

Calendar No. 944

69TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 930

ALLING R. MAISH

MAY 21 (calendar day, MAY 25), 1926.—Ordered to be printed

Mr. ROBINSON of Arkansas, from the Committee on Military Affairs,
submitted the following

REPORT

[To accompany H. R. 9019]

The Committee on Military Affairs, to which was referred the bill (H. R. 9019) for the relief of Ailing R. Maish, having considered the same, reports thereon favorably with the recommendation that it pass with the following amendments:

In line 5, strike out the name "Ailing" and insert "Alling."

Amend the title so as to read: "An act for the relief of Alling R. Maish."

The above amendments correct and change the spelling of the beneficiary's given name to agree with the records of the War Department.

The report of the House, which explains the merits of the case, is made a part of this report, as follows:

[House Report No. 656, Sixty-ninth Congress, first session]

The War Department records show that Alling R. Maish enlisted (first enlistment) April 13, 1898, and was honorably discharged April 12, 1901, at Dagupan, P. I., a sergeant; character excellent. He again enlisted December 7, 1901, and was assigned to Company M, Seventeenth United States Infantry; he remained in the service until August 19, 1902, when he deserted; a request for discharge because of the dependency of his aged father had just previously been rejected. He was apprehended, tried, and ordered discharged from the military service without honor by reason of his desertion.

During the World War he applied to The Adjutant General for permission to reenlist; such permission was granted, and he reenlisted in the Army for Infantry duty on March 12, 1918; he was discharged as a sergeant on September 16, 1918, to accept a commission as second lieutenant of Infantry; he accepted this commission September 17, 1918, and was honorably discharged January 14, 1919, as a second lieutenant of the Quartermaster Corps, United States Army.

The records further show that Alling R. Maish rendered subsequent service in the United States Army as an enlisted man from August 8, 1919, to August 18, 1920, and that he was also a second lieutenant of the Quartermaster Reserve Corps from January 28, 1920, to February 4, 1924.

Section 2 of the act of Congress approved March 4, 1925, provides that where a charge of desertion is now standing against the records of an officer or enlisted man in the Army, Navy, or Marine Corps, who has since such charge served honorably in the World War prior to November 11, 1918, the President may cause an entry to be made on said rolls and records relieving such officer or enlisted man of all the disabilities which he had theretofore or would hereafter suffer by virtue of said charge of desertion thus appearing against him.

Referring to this act, the War Department in their letter dated February 19, 1926, say:

"The discharge of this soldier without honor was a complete disposition of the charge of desertion in his case, which charge, therefore, no longer stands against him, although the record of the fact that he was absent in desertion from August 19, 1902, to January 28, 1903, can not be expunged.

"Since the charge of desertion is not 'now standing' against him, Alling R. Maish is not entitled to relief under the provisions of section 2 of the act of Congress above cited.

"It is also deemed proper to state that as the discharge without honor of this soldier has been duly carried into effect, it is now beyond the power of the Executive branch of the Government to modify or set aside that action, and the War Department is without authority to alter or amend the records in its custody so as to make them show anything other than what they now show in regard to his service or to issue to him an honorable discharge, as a private of Company M, Seventeenth United States Infantry."

It would therefore appear that if this soldier had not been apprehended and tried for his desertion he would now stand on the rolls as an honorably discharged soldier from the enlistment in question; but that since he has been punished for such desertion the words "now standing against him" in the act above referred to preclude such action by the department.

It is believed, in view of the faithful service rendered by this soldier in the Spanish-American War, and the splendid record in the World War, from which service he holds an honorable discharge, and in view of the fact that he has made an honest effort to live creditably and honorably in his community, he should be entitled to favorable consideration.