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86TH CONGRESS, 1st Session } SENATE { REPORT No. 479

PAYMENT OF VETERANS' BENEFITS TO CERTAIN VETERANS WHO WERE DISCHARGED AS ALIENS

JULY 8, 1959.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 3269]

The Committee on Finance, to whom was referred the bill (H.R. 3269) to authorize the payment of veterans' benefits to certain veterans who were discharged as aliens, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

This bill would permit payment of veterans' benefits in certain alienage discharge cases, if otherwise in order, whether or not the character of the veteran's discharge has been changed. However, those cases in which there is affirmative evidence establishing that the veteran applied for or solicited his alienage discharge would continue to be barred.

GENERAL EXPLANATION

This situation arises as a result of instructions issued by the Secretary of War January 27, 1918, in which it was directed that all subjects of countries with which we were at war and who did not desire to serve in the Army be discharged at the earliest possible moment. Subsequently, legislation was enacted which provided that a discharge or dismissal of any person from the military or naval forces on the grounds that he was an alien should bar all rights to any compensation or training or other benefits under appropriate VA laws. It was further provided, however, that the bar would not apply to any alien whose service was honest and faithful and who was not so discharged on his own application or solicitation. Because of the 1918 instructions of the Secretary of War, the VA and its predecessor agencies have held that a person discharged as an alien on or prior to November 11,

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1918, was presumed to be discharged upon his own application. This conclusion, of course, could be rebutted by facts to overcome the presumption. The VA in 1950 provided by administrative regulation that in cases of discharges for alienage to which one of the Boards of Review for the Correction of Military Records changed a character of the veteran's discharge to honorable, it would be considered that the discharge was not issued at the veteran's request. However, on and after January 7, 1957, the Army Discharge Review Board announced that it no longer considered this factor controlling in reaching a conclusion and that it could if it desired change the character of a discharge to honorable even though the serviceman did in fact request discharge as an alien. Thus, the VA today requires that the claimant submit satisfactory evidence to prove that the discharge was not granted upon the veteran's application or solicitation.

VETERANS' ADMINISTRATION APPROVAL

Approval of this bill is expressed in the following excerpt from the report of the Veterans' Administration dated July 8, 1959:

> Based on the history of this provision of law we feel that our interpretation is sound. However, we do recognize that it places a heavy burden on the claimant to prove—currently, some 40 years after the event—that the veteran did not apply for or solicit his alienage discharge. Undoubtedly the inability to so prove a negative has resulted in hardship in some cases. Under the circumstances, we feel that the modification of the existing statutory bar to benefits proposed by H.R. 3269 is reasonable.

COST ESTIMATE

Although no data are available upon which to base an accurate estimate of the cost of the bill, the Veterans' Administration believes that it would be relatively small.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

SECTION 3103, TITLE 38, UNITED STATES CODE

§ 3103. Certain bars to benefits

(a) The discharge or dismissal by reason of the sentence of a general court-martial of any person from the Armed Forces, or the discharge of any such person on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of compentent military authority, or as a deserter or of an officer by the acceptance of his resignation for the good of the service, or (except as provided in subsection (c)) the discharge of any individual during a period of hostilities

as an alien, shall bar all rights of such person under laws administered by the Veterans' Administration based upon the period of service from which discharged or dismissed.

(b) Notwithstanding subsection (a), if it is established to the satisfaction of the Administrator that, at the time of the commission of an offense leading to his court-martial, discharge, or resignation, any person was insane, such person shall not be precluded from benefits under laws administered by the Veterans' Administration based upon the period of service from which he was separated.

(c) Subsection (a) shall not apply to any alien whose service was honest and faithful, and who was not discharged on his own application or solicitation as an alien. *No individual shall be considered as having been discharged on his own application or solicitation as an alien in the absence of affirmative evidence establishing that he was so discharged.*

(d) This section shall not apply to any war-risk insurance, Government (converted) or National Service Life Insurance policy.

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