, if any, is forwarded to major commander. b. Class III. Investigated and forwarded to major commander. (AR 635-89)</p> | <p>1. <u>Homosexuality</u> a. Class II. If person refuses to sign statement accepting undesirable discharge he shall be recommended for trial by general court-martial. If he signs statement a full report including statement, if any, from person concerned is forwarded to Navy Dept. b. Class III. Investigated and forwarded to Navy Dept. (Note: Each case of homosexuality reported to Navy Dept. is referred to an appropriate board of officers in the Dept. for consideration and recommendations) (SECNAV INST. 1620.1, 5 June 1953)</p> | <p>1. <u>Homosexuality</u> Same as Navy. (SECNAV INST. 1620.1 5 June 1953)</p> | <p>1. <u>Homosexuality</u> Class II and III. If person does not desire to apply for discharge, he may be tried by court-martial or brought before a board of officers. If brought before board of officers it will consist of at least three officers, one of field grade. (AFR 35-66)</p> | <p>1. <u>Homosexuality</u> Substantially the same as the Navy. (Chapter 12, Personnel Manual)</p> |
| | <p>2. <u>Misconduct</u> a. Fraudulent entry. An investigation is made and person concerned is fully apprised of nature of action pending and given an opportunity of submitting written statement. b. Absence without leave and desertion, trial waived. No proceedings before physical evaluation board if person waives his right to such a hearing, and further physical unfitness resulted from intentional misconduct, willful neglect or occurred during a period of AWOL or physical unfitness existed prior to entry in military service and condition not aggravated thereby. In other cases P. E. B. proceedings. c. Deserters from Spanish American War, World War I and others. Upon application to The Adjutant General, Dept. of Army. d. Conviction by civil court. Note: The foregoing applies to persons not members of the Reserve Components. For members of the Reserve Components, the Armed Forces Reserve Act of 1952 (sections 249(b) and (c) P.L. 476, 82nd Cong.) provides that they may be discharged under conditions other than honorable only pursuant to the approved findings of a board of officers except where person concerned consents to such discharge with waiver of board proceedings. (AR 615-366)</p> | <p>2. <u>Misconduct</u> On direction of the Bureau of Naval Personnel. (C-10313)</p> | <p>2. <u>Misconduct</u> When cases are forwarded, copies of all pertinent documents will be enclosed and the principles and procedures prescribed for discharge for unfitness will govern (see 3 below) except statement of the person concerned is not required when he is unavailable. (para. 10278)</p> | <p>2. <u>Misconduct</u> a. Fraudulent entry. Any person subject to such discharge will be afforded opportunity to submit statement, which along with other documents in the case will be forwarded to discharge authority. (AFR 39-21) b. Absentees and deserters. Persons whose trial is not barred but who are found either physically or mentally unfit for further military service. Persons whose trial is barred by Statute of Limitations. World War I deserters, if trial is deemed inadvisable. (AFR 39-23) c. Conviction by civil court. (AFR 39-22) Note: Foregoing applies to persons other than members of the Reserve Components. For members of the Reserve Components there must be a board of officers unless person consents to discharge other than honorable and waives board proceedings. (Armed Forces Reserve Act of 1952)</p> | <p>2. <u>Misconduct</u> A complete and comprehensive report will be made to Commandant. In fraudulent enlistment cases, statement, if any, from person concerned. In cases of conviction by civil authorities all pertinent documents. (Chapter 12, Personnel Manual)</p> |
| | <p>3. <u>Resignations</u> Must be accompanied by complete statement of facts and pertinent documents. (AR 615-367)</p> | | | <p>3. <u>Resignations for the good of the Service</u> Must be accompanied by complete statement of facts. (AFR 39-15)</p> | |
| | <p>4. <u>Unfitness</u> A person scheduled to appear before a board for unfitness will first appear before a medical officer who will submit a report to the board. If psychiatric conditions are involved the medical officer will be a psychiatrist. If any doubt exists as to existence of mental or physical disability as cause of unfitness, person will be brought before board of medical officers for a determination of fact. The Commander exercising general court-martial jurisdiction will convene the board to determine the person's fitness. Such board will consist of three experienced officers, at least one of field grade, the proceedings are recorded, witnesses are sworn and person concerned has right to counsel. (AR 615-368)</p> | <p>3. <u>Unfitness</u> Before recommending such a discharge, the C.O. shall thoroughly investigate the case. The person concerned shall be informed of the contemplated action and reasons therefor and given an opportunity to appear and present any facts or submit any signed statement in his own behalf. If there is doubt of the existence of a mental or physical disability as the cause for unfitness, the person should be brought before a board of medical survey for a determination of fact. (C-10312)</p> | <p>3. <u>Unfitness</u> Substantially the same as Navy plus the following: A board of not less than three officers shall be appointed by each Commanding General exercising general court-martial jurisdiction to consider all recommendations for undesirable discharge and to make recommendations to Commanding General as to final disposition of each case. (para. 10277)</p> | <p>4. <u>Unfitness</u> a. Application for discharge. Person waives hearing before board of officers and states he understands he may receive undesirable discharge. Person is given medical examination before case is forwarded to discharge authority. b. When no application is submitted. A person scheduled to appear before a board for unfitness will first appear before a medical officer who will submit report to board. If psychiatric conditions are involved the medical officer will be a psychiatrist. If there is a reasonable basis for believing a mental or physical defect exists action on unfitness will be suspended pending determination of disability. Wing Commander will convene board of not more than five and not less than three officers. The proceedings are recorded, witnesses are sworn and person concerned has right to counsel. (AFR 39-17)</p> | <p>3. <u>Unfitness</u> When a C.O. considers that the discharge of a person for unfitness may be warranted, he will appoint an investigatory body, who will consider all pertinent matters and make recommendations. (Chapter 12, Personnel Manual)</p> |
| | <p>5. <u>Military Personnel Security Program</u> The procedure to be followed in cases of this character is prescribed in detail in AR 604-10. It includes investigation, action by a Departmental Screening Board, Letter of Allegations, a field board of inquiry and a Department of Army Review Board (AR 604-10)</p> | <p>4. <u>Military Personnel Security Program</u> The procedure to be followed is prescribed in SECNAV INST. 5521.6, 23 June 1954 and SECNAV Notice 5521, 9 December 1954; id. 7 March 1955; id. 13 September 1955. It includes an unclassified narrative statement of fact and written interrogations, action by Local Security Boards, Bureau and Headquarters Security Boards, and Dept. of Navy Security Boards.</p> | <p>4. <u>Military Personnel Security Program</u> Same as Navy.</p> | <p>5. <u>Military Personnel Security Program</u> The procedure to be followed in cases of this character is prescribed in AFR 35-62. It includes action by Military Personnel Security Committee, Notice of Proposed Termination of Appointment or Enlistment with statement of reasons, field hearing boards and the Air Force Personnel Board. (AFR 35-62)</p> | <p>4. <u>Disloyalty</u> When determined by Secretary of Treasury (Chapter 12, Personnel Manual)</p> |

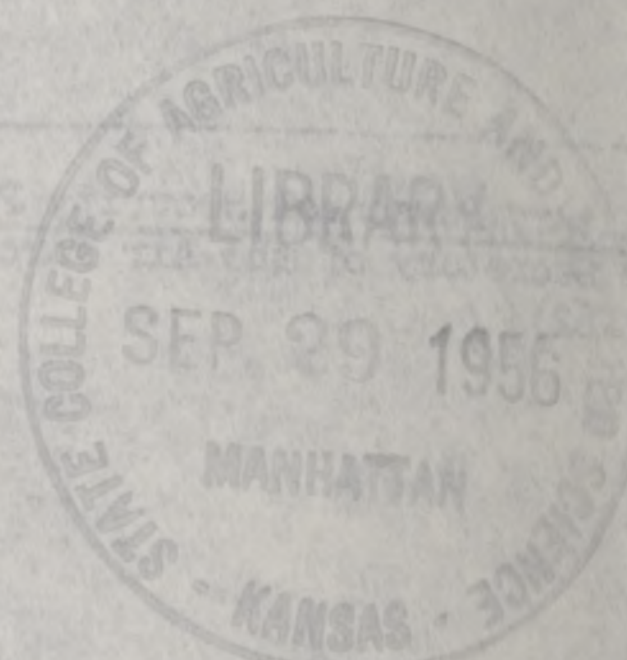


UNDESIRABLE DISCHARGES

Table 4.

Note: The data in this table does not purport to be all inclusive; it merely points out some of the significant criteria.

| | ARMY | NAVY | MARINE CORPS | AIR FORCE | COAST GUARD |
|------------|---|--|--|---|--|
| ORDERED BY | 1. <u>Homosexuality</u> Continental Army Commanders, Commanding General, MDW, and major overseas commanders. (AR 635-89) | 1. <u>Homosexuality</u> Navy Dept. (SECNAV INST. 1620.1, 5 June 1953) | 1. <u>Homosexuality</u> Same as Navy. (SECNAV INST. 1620.1) | 1. <u>Homosexuality</u> Secretary of Air Force (Director, Secretary of Air Force Personnel Council). (AFR 35-66) | 1. <u>Homosexuality</u> Commandant, Coast Guard. (Chapter 12, Personnel Manual) |
| | 2. <u>Misconduct</u> a. Fraudulent entry. Commander exercising general court-martial jurisdiction. b. Absence without leave and desertion, trial waived. Commander exercising general court-martial jurisdiction. c. Deserters from Spanish American War, World War I and others. The Adjutant General, Dept. of Army. d. Conviction by civil court. Commander exercising general court-martial jurisdiction. (AR 615-360; AR 615-366) | 2. <u>Misconduct</u> Bureau of Naval Personnel. (C-10313) | 2. <u>Misconduct</u> Either Commandant, Marine Corps or Commanding General exercising general court-martial jurisdiction, except that where basis of discharge is concealment of juvenile or youthful offender record and retention is not considered warranted, or desertion where trial is barred by Statute of Limitations, the case will be forwarded to Commandant, Marine Corps for decision. (para. 10278) | 2. <u>Misconduct</u> a. Fraudulent entry. General officers or commanders of units normally commanded by general officers. (AFR 39-21; AFR 39-10) b. Absentees and deserters. Officer exercising general court-martial jurisdiction. (AFR 39-23) c. Conviction by civil authorities. General officers or commanders of units normally commanded by general officers. (AFR 39-22; AFR 39-10) | 2. <u>Misconduct</u> Commandant, Coast Guard (Chapter 12, Personnel Manual) |
| | 3. <u>Resignations</u> a. In lieu of board action for unfitness. Commander exercising general court-martial jurisdiction. b. For good of the service. Commander exercising general court-martial jurisdiction. c. In lieu of separation under Security Program. Secretary of the Army. d. In lieu of separation for homosexuality. Continental Army Commanders, Commanding General, MDW, major overseas commanders and Secretary of Army. (AR 615-367; AR 635-89) | | | 3. <u>Resignation for good of the Service</u> Secretary of the Air Force, (Secretary of Air Force Personnel Council). (AFR 39-15) | |
| | 4. <u>Unfitness</u> Commanders exercising general court-martial jurisdiction. (AR 615-368) | 3. <u>Unfitness Naval</u> Bureau of Personnel. (C-10312) | 3. <u>Unfitness</u> Either Commandant, Marine Corps or Commanding General exercising general court-martial jurisdiction, except that cases involving homosexuality will be referred to Commandant, Marine Corps. (para. 10277) | 4. <u>Unfitness</u> Officer exercising general court-martial jurisdiction. (AFR 39-17) | 3. <u>Unfitness</u> Commandant, Coast Guard (Chapter 12, Personnel Manual) |
| | 5. <u>Military Personnel Security Program</u> The Adjutant General or The Secretary of Army. (AR 604-10) | 4. <u>Military Personnel Security Program</u> Chief of Naval Personnel or Secretary of Navy (SECNAV INST. 5521.6, 23 June 1954) | 4. <u>Military Personnel Security Program</u> Commandant, Marine Corps or Secretary of Navy (SECNAV INST. 5521.6, 23 June 1954) | 5. <u>Military Personnel Security Program</u> The Secretary of the Air Force. (AFR 35-62) | 4. <u>Disloyalty</u> Secretary of the Treasury. (Chapter 12, Personnel Manual) |



tional cases.⁴ This means that practically all of the bad conduct discharges in the Army are imposed by general courts-martial, whereas in the other services more bad conduct discharges are imposed by special court-martial than by general courts-martial. Inasmuch as section 300 of the Servicemen's Readjustment Act of 1944⁵ bars from benefits based upon the period of service involved all persons discharged by reason of a sentence of a general court-martial, Army personnel sentenced to a bad conduct discharge are penalized to a greater extent than personnel of the other services.

A somewhat similar situation may arise in services other than the Army when an accused is brought to trial before a general court-martial for an offense punishable by a dishonorable discharge and the evidence adduced at the trial is insufficient to support the offense charged, but does prove that he is guilty of a lesser included offense which is punishable by a bad conduct discharge. Under these circumstances the general court-martial would probably sentence him to a bad conduct discharge. Inasmuch as this discharge is adjudged by a general court-martial, the accused is barred from any veterans' benefits for the period of service involved under section 300 of the Servicemen's Readjustment Act of 1944.

On the other hand, if the trial of the accused had taken place before a special court-martial with the same sentence as that adjudged by the general court, his veterans' rights would not have been barred by section 300 supra, but he would have been in a position to have the character of his discharge adjudicated by the Veterans' Administration under section 1503 of the Servicemen's Readjustment Act of 1944.

The regulations of the services concerning the issuance of undesirable discharges are basically similar and are summarized in tables 2, 3, and 4. Each service authorizes such discharges for homosexuality, misconduct,⁶ unfitness, and on security grounds. This is to be expected inasmuch as the regulations are all in implementation of the directive on discharges issued by the Department of Defense.⁷ There are, however, certain differences in procedure. For example, in the Army and Air Force and to a lesser extent in the Marine Corps, authority to order undesirable discharges is delegated in some instances to field commanders, whereas in the Navy and Coast Guard all such discharges are ordered from Washington. It is also to be observed that in the Army and Air Force there is a greater use than in the other services of boards of officers during the preliminary stages of the proceedings before which the person concerned is given a hearing. The regulations of the Army and Air Force also are much more voluminous and detailed than those of the other services.

⁴ Bad conduct discharges cannot be adjudged by special court-martial unless a complete record of the proceedings and testimony before the court has been made (UCMJ, Art. 19). In the Army reporters shall not be appointed for special courts-martial unless the convening authority shall have received special authorization in each instance from the Secretary of the Army. The Judge Advocate General will consider, sign, authenticate and issue or withhold any such authorization by the authority of and for the Secretary of the Army (par. 1, Changes No. 1, SR 22-145-1, Mar. 6, 1952; par. 1, Changes No. 2, SR 22-145-1, May 20, 1954.)

⁵ See ch. II.

⁶ The regulations of the Air Force do not use this general classification but have separate regulations for each type of misconduct that in the other services are grouped under the general classification. In this connection see table 2 where the separate regulations are listed under the heading of misconduct.

⁷ Summarized in ch. IV.

CHAPTER VI

RECOMMENDATIONS OF INTERESTED AGENCIES

DEPARTMENT OF DEFENSE

In a letter dated August 11, 1955¹ the Department of Defense concluded, after careful consideration of the matter, that with three exceptions service personnel whose last separation was under other than honorable conditions, as evidenced by the type of discharge issued by the service concerned, should be ineligible for any of the benefits now provided by law or regulations for veterans of the military service. The three exceptions are:

1. Continue the present regulation, paragraph 5300, Joint Travel Regulations,² which authorizes the services to furnish transportation in kind to the home or point of entry into the service of the person discharged, irrespective of the type of discharge involved.

2. Amend paragraphs 7000, 2, (5) and 8014, (4), Joint Travel Regulations, which prohibit the shipment of household goods and transportation of dependents at Government expense of persons separated under other than honorable conditions, to authorize the return of such a person's dependents and household goods (if otherwise proper) to the home or point of entry into the service of such person.

3. In cases where the separation was under other than honorable conditions, except where such separation was the result of, or in lieu of, either general or special court-martial action, to authorize hospitalization and disability compensation provided such person has a service-connected disability incurred under circumstances unrelated to the factors which warranted the other than honorable discharge. In other words, persons discharged with bad conduct discharges either by reason of a sentence of a general or special court-martial, persons dishonorably discharged and persons who resign for the good of the service in lieu of trial by court-martial would be ineligible for any benefits except transportation in kind, including, if otherwise proper, transportation of dependents and shipment of household goods to their home or point of entry into the service. Enlisted persons with undesirable discharges or officers with discharges under other than honorable conditions would be ineligible for any benefits except transportation in kind, including dependents and household goods, unless they have suffered a service-connected disability unrelated to the factors warranting the discharge, in which event they would also be entitled to hospitalization and disability compensation.

VETERANS' ADMINISTRATION

In a letter dated June 27, 1955,³ the Veterans' Administration stated in pertinent part as follows:

Briefly, it may be stated that a dishonorable discharge disqualifies one for any of the benefits under the mentioned laws, and, of course, an honorable discharge

¹ Copy attached as appendix A, together with a copy of the chart entitled "Incidents of Discharge" as appendix B.

² Joint Travel Regulations for the Uniformed Services. Such regulations are prepared in accordance with section 303 (h) of the Career Compensation Act of 1949 (37 U. S. C. 253) and are promulgated by the Secretaries of the uniformed services, to wit: Secretaries of Army, Navy, Air Force, Treasury, Commerce, and the Federal Security Administrator (now Secretary of Health, Education, and Welfare).

³ Copy attached as appendix C.

meets the requirement. A general discharge is considered by the Army to be granted under honorable conditions (AR 615-360) and such discharge may be considered by the Veterans' Administration as under conditions other than dishonorable.

However, with respect to the other types of discharges which are neither dishonorable nor honorable, certain of these are granted for reasons which may definitely classify them as being under dishonorable conditions, and others for reasons which may classify them as under conditions other than dishonorable. In this class fall the undesirable and bad conduct discharges.

In interpreting section 1503 of Public Law 346, supra, "dishonorable conditions" are deemed by the Veterans' Administration to exist when the discharge or separation from active military or naval service was for mutiny, spying, for an offense involving moral turpitude, or willful and persistent misconduct. However, where service was otherwise honest, faithful, and meritorious, a discharge or separation other than dishonorable because of the commission of a minor offense will not be deemed to constitute discharge or separation under dishonorable conditions. Under the requirement contained in section 1503 a discharge which is neither specifically honorable nor specifically dishonorable must be evaluated on an individual basis to determine in the light of all the circumstances whether the discharge is given "under conditions other than dishonorable."

It should also be borne in mind that under section 300 of Public Law 346, 78th Congress (38 U. S. C. 693g), a discharge or dismissal by reason of the sentence of a general court-martial bars all right based upon the period of service from which the person is so discharged. Therefore, a bad conduct discharge issued by reason of the sentence of a general court-martial is a bar to benefits based upon the period of service from which the person is so discharged.

Insurance benefits which are payable because of death or disability under United States Government life and national service life insurance are rights based on contracts. All insurance issued, reinstated or converted becomes incontestable from date of issue, reinstatement or conversion except for fraud, nonpayment of premiums or on the ground that the applicant was not a member of the military or naval forces of the United States.

Under the terms of the insurance contracts any rights which accrue cannot be denied except for the specific offenses set forth by statute and the contracts as basis for forfeiture of the insurance. Under both United States Government life and national service life insurance no insurance shall be payable for death inflicted as a lawful punishment for crime or military offense except when inflicted by the enemy. In addition, under national service life insurance any person guilty of mutiny, treason, spying, or desertion, or who because of conscientious objections refuses to perform service in the land or naval forces of the United States or refuses to wear the uniform of such forces shall forfeit all rights to insurance. Any change which would provide any cause for forfeiture other than those specified would constitute an impairment of the contracts and would be improper.

Servicemen's indemnity is payable for death within 120 days after separation or release from active service, if called to extended active service for a period exceeding 30 days regardless of the type of discharge received. However, the act contains a prohibition against payment of indemnity for death inflicted for lawful punishment for a crime and for forfeiture of benefits for offenses similar to those provided in the insurance laws. * * *

It is the view of the Veterans' Administration that the concept underlying section 1503 of the Servicemen's Readjustment Act, with respect to character of discharge, is sound and equitable. Although statistics are not available, it is believed that a status or eligibility has been found by the Veterans' Administration only where warranted upon consideration of all pertinent factors, including the circumstances leading to discharge, combat service, and prisoner of war experience. Accordingly, I do not recommend any change in existing legislation on this subject.

In a letter dated March 14, 1956,⁴ the Treasury Department expressed the opinion that the views of the Veterans' Administration are preferable to those of the Department of Defense.

⁴ Copy attached as appendix D.

CHAPTER VII

SAMPLE OF ADJUDICATIONS BY THE VETERANS' ADMINISTRATION

The Commission obtained from the Department of Defense and the Coast Guard the names and other critical data respecting 644 persons who had been discharged during period July 1, 1952, to June 30, 1954, either with bad-conduct discharges imposed by special courts-martial or undesirable discharges and whose records in the hands of the service from which discharged showed that they, or their dependents, had applied to the Veterans' Administration for some benefit other than insurance or indemnity. The names were selected at random by the services as indicated below:

| Type of discharge | Service | | | | | |
|--|---------|------|--------------|-----------|-------------|-------|
| | Army | Navy | Marine Corps | Air Force | Coast Guard | Total |
| Bad conduct discharge by special court-martial (except deserters)----- | 6 | 100 | 50 | 33 | 5 | 194 |
| Undesirable discharge (except deserters)----- | 200 | 75 | 40 | 125 | 10 | 450 |
| Total----- | 206 | 175 | 90 | 158 | 15 | 644 |

The names and other critical data were sent to the VA for information in each case as to whether there had been an adjudication respecting the character of the discharge, if so whether the discharge had been adjudicated as under conditions other than dishonorable or whether it had been held under dishonorable conditions and, if the former, the reasons therefor. The VA found that in 599 cases (184 bad-conduct discharge and 415 undesirable discharge) there had been an adjudication of the nature of the persons' discharge and that the adjudication had been made in 66 different offices of the VA.

The result of the sample adjudications is shown below:

184 bad-conduct discharge cases

Discharge as adjudicated as under other than dishonorable conditions: 5 or 2.7 percent.

Discharges adjudicated as under dishonorable conditions: 179 or 97.3 percent.

415 undesirable discharge cases

Discharges adjudicated as under other than dishonorable conditions: 32 or 7.7 percent.

Discharges adjudicated as under dishonorable conditions: 383 or 92.3 percent.

599 bad-conduct discharge and undesirable discharge cases

Discharges adjudicated as under other than dishonorable conditions: 37 or 6.2 percent.

Discharges adjudicated as under dishonorable conditions: 562 or 93.8 percent.

Principal offenses involved in the five bad-conduct discharges adjudicated as under other than dishonorable conditions:

| | |
|--|---|
| Insubordinate conduct and related offenses | 3 |
| Other military offenses | 2 |
| Total | 5 |

Principal offenses involved in the 179 bad-conduct discharges adjudicated as under dishonorable conditions:

| | |
|--|-----|
| AWOL | 125 |
| Assault | 6 |
| Escape from confinement and related offenses | 3 |
| Insubordinate conduct and related offenses | 8 |
| Larceny and related offenses | 28 |
| Misbehaviour of sentinel | 2 |
| Other military offenses | 7 |
| Total | 179 |

Principal factors involved in the 32 undesirable discharges adjudicated as under other than dishonorable conditions:

| | |
|---|----|
| Conviction by civil authorities | 8 |
| Fraudulent entry in service | 9 |
| Recommended for discharge by medical board because of personality disorders and frequent infractions of regulations | 3 |
| Repeated minor military offenses | 5 |
| Unfit: | |
| Unclean habits | 1 |
| Misconduct | 6 |
| Total | 32 |

Principal factors involved in the 383 undesirable discharges adjudicated as under dishonorable conditions:

| | |
|---|-----|
| AWOL | 5 |
| Conviction by civil authorities | 48 |
| Fraudulent entry in service | 19 |
| Homosexuality | 75 |
| Recommended for discharge by medical board because of personality disorders and frequent infractions of regulations | 63 |
| Repeated minor military offenses | 126 |
| Unfit: | |
| Chronic alcoholism | 17 |
| Criminalism | 2 |
| Misconduct | 18 |
| Narcotics | 8 |
| Unclean habits | 2 |
| Total | 383 |

APPENDIXES

APPENDIX A

ASSISTANT SECRETARY OF DEFENSE,
MANPOWER AND PERSONNEL,
Washington, D. C., August 11, 1955.

Gen. OMAR N. BRADLEY,
Chairman, President's Commission on Veterans Benefits,
1400 Pennsylvania Avenue NW., Washington, D. C.

DEAR GENERAL BRADLEY: Your letter to me of May 23 requested recommendation from the Department of Defense as to whether service personnel separated under other than honorable conditions should be entitled to veterans' benefits.

The questions involved have been given careful consideration within the Department of Defense. We have reached the conclusion that except as noted below, persons whose last separation from service was under other than honorable conditions, as evidenced by the type of discharge issued by the service concerned, should be ineligible for any of the benefits now provided by law or regulation for veterans of military service.

The first exception to which I refer would be consistent with existing regulation, specifically, paragraph 5300, Joint Travel Regulations. It would continue the authority for the services to furnish transportation in kind to home or point of entry into the service of the individual concerned. This would apply irrespective of the type of discharge received.

The second exception pertains to transportation of dependents and household goods. At present, for members of the service separated under other than honorable conditions, Joint Travel Regulations (pars. 7000.2 (5) and 8014 (4)) prohibit the shipment of household goods and transportation of dependents at Government expense.

It is the view of the Department of Defense that the return of the service member's dependents and household goods (if otherwise proper) to home or point of entry into the service should be authorized.

The third exception would be applicable only to discharges who have incurred a service-connected disability under circumstances unrelated to the factors which warranted the other-than-honorable discharge. In those cases, it is believed that the Government is obligated to compensate for a lessening of earning capacity which is attributable to disabilities incurred in line of duty. This obligation should be limited to necessary hospitalization and disability compensation. However, extension of this exception to include personnel separated as the result of, or in lieu of either general or special court-martial action is not considered warranted, since the forfeiture of the right to any form of compensation may properly be considered as a part of the punitive discharge.

At this point may I refer you to the chart, Incidents of Discharge, which I enclosed in my letter to you of May 6. That chart listed the various benefits provided by law or regulation and eligibility therefor based on types of discharge received.

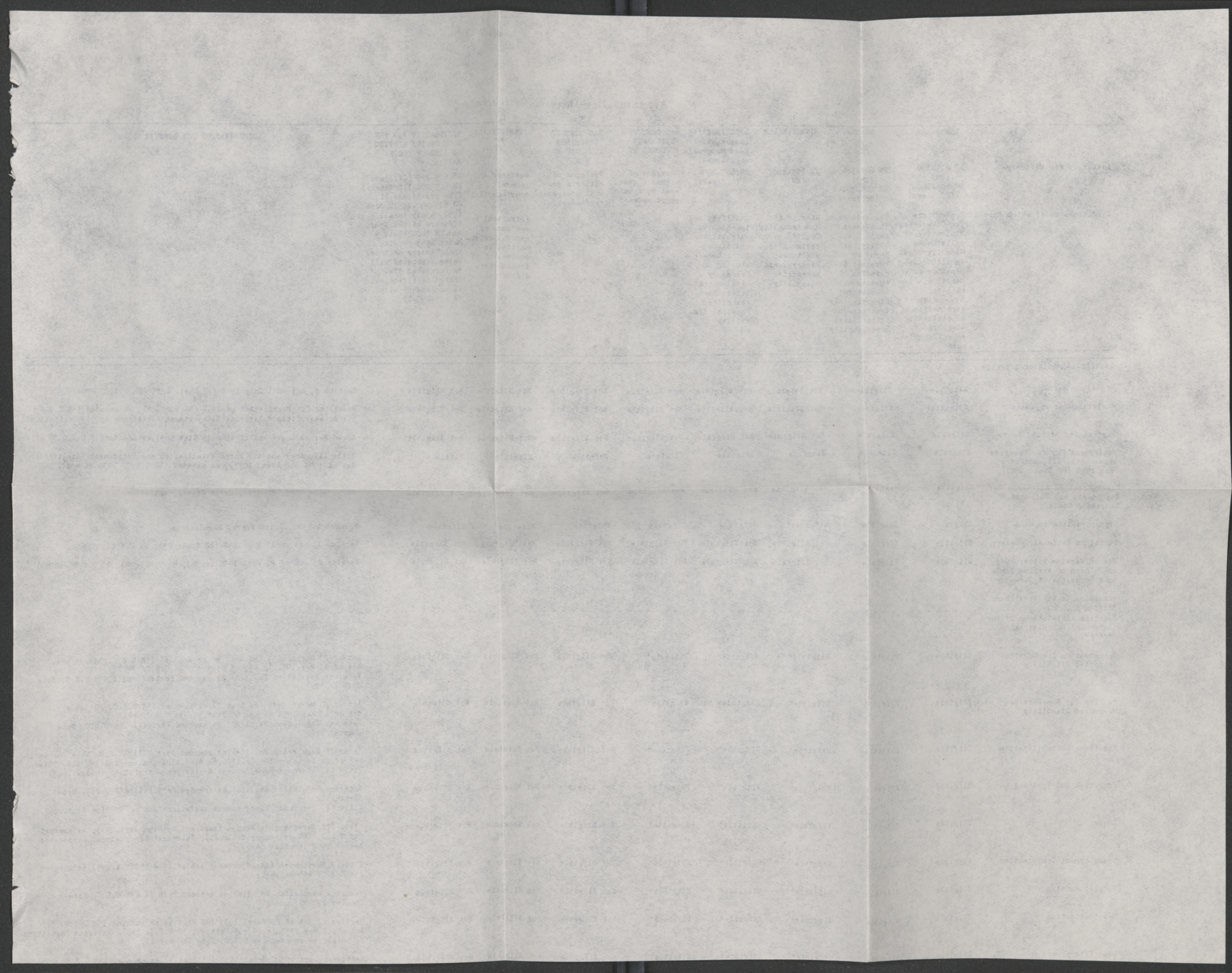
Applying these recommendations specifically to the benefits listed on the chart, it would mean:

(a) That persons discharged under any of the conditions listed in columns 6, 7, 8, and 9 of the chart would be ineligible for any benefits except transportation in kind including, if otherwise proper, transportation of dependents and shipment of household goods.

(b) Persons discharged under any of the conditions listed in columns 4 and 5 of the chart (undesirable discharge for enlisted men, and under other than honorable conditions for officers) would be ineligible for any benefits except transportation in kind (including dependents and household goods) unless they have suffered a service-connected disability. In such cases, the obligations of the Government should be limited to necessary hospitalization by the VA and disability compensation.

APPENDIX B.—Incidents of Discharge

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | |
|---|---|---|---|---|--|--|---|--|
| | HONORABLE | GENERAL | UNDESIRABLE | DISCHARGE**** (under other than honorable conditions) | BAD CONDUCT DISCHARGE ADJUDGED BY SCM | BAD CONDUCT DISCHARGE ADJUDGED BY GCM | DISHONORABLE ** | AUTHORIZATION FOR BENEFIT |
| Author. ty for Discharge | AR 615-360 (EM) SR 605-290-1 (Officers) | AR 615-360 (EM) SR 605-290-1 (Officers) | AR 615-360 (EM) | SR 605-290-1 (Officers) | Sentence of either a gen- eral or special court-martial | Sentence of either a gen- eral or special court-martial | Sentence of general court-martial | RESIGNATION FOR THE GOOD OF THE SERVICE IN LIEU OF COURT- MARTIAL*** |
| Conditions under which issued | Convenience of The Government; Expiration of enlistment; Minority; Res- ignation; De- pendency or hardship; Dis- ability; Revocation or termination of appointment; Discharge to accept appoint- ment | Convenience of the Govern- ment; Disa- bility, dis- loyal or sub- versive; Ex- piration of enlistment; Inaptitude; Minority; Res- ignation-Un- suitability; Homosexuality | Misconduct; Homosexuality; Qualified resignation, unfitness; Disloyal and subversive; Disability | Qualified res- ignation; Un- suitability and miscon- duct; Con- viction of felony by civil author- ities; Homo- sexuality; Physical dis- ability | | | (Dismissal by sentence of general court- martial is equivalent to dishonorable discharge) | AR 605-275 (Officers) SR 605-290-1(Officers) (The provisions of SR 605-290-1, 17 June 1952, apply to all officers of the Army; and SR 140-175-1, 9 March 1953 provide that Reserve officers being separated will be furnished dis- charge certificates in accordance with SR 605-290-1) |
| <hr/> | | | | | | | | |
| Benefits Administered by the Army | | | | | | | | |
| Headstone Marker | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Section 1, act of 1 July 1948 (62 Stat. 1215; 24 U.S.C. 279a) |
| Mustering-out Payments | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Mustering-Out Payment Act of 1944 (58 Stat. 8), as amended (38 U.S.C. 691 et seq.) Title V, Veterans' Readjustment Assistance Act, 1952 (66 Stat. 688) |
| Payment for Accrued Leave | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Armed Forces Leave Act of 1946 (60 Stat. 963), as amended (37 U.S.C. 32 et seq.) |
| Retirement Pay for Reserves under title III, act of 29 June 1948 (62 Stat. 1087) | Eligible | Eligible | Eligible | Eligible | Eligible | Eligible | Eligible | Title III, Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1087), as amended (10 U.S.C. 103b et seq.) |
| Transportation Allowance for Dependents and Shipment of Household Goods | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Paragraphs 7000, 8009(5), Joint Travel Regulations |
| Transportation in Kind | Eligible | Eligible | Eligible | Eligible | Eligible | Eligible | Eligible | Paragraph 5300, Joint Travel Regulations |
| Burial in National Cemetery | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Section 1, act of 14 May 1948 (62 Stat. 234; 24 U.S.C. 281) |
| Use of Wartime Title; Wear of Uniform of Wartime Grade upon Occasions of Ceremony | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Section 2, act of 21 June 1930 (c. 563, 46 Stat. 793; 10 U.S.C. 1028b) |
| Admission to Soldiers' Home | **** | | | | | | | |
| <hr/> | | | | | | | | |
| Benefits Administered by the Veterans' Administration | | | | | | | | |
| Compensation for Service-Connected Disability | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Act of 20 March 1933 (48 Stat. 8), as amended (38 U.S.C. 701 et seq.) Act of 11 May 1951 (c. 49, 65 Stat. 40; 38 U.S.C. 745) Veterans Regulation No. 1(a), as amended, Parts I and II (38 U.S.C. Note Chapter 12) |
| Pension for Non-Service-Connected Disability | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Act of 20 March 1933 (48 Stat. 8), as amended (38 U.S.C. 701 et seq.) Act of 11 May 1951 (c. 49, 65 Stat. 40; 38 U.S.C. 745) Veterans Regulation No. 1(a), as amended, Part III (38 U.S.C. Note Chapter 12) |
| Vocational Rehabilitation | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Veterans Regulation No. 1(a), as amended, Part VII (38 U.S.C. Note Chapter 12) Act of 28 December 1950 (c. 1176, 64 Stat. 1121), as amended (38 U.S.C. 701a) Title II, Veterans' Readjustment Assistance Act of 1952 (66 Stat. 663) |
| Education and Training | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Veterans Regulation No. 1(a), as amended, Part VIII (38 U.S.C. Note Chapter 12) Title II, Veterans' Readjustment Assistance Act of 1952 (66 Stat. 663) |
| Loans | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Title III, Servicemen's Readjustment Act, 1944 (50 Stat. 291), as amended (38 U.S.C. 694 et seq.); Title III, Veterans' Readjustment Assistance Act of 1952 (66 Stat. 682) |
| Unemployment Compensation | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Title V, Servicemen's Readjustment Act of 1944 (58 Stat. 295), as amended (38 U.S.C. 696 et seq.) |
| Special Housing | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Veterans Regulation No. 1(a), as amended, Part IX (38 U.S.C. Note Chapter 12) |
| Hospitalization | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Section 6, act of 20 March 1933 (48 Stat. 9), as amended (38 U.S.C. 706) Act of 11 May 1951 (c. 49, 65 Stat. 40; 38 U.S.C. 745); Veterans Regulation No. 6(a), as amended (38 U.S.C. Note Chapter 12) |
| Domiciliary Care | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Section 6, act of 20 March 1933 (48 Stat. 9), as amended (38 U.S.C. 706) |



| | | | | | | | | | |
|--|---|----------|--------------|--------------|--------------|--------------|--------------|--------------|---|
| Out-Patient Medical Treatment | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | No. 6(a), as amended (38 U.S.C. Note Chapter 12) |
| Out-Patient Dental Treatment | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Section 6, act of 20 March 1933 (48 Stat.9), as amended (38 U.S.C. 70b) Veterans Regulations Nos. 6(a) and 7(a), as amended (38 U.S.C. Note Chapter 12) |
| Prosthetic Appliances | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Veterans Regulation No. 7(a), as amended (38 U.S.C. Note Chapter 12) |
| Seeing-Eye Dogs and Mechanical Electronic Equipment | (Eligibility dependent upon entitlement to disability compensation) | | | | | Not Eligible | Not Eligible | Not Eligible | Section 4, act of 19 July 1939 (53 Stat.1070), as amended (38 U.S.C. 706b) |
| Automobiles | (Eligibility dependent upon entitlement to disability compensation for one of specified disabilities) | | | | | Not Eligible | Not Eligible | Not Eligible | Section 1, act of 24 May 1944 (58 Stat.226; 38 U.S.C. 251) |
| Compensation for Service-Connected Death | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Section 101, act of 8 August 1946 (60 Stat.915; 38 U.S.C. 252) Section 1, act of 20 October 1951 (65 Stat.574; 38 U.S.C. 252a) |
| Pension for non-Service-Connected Death | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Act of 20 March 1933 (48 Stat.8), as amended (38 U.S.C. 701 et seq.) Veterans Regulation No. 1(a), as amended, Parts I and II (38 U.S.C. Note Chapter 12) |
| Burial Expenses | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Act of 20 March 1933 (48 Stat.8), as amended (38 U.S.C. 701 et seq.) Veterans Regulation No. 1(a), as amended, Part III (38 U.S.C. Note Chapter 12) |
| Burial Flags | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Section 17, act of 20 March 1933 (48 Stat.11; 38 U.S.C. 717) Act of 11 May 1951 (c.49, 65 Stat. 40; 38 U.S.C. 745) |
| <hr/> | | | | | | | | | |
| <u>Benefits Administered by Other Federal Agencies</u> | | | | | | | | | |
| Farm and Farm Housing Loans (Department of Agriculture) | Eligible | Eligible | Eligible | Eligible | Eligible | Eligible | Not Eligible | Eligible | Section 1, act of 22 November 1943 (c.301, 57 Stat.590; 38 U.S.C. 183) |
| Preference in Housing (Defense Rental Areas Division, Office of Defense Mobilization) | Eligible | Eligible | Eligible | Eligible | Eligible | Eligible | Not Eligible | Eligible | Bankhead-Jones Farm Tenant Act (50 Stat. 522), as amended (7 U.S.C. 1001 et seq; section 2, act of 30 June 1953 (Pub.Law 98, 83d Cong; 67 Stat. 132); Title V, Housing Act of 1949 (63 Stat.132), as amended (42 U.S.C. 1471 et seq; section 3, act of 30 June 1953 (Pub.Law 98, 83d Cong; 67 Stat.132) |
| Homestead, Desert Land and Small Tract Preference (Department of Interior) | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Section 4, Housing and Rent Act of 1947 (61 Stat.105), as amended (50 U.S.C. App. 1884; subsection 201(a), Defense Production Act Amendments of 1952 (66 Stat.306); Section 2, Housing and Rent Act of 1953 (Pub. Law 23, 83d Cong; 67 Stat.24)) |
| Civil Service Preference (Civil Service Commission) | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Section 1, act of 27 September 1944 (c.421, 58 Stat.747), as amended (43 U.S.C. 279) |
| Reemployment Benefits-Federal Employment (Civil Service Commission) | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Section 2, Veterans' Preference Act of 1944 (58 Stat.387), as amended (5 U.S.C. 851; section 1, act of 14 July 1952 (c.728, 66 Stat.626) |
| Reemployment Benefits-Private Employment (Department of Labor) | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Section 9, Universal Military Training and Service Act (62 Stat.614), as amended (50 U.S.C. App.459); Part 35, Civil Service Commission Regulations |
| Employment Preference (Department of Labor) | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Section 8, Selective Training and Service Act of 1940 (54 Stat.890), as amended (50 U.S.C. App.308); Section 9, Universal Military Training and Service Act (62 Stat.614), as amended (50 U.S.C. App. 459) |
| Unemployment Compensation - Veterans of Service after 26 June 1950 (Department of Labor) | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Title IV, Servicemen's Readjustment Act of 1944 (58 Stat.293) as amended (38 U.S.C. 695 et seq.) |
| Naturalization Benefits (Department of Justice) | Eligible | Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Not Eligible | Title IV, Veterans' Readjustment Assistance Act of 1952 (66 Stat.684) |
| Social Security (Social Security Administration) | Eligible | Eligible | Eligible* | Eligible* | Eligible* | Not Eligible | Not Eligible | Not Eligible | Section 329, Immigration and Nationality Act (66 Stat.250); Act of 30 June 1953 (Pub.Law 86, 83d Cong; 67 Stat.108) |

State Benefits

The states provide a varying number of veterans' benefits which include bonuses, burial rights, employment preferences and tax benefits. No general rule can be stated as to eligibility requirements for such benefits. Some states require "an honorable discharge"; others require "discharge under conditions other than dishonorable", "service with honor", or "satisfactory service".

- * Subject to a review of the facts surrounding the discharge by the agency administering the benefit.
- ** Subsection 349(a)(3), Immigration and Nationality Act (66 Stat.268) provides in part that a person convicted by a court-martial for desertion in time of war and sentenced to a dishonorable discharge, shall as a result thereof lose his nationality.
- *** Resignations for the good of the service are normally accepted as under other than honorable conditions and a discharge (under other than honorable conditions) is issued. Paragraph 4 d, Army Regulations 605-275, dated 27 June 1949, provides, however, that if the Department of the Army determines that the resignation be accepted under honorable conditions, an honorable or general discharge may be furnished. As a matter of policy if it is determined that the resignation is under honorable conditions it is no longer considered a resignation "for the good of the service" but as a resignation under honorable conditions.
- **** Section 10 of the act of 5 May 1950 (64 Stat.146; 50 U.S.C. 739) provides for the dropping from the rolls of an officer absent without leave more than three months or who has been convicted by civilian authorities and sentenced to confinement in a Federal or state penitentiary or correctional institution. This office has previously stated that such separation will usually be characterized as under other than honorable conditions.
- ***** Section 4821, Revised Statutes (24 U.S.C.49) provides that certain soldiers with service in the Army of the United States are eligible for admission to the Soldiers' Home. Section 4822, Revised Statutes (24 U.S.C. 59) provides "the benefits of the Soldiers' Home shall not be extended to any soldier in the regular or volunteer service, convicted of felony or other disgraceful or infamous crimes of a civil nature after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer or habitual drunkard be relieved without such evidence of subsequent service, good conduct, and reformation of character as is satisfactory to the commissioners".
- ***** Section 300 of the Servicemen's Readjustment Act of 1944 (58 Stat.286; 38 U.S.C. 693g) provides in substance that discharge or dismissal by reason of sentence of GCM and other discharges and dismissals specified, shall bar all rights based upon the period of service from which discharged or dismissed, under any laws administered by the Veterans' Administration.



The Department of Defense is appreciative of the fact that some cases might be envisioned by the Commission which would turn on unusual facts or circumstances. If so, and should the Commission desire comment or study by the Department of Defense in any specific cases, please let us know. We will be glad to assist in any way we can.

Sincerely yours,

CARTER L. BURGESS.

APPENDIX C

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., June 27, 1955.

Gen. OMAR N. BRADLEY,
Chairman, President's Commission on Veterans' Pensions,
Washington, D. C.

DEAR GENERAL BRADLEY: This is in further reply to your letter of May 25, 1955, stating that your Commission has under consideration the problem of whether persons separated from the military service under other than honorable conditions should be entitled to receive benefits provided for veterans and requesting my recommendations with respect to this matter.

Generally, with the exception of certain insurance and indemnity benefits, a discharge or release from active service under conditions other than dishonorable is a prerequisite for benefits under laws administered by the Veterans' Administration.

Section 1503, Public Law 346, 78th Congress (Servicemen's Readjustment Act of 1944 (38 U. S. C. 697c)) provides:

"A discharge or release from active service *under conditions other than dishonorable* shall be a prerequisite to entitlement to veterans' benefits provided by this Act of Public Law Numbered 2, Seventy-third Congress, as amended." (Italics supplied.)

Public No. 2, as amended, provides for hospitalization and domiciliary care, medical and dental treatment, compensation and pension, specially adapted housing, prosthetic appliances, and burial benefits, Public Law 346 provides for education and training, loan, and other readjustment benefits for World War II veterans. Additionally, Public Law 550, 82d Congress (Veterans' Readjustment Assistance Act of 1952), provides with respect to the education or training; unemployment compensation and loan benefits under that act for veterans with service in or after June 27, 1950, and prior to February 1, 1955 (Korean conflict), that the discharge or release from active service be "under conditions other than dishonorable." The same type of discharge is required for vocational rehabilitation purposes under Public Law 16, 78th Congress, as amended, and Public Law 894, 81st Congress, as amended.

Briefly, it may be stated that a dishonorable discharge disqualifies one for any of the benefits under the mentioned laws and, of course, an honorable discharge meets the requirement. A general discharge is considered by the Army to be granted under honorable conditions (AR 615-360) and such discharge may be considered by the Veterans' Administration as "under conditions other than dishonorable."

However, with respect to the other types of discharges which are neither dishonorable nor honorable, certain of these are granted for reasons which may definitely classify them as being under dishonorable conditions, and others for reasons which may classify them as under conditions other than dishonorable. In this class fall the undesirable and bad-conduct discharges.

In interpreting section 1503 of Public Law 346, supra, "dishonorable conditions" are deemed by the Veterans' Administration to exist when the discharge or separation from active military or naval service was for mutiny, spying, for an offense involving moral turpitude, or willful and persistent misconduct. However, where service was otherwise honest, faithful, and meritorious, a discharge or separation other than dishonorable because of the commission of a minor offense will not be deemed to constitute discharge or separation under dishonorable conditions. Under the requirement contained in section 1503 a discharge which is neither specifically honorable nor specifically dishonorable must be evaluated on an individual basis to determine in the light of all the circumstances whether the discharge is given "under conditions other than dishonorable."

It should also be borne in mind that under section 300 of Public Law 346, 78th Congress (38 U. S. C. 693g), a discharge or dismissal by reason of the sentence of a general court-martial bars all right based upon the period of service from which

the person is so discharged. Therefore, a bad conduct discharge issued by reason of the sentence of a general court-martial is a bar to benefits based upon the period of service from which the person is so discharged.

Insurance benefits which are payable because of death or disability under United States Government life and National Service life insurance are rights based on contracts. All insurance issued, reinstated, or converted becomes incontestable from date of issue, reinstatement or conversion except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States.

Under the terms of the insurance contracts any rights which accrue cannot be denied except for the specific offenses set forth by statute and the contracts as basis for forfeiture of the insurance. Under both United States Government life and National Service life insurance no insurance shall be payable for death inflicted as a lawful punishment for crime or military offense except when inflicted by the enemy. In addition, under national service life insurance any person guilty of mutiny, treason, spying, or desertion, or who because of conscientious objections refuses to perform service in the land or naval forces shall forfeit all rights to insurance. Any change which would provide any cause for forfeiture other than those specified would constitute an impairment of the contracts and would be improper.

Servicemen's indemnity is payable for death within 120 days after separation or release from active service, if called to extended active service for a period exceeding 30 days regardless of the type of discharge received. However, the act contains a prohibition against payment of indemnity for death inflicted for lawful punishment for a crime and for forfeiture of benefits for offenses similar to those provided in the insurance laws.

With reference to the chart prepared by the Judge Advocate General of the Army, which was enclosed in your letter, it will be noted that a general discharge (i. e., under honorable conditions) may be issued under conditions involving disloyalty, subversion, or homosexuality. The chart also indicates that an undesirable discharge may be issued in cases involving the same conditions, among others. It is suggested that you may wish to request further information from the Department of Defense as to the criteria used in determining which of the mentioned discharges should be issued in a particular case where questions of disloyalty, subversion, or homosexuality are involved. This assumes considerable importance in view of the fact that the effects of a general discharge are identical with those of an honorable discharge and entitle an individual so discharged to full rights and benefits under laws administered by the Veterans' Administration.

It is the view of the Veterans' Administration that the concept underlying section 1503 of the Servicemen's Readjustment Act, with respect to character of discharge, is sound and equitable. Although statistics are not available, it is believed that a status of eligibility has been found by the Veterans' Administration only where warranted upon consideration of all pertinent factors, including the circumstances leading to discharge, combat service, and prisoner-of-war experience. Accordingly, I do not recommend any change in existing legislation on this subject.

Sincerely yours,

H. V. HIGLEY, *Administrator.*

APPENDIX D

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, March 14, 1956.

Maj. Gen. E. M. BRANNON, United States Army,
Executive Director, President's Commission on Veterans' Pensions,
Washington, D. C.

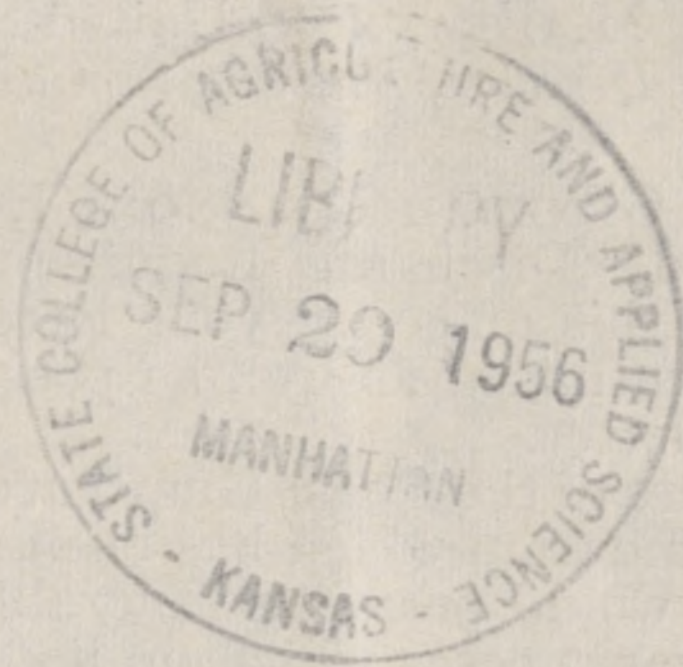
MY DEAR GENERAL BRANNON: Returned herewith are the two copies of a study entitled "Discharge Requirements for Veterans' Benefits," which were forwarded to this office by your letter dated February 21, 1956. These copies have been scrutinized as well as possible within the time limitations set by the transmitting letter.

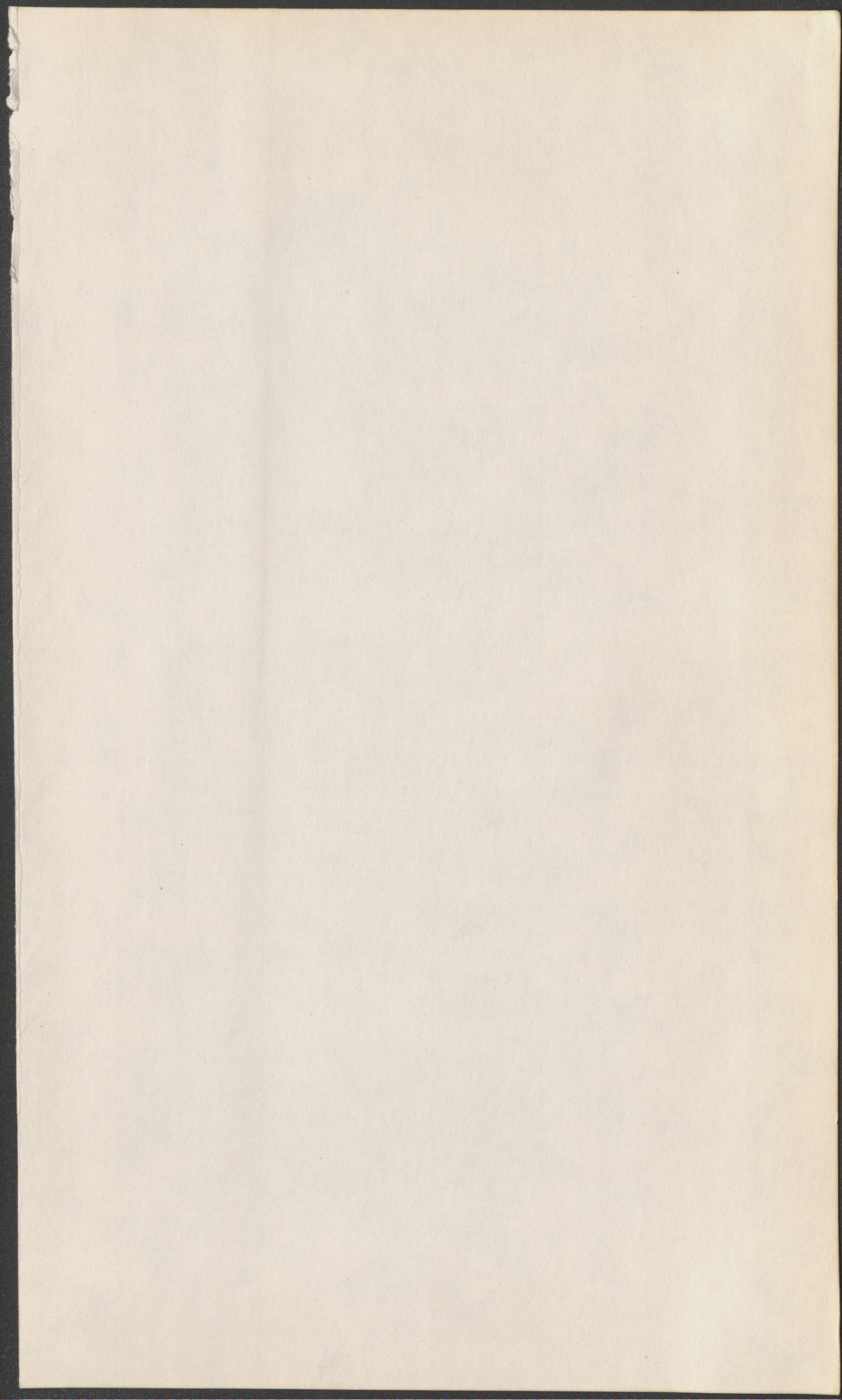
The practices of the Coast Guard are essentially those laid down by the booklets. The recommendation which has been made by the Veterans' Administration, to a great extent, would permit a favorable adjudication in special court-martial bad-conduct discharge cases which do not involve moral turpitude or serious military offenses, and is preferable to the recommendation made by the Department of Defense which would deny benefits under standards which make no allowance for extenuating circumstances in individual cases.

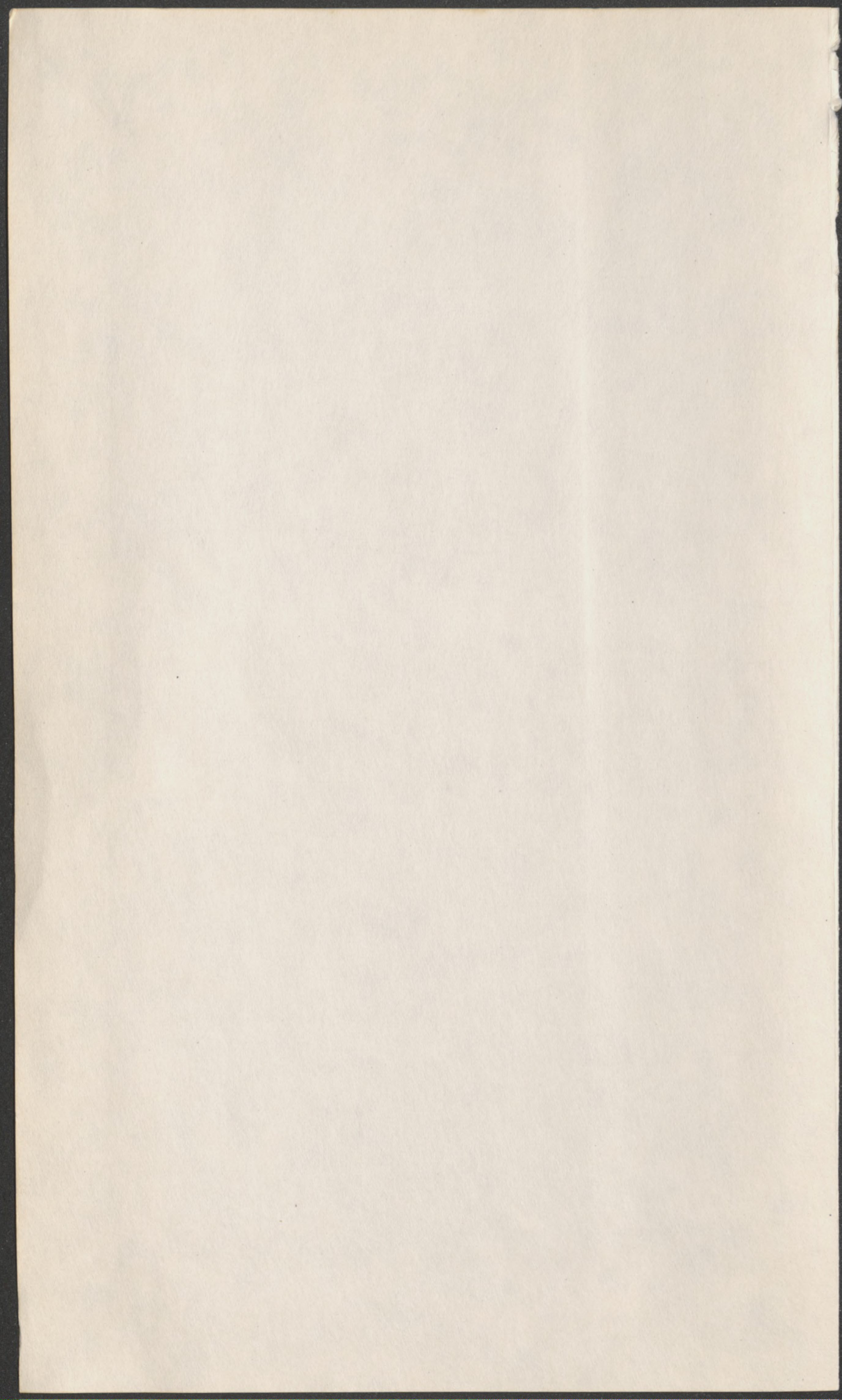
Very truly yours,

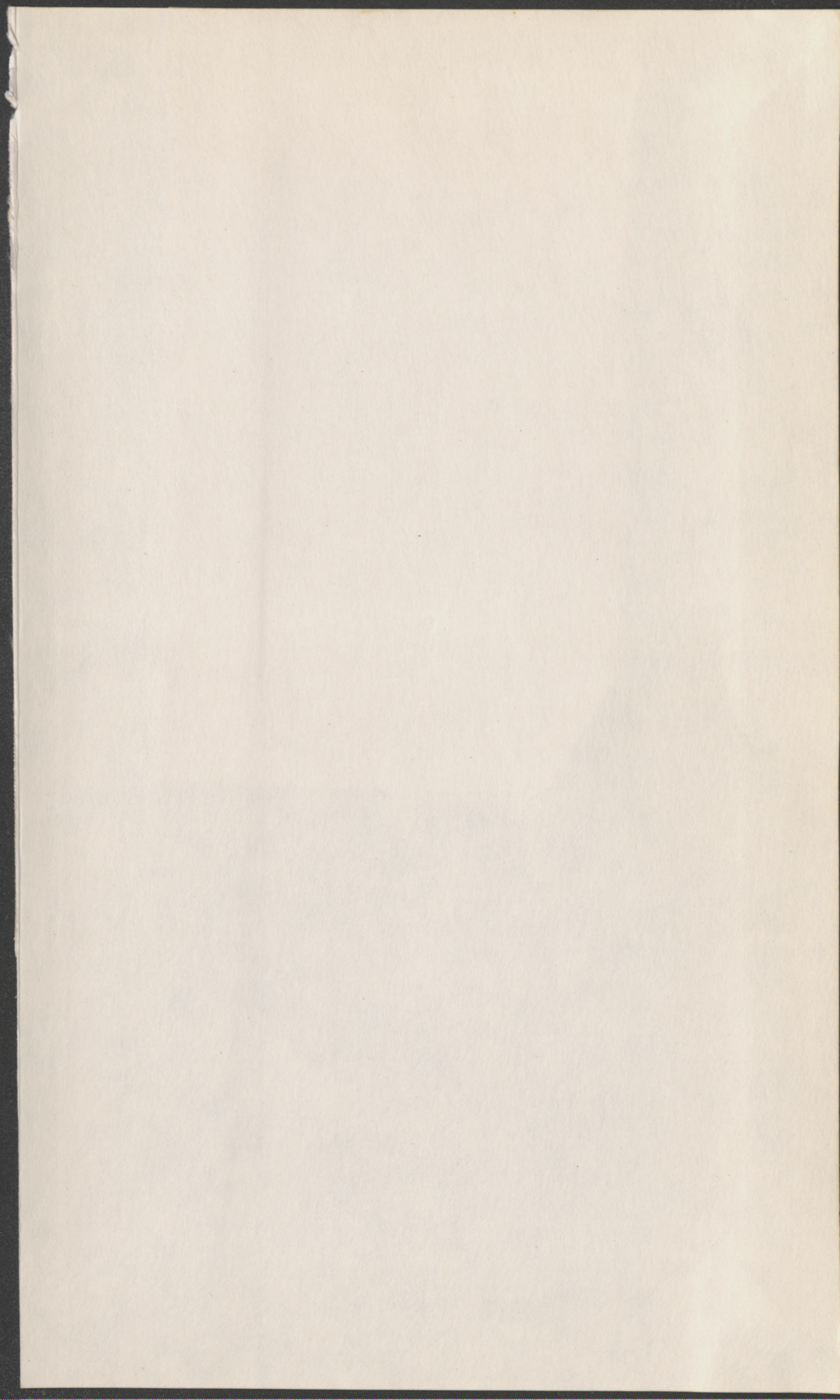
DAVID W. KENDALL,
Acting Secretary of the Treasury.

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CONTINUATION

