The original documents are located in Box 4, folder "Clemency - Gottlieb, Irvin" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

January 7, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: JAY FRENCH

SUBJECT: POSTHUMOUS GRANTS OF EXECUTIVE CLEMENCY

Mr. Hoffman has requested either a pardon or some other form of clemency for Irvin Charles Gottlieb, deceased. Mr. Hoffman is the husband of Gottlieb's daughter, and I doubt that he has standing to request Executive clemency. However, setting this question aside, he raises a more important question, which is whether the President has the power to posthumously grant clemency.

The attached memorandum from Assistant Attorney General Rankin, Office of Legal Counsel, indicates that a President cannot grant a pardon posthumously because it is a deed which requires acceptance. However, this opinion does indicate that fines might be remitted after death. Since we do not have all of the facts of Mr. Gottlieb's case before us, I am asking the Pardon Attorney to get enough facts to determine whether there are any outstanding fines which could be remitted.

Enclosure

51
12-27-74

(2) No Previous File

10721 S.W. 70th Court
Miami, Florida 33156
December 24, 1974

CI/S2a

Honorable Gerald Ford
President
The White House
Washington, D.C.

Re: Irving Charles Gottlieb

Dear President Ford:

I represent Anita Gottlieb Hoffman, the daughter of Irving Charles Gottlieb.

I contacted your office by letter of September 1, 1974, and of October 21, 1974, copies of which are enclosed, concerning a possible Presidential Pardon or some other form of Presidential clemency for Mr. Gottlieb. As of this time, I have not received any communications from your office pertaining to this matter.

This matter is of great importance to Anita Gottlieb Hoffman and a response from your office would be greatly appreciated.

Respectfully,

L. Joseph Hoffman

LJH

enclosures

MEMORANDUM FOR THE ATTORNEY GENERAL

August 1956

Re: The President's power to issue a posthumous pardon

This is in response to your request for our advice on the above question. The Constitution, Article II, Section 2, vests in the President "Power to grant Reprieves and Pardons for Offenses against the United States." The authorities dealing with the question whether this power extends to the issuance of posthumous pardons are few and not of recent date.

At its December 1871 term, the Court of Claims held in Meldrim v. United States, 7 Ct. Cl. 595, that where an individual guilty of giving aid or comfort to the rebellion of the Southern States died without pardon and before the President's General Amnesty Proclamation of December 25, 1868 (15 Stat. 711), the proclamation did not obliterate the offense, and his administratrix therefore could not maintain an action for the proceeds of his captured property in the Treasury. It further appeared that the President had issued a special pardon but the intestate died shortly after its issuance and never accepted it. In a subsequent case, Sierra v. United States, 9 Ct. Cl. 224 (Dec. T., 1873), the court held on the authority of its decision in the Meldrim case that the Amnesty Proclamation of 1868 was "inoperative as to one who had died before its issue." See also Scott's Case, 8 Ct. Cl. 457 (Dec. T., 1873).

At an earlier date, in 1864, the President had before him the question whether he could remit a fine after the death of a man convicted of aiding and rescuing a deserter, the court having imposed a sentence of a $500 fine. Attorney General Bates advised the President that he had this power. 11 Ops. A.G. 35. He said that "it might be doubtful on technical principles whether the President could grant a deed of pardon to a man after his death, since as Chief Justice Marshall says, in United States vs. Wilson, (7 Pet., 161,) 'a pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance', and, of course, there can be no delivery to and acceptance by a dead man" (p. 36). However, he continued (pp. 36-37):

> * * * a distinction exists between the act of a pardon by which a man is relieved of corporal punishment for guilt and the act for remission of a fine which operates on his estate only. The technical reason which may (I do not say will) prevent a pardon from operating in favor of a dead man, does not apply to the remission of a fine, for that may be accepted by the heirs to the estate whose interests are affected by it. The distinction between pardon of corporal punishment and remission of a pecuniary fine is recognized by the act of February 20, 1863, chap. 46, which gives the President the full discretionary power to remit the one without disturbing the other.*
>
> In my opinion you have the power to remit the fine imposed on the late John Caldwell, notwithstanding his death, by an instrument reciting the circumstances of the case.**

The deed concept of a pardon as expressed by Chief Justice Marshall was approved in Burdick v. United States, 236 U.S. 79, and on that basis it was held that the President "cannot force a pardon upon a man." However, in Biddle v. Perovich, 274 U.S. 480, the Supreme Court held that the reasoning of the Burdick case was not to be extended to the commutation of a death sentence to life imprisonment. Without overruling Burdick, the Court did say (p. 486) that "A pardon in our days is not a private act of grace from an individual happening to possess power." However, it would seem that as the law now stands a pardon, except in the situation involved in Perovich, must be considered as in the nature of a deed so that to be effective it has to be accepted. Moreover, the law is well-settled that in the absence of statute a deed to a deceased party is ineffectual to pass title to real property. Davenport v. Lamb, 13 Wall. 418; Note, 148 A.L.R. 252.

---

*See, 18 U.S.C. 3570, providing that when an individual is sentenced to two kinds of punishment "the one Pecuniary and the other corporal, the President's remission in whole or in part of either kind shall not impair the legal validity of the other kind or of any portion of either kind, not remitted."

**This opinion has never been subsequently cited.

The Pardon Attorney advises us that with the exception of the fine case above (11 Ops. A.G. 35), he has found no record of the President issuing a posthumous pardon. He further states that it has always been the view of his office that it would not be practical to issue pardons to deceased persons although personally he "would not object in hardship cases such as cases of widows of Government employees who are deprived of annuities to follow the precedent established in the Caldwell case /11 Ops. A.G. 35, supra/ * * * where an estate is involved rather than a person. I would counsel against, however, the practice of recommending pardons for deceased persons for the mere purpose of clearing the name, etc. There is no doubt that many widows and survivors would want that done."

Unless the deed theory of a pardon is to be rejected, which I do not believe is warranted under existing decisions, it is my opinion that the President does not possess the power to issue a posthumous pardon; he does have the power, as established by the opinion of Attorney General Bates, to remit a fine posthumously. Unless there is occasion to do so, I feel that we should leave open the question whether Attorney General Bates' reasoning as to remission of a fine may be extended to affording relief, by way of a posthumous pardon, with respect to a Government annuity, as suggested by the Pardon Attorney.

/s/ J. Lee Rankin
J. Lee Rankin
Assistant Attorney General
Office of Legal Counsel

THE WHITE HOUSE

WASHINGTON

January 4, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: JAY FRENCH

SUBJECT: THE UNDESIRABLE DISCHARGE AND EXECUTIVE CLEMENCY

The accompanying papers (See Tab A) recite a familiar problem: the difficulty in assisting a socially rehabilitated veteran who received an Undesirable (administrative) Discharge.

This person has no record of conviction before a court-martial and, therefore, under existing rules the Pardon Attorney's office may not consider his case. If the Pardon Attorney could review his case, then the petitioner's record of social rehabilitation could be considered.

Instead, persons in this category must submit their requests for review to a discharge review board.[1/] However, this board, unlike the Pardon Attorney's office does not consider whether the person is rehabilitated and is leading a useful, productive

1/ Each military department has two review boards. They are the "Board for Correction of Military Records" and the "Discharge Review Board". The former are boards of civilians created within each respective department pursuant to 10 U.S.C.A. § 1552. The latter boards are composed of military personnel, appointed by the respective Secretaries, pursuant to 10 U.S.C.A. § 1553. There are procedural differences in the way these boards operate, although, all of them perform the same basic review process. The regulations of the Army's boards are set forth in Tab B.

life. The board, by its regulations, only corrects errors or injustices based on a review of the military record.2/

I have set forth below the types of discharges presently given by the military services as an aid in the following discussion.

Administrative

Honorable (for "honorable service")
General (for "honorable service" when the service record discloses misconduct)
Undesirable ("other than honorable service")

Punitive

Bad Conduct (By verdict of a Special/General Court-Martial)
Dishonorable (By verdict of a General Court-Martial)

The first apparent solution to this problem is the amendment of the Pardon Attorney's rules to permit application by those with Undesirable Discharges. However, this act raises a very important policy question. Does the President want to institutionalize Executive clemency for unconvicted individuals? Furthermore, even if this question is answered affirmatively, the successful applicant still will not receive an upgraded discharge simply because he has received clemency. Clemency forgives but never alters the record. Thus, it would be necessary, subsequently, for the President, as Commander in Chief, to direct the issuance of a new upgraded discharge. Examined in this light, one is led to wonder whether Executive clemency is the best solution, for it only provides the President with a review of the case and a reason to exercise his powers as Commander of the armed forces.

2/ This statement is partially correct in that the Department of Defense, and the Army and the Navy Departments, agree that these boards should only review the military record. However, the Air Force does consider post military records in its review process and thus provides a way for deserving persons to receive an upgraded discharge.

The second solution is for the President to act directly under his power as Commander in Chief. This can be accomplished by directing the Secretaries of the military departments to change pertinent regulations to enlarge the scope of inquiry of their respective discharge review boards to specifically include matters of rehabilitation after service.

The difficulty with this action is that it flies squarely in the face of the purpose of a discharge. The military argues that a discharge describes the character of an individual's service and nothing more. Therefore, to look at post military rehabilitation in the review process is contrary to the nature of the discharge. If this statement is correct, it leads inevitably to the realization that the bearer of an Undesirable Discharge is forever foreclosed from clearing his name and record.

This analysis has led me to the conclusion that an Undesirable Discharge is a stigma which should be abolished. This can be put in different words: no one should be discharged from military service with an unhonorable characterization of service unless it is the judgment of a court-martial.

The problem, outlined above, is compounded by a review of recent statistics. In 1973, approximately 30,000 persons were discharged from the military with Undesirable Discharges. Of this amount, approximately 80% accepted this discharge in lieu of standing trial by court-martial for violations of the Uniform Code of Military Justice. It is clear that the Undesirable Discharge is an inappropriate short cut for overburdened military prosecutors that would never be tolerated in our civil law.

Summary of Issues

Should the recipient of an Undesirable Discharge be allowed to earn an upgraded discharge based upon a post military record reflecting rehabilitation?

Is it consistent with our system of justice to characterize an individual's military service as "other than honorable" without the judgment of a court-martial?

Recommendations

I recommend that the President consider the creation of an interdepartment-civilian board to make recommendations with regard to the issues stated above.

As a temporary matter of policy, I recommend that the President direct the military departments to revise their regulations governing review of discharges by adopting the Air Force's lenient policy of considering post military rehabilitation.

It is my belief that the appointment of such a board would come at a most desirable time. Shortly, the earned return program will conclude. Although numbers should not be a measure of its success, nevertheless, it will be obvious that one of the least successful aspects of the program was the treatment of persons with an Undesirable Discharge. Of approximately 85,000 eligible persons, 277 have applied.

TAB
A

JON STAFSHOLT
ATTORNEY AT LAW
ELBOW LAKE, MINNESOTA 56531
PHONE 218-685-4551

December 23, 1974

Phillip Buchen
White House Counsel
1600 Pennsylvania Avenue
Washington, D. C.

Re: Casimir Molargie

Dear Mr. Buchen:

I represent an 84-year old World War I veteran named Casimir Molargie, presently residing at a nursing home in Ashby, Minnesota. Mr. Molargie first came to me early last summer with the request that I help him secure an honorable discharge from the Navy. After much correspondence with the government agencies, I learned that it would be impossible for Mr. Molargie to get an honorable discharge. He was undesirably discharged in 1919. The reason for the discharge was that he was charged with jumping ship. However, Mr. Molargie never received a trial or hearing on that original offense. Nevertheless, the offense was reviewed by the Navy twice, and no action was taken to change his discharge from undesirable to honorable.

Mr. Molargie has apparently suffered great anguish over what he felt was unjust action on the part of the Navy throughout his entire life. Now he is quite elderly and, in my opinion, in poor health. He still would like his record cleared before he dies, and he is now willing to seek a pardon for the offense rather than have the offense removed from his record. Accordingly, I have corresponded with the Judge Advocate of the Navy, and in a letter dated August 26, 1974, a copy of which is enclosed herein, the Navy agreed not to object to a pardon being granted to Mr. Molargie. The Navy, of course, is without jurisdiction to grant pardons. This is purely a discretionary matter with the President. Accordingly, I have also been in correspondence with the United States Pardon Attorney at the Justice Department. I was recently notified by the Pardon Attorney that no action would be taken to grant a presidential pardon to Mr. Molargie. I have enclosed copies of all the correspondence in this regard.

The Pardon Attorney, Lawrence M. Traylor, has been quite helpful to me thus far in the processing of the papers. However, he apparently feels bound by the general policy of the Justice Department to refuse to grant pardons unless there has first been a conviction of a federal offense. It is his interpretation of the law that an undesirable discharge is not such a conviction and, therefore, is not a pardonable offense. He does not feel he has authority to make exceptions to the general policy. However, he did acknowledge that since the pardon authority is purely discretionary with the President, that the President, of course, has such authority to make exceptions in certain cases. As I'm sure you are aware, making exceptions to the general pardon policy is not without precedent in recent history.

Therefore, I am requesting that you intervene on Mr. Molargie's behalf and personally bring his case directly to the President's desk. I am sure the pardoning of Casimir Molargie would be one small act of justice with which no one would find fault. Thank you for your consideration of this matter.

Sincerely,

Jon Stafsholt
Attorney at Law

JS/ejh
Enclosures

United States Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

16

December 17, 1974

Mr. Jon Stafsholt
Attorney at Law
Elbow Lake, Minnesota 56531

Dear Mr. Stafsholt:

This refers to your letter of December 2, 1974 concerning our decision of November 25, 1974 not to process the petition for pardon of Casimir Molargie.

The Department has a long established policy of not processing petitions for pardon in cases in which there has been no conviction, whether civil or military, except in cases of the administrative forfeiture of veterans rights. Although Mr. Molargie received an undesirable discharge from the Navy, he was not convicted of any offense and, therefore, falls within this policy.

You have asked for reconsideration of our decision on a number of grounds and I shall address myself to these questions as they appear in your letter.

1. Mr. Molargie was granted a discharge in accordance with applicable law and regulations. Furthermore, according to his petition, his discharge was reviewed at least three times by military tribunals and the undesirable discharge was upheld each time. In these circumstances, it does not appear to me that he has been denied due process of law.

2. The policy of excluding from consideration cases in which no conviction has been obtained has the approval of the White House. Since only the President has the power to pardon and its exercise is completely discretionary with him, he is, of course, free to indicate that he will not exercise his discretion with respect to cases such as those described or, for that matter, any other class of cases. In these circumstances, the charge that Mr. Molargie has not received due process by not being considered for pardon does not seem well taken.

3. You mention the situation of former President Nixon, who was granted a pardon without having been convicted, and indicate that Mr. Molargie would be denied equal protection of the law by requiring him to be convicted before being considered for a pardon. The cases are not analogous and there are substantial differences in the two situations. Aside from the important public policy consideration cited by President Ford in granting a pardon to the former President, Mr. Nixon was granted a pardon in order to assure that he would not be prosecuted whereas the Navy granted your client an administrative discharge as a substitute for prosecution.

Your letter points out that the Assistant Judge Advocate General of the Navy has stated that the Navy would interpose no objection to a pardon being granted to Mr. Molargie. The Department of Justice has been granted the responsibility of processing petitions for pardon and advising the President in such matters. In military cases the Department seeks the views and recommendation of the particular branch of the service concerned. However, these views are not binding on this Department nor, of course, on the President.

You mentioned that Mr. Molargie's discharge results in the denial and forfeiture of his veteran's rights. However, it is well established that a pardon does not operate to change the nature of a discharge from the service nor operate to restore veterans rights forfeited as a result of a military proceeding. Only military authorities can change the nature of a discharge from the service. Thus, a pardon would not afford Mr. Molargie any material benefits. His situation thus differs from that of veterans whose benefits have been forfeited by administrative action of the Veterans Administration. These cases are considered even though there has been no conviction because a pardon entitles the grantees to a restoration of veterans benefits.

With regard to appealing our decision to "no action" Mr. Molargie's petition, I can only advise you that the decision is based on the well-established policy discussed at length in this letter. Although there is no appeal from decisions reached in clemency matters, the President, of course, may consider cases which do not come within the rules or policies established for the guidance of this Department in processing clemency petitions. However, this power has been exercised in few cases in recent years. The pardon of former President Nixon is the only instance since the administration of President Lyndon Johnson.

While I am in sympathy with Mr. Molargie's position, I regret that I cannot alter our previous decision not to process his petition for a pardon.

Sincerely,

Lawrence M. Traylor

Lawrence M. Traylor
Pardon Attorney

December 2, 1974

Lawrence M. Traylor
United States Pardon Attorney
United States Department of Justice
Washington, D. C. 20530

Re: Casimir Molargie

Dear Mr. Traylor:

I was disappointed with your letter of November 25th concerning your decision not to process Casimir Molargie's petition for executive clemency. He was declared a deserter without the benefit of a trial. This declaration by the Navy is tantamount to conviction of an offense because it results in the denial and forfeiture of his veteran's rights.

The Petition for Pardon which we submitted states that the form may be modified for forfeiture of vetern's benefits or military cases. Furthermore, the letter dated August 26 from the Assistant Judge Advocate General stated that the Navy would not object to a pardon being granted.

I urge you to reconsider your decision on the following grounds:

1. Mr. Molargie was denied due process of law by not being afforded a trial.

2. Mr. Molargie would be denied due process of law if he has no place to turn for a pardon.

3. Mr. Molargie would be denied the equal protection of the laws if you require him to have first been convicted of a federal offense before a pardon is granted when former President Nixon was given a presidential pardon without having first been convicted.

I think that failure to process a pardon for Mr. Molargie would be a serious violation of his constitutional rights and would result in a gross injustice. At age 84, Mr. Molargie does not want much out of life. In fact, the only thing he wants is to die knowing that the World War I offense for which he was undesirably discharged was forgiven.

If the processing and granting of a presidential pardon for Mr. Molargie is too great a burden for our legal system to bear, then, as a lawyer, I am ashamed to be a part of that system.

In the event you feel you cannot reconsider this matter, please advise me of the proper channels for appeal of that decision. Thank you for your assistance in this matter and the consideration you have already given.

Sincerely,

Jon Stafsholt
Attorney at Law

JS/ejh

United States Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

November 25, 1974

Mr. Jon Stafsholt
Attorney at Law
Elbow Lake, Minnesota 56531

Dear Mr. Stafsholt:

This is in further reference to the petition for pardon of Casimir Molargie.

On May 17, 1974, we advised you that a pardon petition can only be processed if the applicant had been convicted of a Federal offense. It has been brought to our attention that although Mr. Molargie received an undesirable discharge from the Navy, he apparently was not convicted of any offense. Since there was no offense committed by Mr. Molargie, we cannot process his petition and, therefore, we are closing the case without further action.

Sincerely,

Lawrence M. Traylor

Lawrence M. Traylor
Pardon Attorney

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C. 20370

IN REPLY REFER TO

JAG:201:CMK:llb

6261

26 AUG 1974

Lawrence M. Traylor, Esq.
Pardon Attorney
Department of Justice
Washington, D. C. 20530

Dear Mr. Traylor:

Enclosed herewith is a Petition for Pardon, with enclosures, in the case of Casimir Molargie (former F3c in the U. S. Navy).

The Judge Advocate General would interpose no objection to a pardon being granted, should it be determined that the conduct of Mr. Molargie has been sufficiently meritorious to warrant favorable consideration of his application by the Department of Justice.

Sincerely,

MAX G. HALLIDAY
Colonel, U. S. Marine Corps
Assistant Judge Advocate General
(Military Law)

Enclosures

Copy to:
Mr. Casimir Molargie
Pelican Lake Nursing Home
Ashby, Minnesota 56309
Jon Stafsholt, Esq.
Elbow Lake, Minnesota 56531

July 11, 1974

COPY

Secretary of the Navy

Washington, D. C.

Re: Casimir Molargie

Dear Sir:

Pursuant to instructions received from Lawrence M. Traylor, U.S. Pardon Attorney, I am forwarding to you for initial processing the Petition for Pardon of Casimir Molargie, together with his personal oath, three character affidavits, and a copy of his Navy record.

It would be appreciated if this matter could be processed as soon as possible because of the petitioner's advanced age.

I am the attorney for the petitioner and will be glad to supply you with additional supporting data, if necessary.

Sincerely,

Jon Stafsholt
Attorney at Law

JS/gm

Encl.

G-17 (Rev. 8-15-72)

UNITED STATES
DEPARTMENT OF JUSTICE

CHARACTER AFFIDAVIT
ON BEHALF OF

Casimir Molargie
(print or type name of petitioner)

In support of the application of the above petitioner to the President of the United States for pardon, I, Dr. Lillian B. Parson, *(print or type name of affiant)*,

residing at Elbow Lake Minn. 56531,
No. Street City State Zip Code

whose occupation is physician,

certify that I have personally known the petitioner for 14 years. Except as otherwise indicated below, he has conducted himself, since his conviction, in a moral and law-abiding manner. My knowledge of petitioner's reputation, conduct and activities, including whether he has been arrested or had any other trouble with public authorities and has been steadily employed, is as follows: I have been Mr. Molargie's physician for about the past twelve years, have known him about 14 years, and have visited him regularly at the Pelican Lake Nursing Home where he resides. It is my opinion that Mr. Molargie is well respected by his peers and is held in high esteem in his community. I know of nothing to cast dispersion on his moral integrity.

I do solemnly swear that the foregoing information is true and correct to the best of my knowledge and belief.

Lillian B Parson MD
(signature of affiant)

Subscribed and sworn to before me this 3rd day of July, 1974.

JON STAFSHOLT
NOTARY PUBLIC - MINNESOTA
GRANT COUNTY
My Commission Expires APRIL 19, 1979

Jon Stafsholt
Notary Public.

DOJ-1973-06

G-17 (Rev. 8-15-72)

UNITED STATES
DEPARTMENT OF JUSTICE

CHARACTER AFFIDAVIT
ON BEHALF OF

Casimir Molargie
(print or type name of petitioner)

In support of the application of the above petitioner to the President of the United States for pardon, I, Anne Madland, *(print or type name of affiant)*,

residing at Pelican Lake Nusing Home *No. Street* Ashby *City* Minnesota *State* 56309 *Zip Code*,

whose occupation is retired,

certify that I have personally known the petitioner for 60 years. Except as otherwise indicated below, he has conducted himself, since his conviction, in a moral and law-abiding manner. My knowledge of petitioner's reputation, conduct and activities, including whether he has been arrested or had any other trouble with public authorities and has been steadily employed, is as follows: I have known Casimir Molargie ever since he moved to Ashby in 1914. During that time, he has conducted himself as an upstanding citizen, and I have never known him to get in trouble with the law.

I do solemnly swear that the foregoing information is true and correct to the best of my knowledge and belief.

Anne Madland
(signature of affiant)

Subscribed and sworn to before me this 3rd day of July, 1974.

JON STAFSHOLT
NOTARY PUBLIC - MINNESOTA
GRANT COUNTY
My Commission Expires APRIL 19, 1979

Jon Stafsholt
Notary Public.

DOJ-1973-06

G-17 (Rev. 8-15-72)

UNITED STATES
DEPARTMENT OF JUSTICE

CHARACTER AFFIDAVIT
ON BEHALF OF

Casimir Molargie
(print or type name of petitioner)

In support of the application of the above petitioner to the President of the United States for pardon, I, Phillip Carlson, *(print or type name of affiant)*, residing at ____ Ashby Minnesota 56309, *(No. Street / City / State / Zip Code)*, whose occupation is Excavator, certify that I have personally known the petitioner for 20 years. Except as otherwise indicated below, he has conducted himself, since his conviction, in a moral and law-abiding manner. My knowledge of petitioner's reputation, conduct and activities, including whether he has been arrested or had any other trouble with public authorities and has been steadily employed, is as follows: Casimir Molargie has worked for me as a ditch digger off and on for about 20 years. Despite his physical handicaps, he has been a hard, conscientious, dependable employee. As far as I know, he has never been arrested or ever been in any trouble with the law. He is well known and well respected in his community.

I do solemnly swear that the foregoing information is true and correct to the best of my knowledge and belief.

Philip Carlson
(signature of affiant)

Subscribed and sworn to before me this 3rd day of July, 1974.

WARREN ZUEHLSDORFF
NOTARY PUBLIC - MINNESOTA
GRANT COUNTY
My Commission Expires Oct. 12, 1979

Warren Zuehlsdorff
Notary Public.

DOJ-1973-06

PETITION FOR PARDON AFTER COMPLETION OF SENTENCE

(Type or Print – This form may be modified for forfeiture of Veterans benefits or military cases)

THE PRESIDENT OF THE UNITED STATES:

PETITIONER, Casimir (First) Molargie (Last), Social Security No. 722-18-9017, is a citizen of U.S.A. (Country), born on June 12, 1890 and resides at Pelican Lake Nursing Home (No. Street) Ashby (City) Minn. (State) 56309 (Zip Code)

PETITIONER was convicted on a plea of not guilty (guilty, not guilty or nolo contendere) in the United States District Court for the Navy Department (Eastern, Western, etc.) District of ~~XX~~ (State) at ~~XX~~ (City)

of the crime of Desertion (Describe specifically and accurately.)

and was ~~sentenced~~ undesirably discharged on September 24, 1931, to ~~XXXXXXX~~ (imprisonment, probation) for ~~XX~~ (length of service)

and/or to pay a fine of ~~XXX~~ .

If conviction was appealed, complete the following paragraph:

PETITIONER appealed to the ~~United States Court of Appeals~~ Navy Board of Review where the judgment was affirmed on December 20, 1946. An appeal was (was, was not) taken to the ~~Supreme Court~~ ~~The Supreme Court~~ ~~XX~~ (granted, denied) ~~petition for a writ of certiorari on XXXXXXXXXX, 19XXXX. If certiorari was granted, the judgment was affirmed on XXXXXXXXXX, 19XXXX~~ to the Navy Board of Review on May 9, 1947, to the Board of Veterans Appeals in January of 1960, and to the Board for Correction of Naval Records in 1961.

~~PETITIONER began the service of his sentence on XXXXXXXXXX, 19XXXX, was released on~~ _____,

~~19XXXX from XXXXXXXXXXXXXXXX and was finally discharged by expiration of sentence on~~ _____ (Federal Institution),

~~19XXXX. The fine XXXXXXXXXX been paid in full. If not paid, explain why.~~ (has, has not)

PETITIONER was 28 years of age when the crime was committed, and his prior and subsequent arrest record is as follows: (List every arrest by local, state or Federal authorities, whether resulting in a conviction or not, giving date, disposition of case and name and location of court.) None.

PETITIONER is not married, has no children, aged xxxxxxxxx and lives with and supports his family to
is, is not

the best of his ability xx(if divorced or not living with or supporting family, explain.)xxx

PETITIONER is employed by x Retired

X at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX as XXXXXXXXXXXX
No. Street City State Position

XXXXXXXXXXXX and has been so employed since XXXXXXXXXXXX 19XXX and his prior employments since conviction follows:

(List names and addresses of employers and dates of each employment.)

PETITIONER submits his personal oath and three character references, promises to obey the laws of, and to be loyal to, the United States, and respectfully prays that he be granted a pardon for the following reasons: I am a World War I veteran. Although my body is weak and about half paralyzed and crippled because of epilepsy and arthritis, my mind is still alert, and it is because of this that I am still haunted with the fact that I received an undesirable discharge from the Navy because of an alleged willful desertion in 1919. The undesirable discharge is a dark cloud on my record. It is one I have had to live with for most of my 84 years, but is it one I do not want to die with. I have no children as I was never married, and I have lost track of my bothers and sisters whom I have not seen or heard from in more than 60 years. Nevertheless, before I die, I want to clear my name, not for the sake of my family, but so that I may have some peace of mind during my last days on earth. Throughout my life I have worked hard and been a law-abiding citizen. I am retired now and living in a nursing home. I have petitioned to have my undesirable discharge reviewed three times by the Navy and once by the Veterans Administrations between 1946 and 1961. The subsequent reviews affirmed the original determinations, but I still believe I was not guilty. Nevertheless, I am appealing the decision no longer as I feel it would do no good and because time is working against me. What I am asking for now is a Presidential Pardon. I understand pardons and amnesty were given to deserters after *

DATE	SIGNATURE OF PETITIONER
July 3, 1974	

G-16 (Rev. 8-15-72)

UNITED STATES
DEPARTMENT OF JUSTICE

PERSONAL OATH

I, Casimir Molargie, in petitioning the
(print or type petitioner's name)

President of the United States for pardon, do solemnly swear that I will be law abiding and will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I take this obligation freely and without any mental reservation whatsoever, So Help Me God.

Casimir Molargie
(signature of petitioner)

Subscribed and sworn to before me this 3rd day of July, 19 74.

Jon Stafsholt
Notary Public

JON STAFSHOLT
NOTARY PUBLIC - MINNESOTA
GRANT COUNTY
My Commission Expires APRIL 19, 1979

TAB
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ARMY REGULATION
No. 15-180

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., *18 January 1968*

BOARDS, COMMISSIONS, AND COMMITTEES
ARMY DISCHARGE REVIEW BOARD

1. Constitution, purpose, and jurisdiction. *a.* The Army Discharge Review Board is an administrative agency created within the Department of the Army, under authority of Section 301, title I, act of 22 June 1944 (10 U.S.C. 1553, 1964 ed.) to review upon its own motion or upon application by or on behalf of the individual concerned, the discharge or dismissal of former members of the Army. The scope of the inquiry of the board will be to determine whether the discharge received was equitably and properly given. When the board determines in an individual case that the discharge was not equitably and properly given, it is authorized, in the manner herein prescribed, to direct The Adjutant General to take appropriate action; that is, to change, correct, or modify any discharge or dismissal, and to issue a new discharge, such direction being subject to review and modification by the Secretary of the Army. Such remedial action is intended primarily to insure that no discharged or dismissed former member of the Army will be deprived unjustly of any benefit provided by law for former members of the military service by reason of a type of discharge or dismissal inequitably or improperly given.

b. The board will not review a discharge or dismissal given by reason of the sentence of general court-martial.

c. The board has no authority to revoke any discharge or dismissal, to reinstate any person in the military service subsequent to his discharge or dismissal, or to recall any person to active duty.

2. Composition. *a. Members.*

(1) The board will consist of five or more officers designated by the Secretary of the Army. The senior member will be president of the board.

(2) For the purpose of maintaining a board of five members at all times as many additional members as are necessary may be appointed to the board. In any proceeding before the board a member who has not been present at a prior session of the board may participate thereafter if that member has read or has read to him the record of proceedings held during his absence or prior to his participation.

(3) Such additional boards as may be required will be designated by the Secretary of the Army.

b. Secretary-recorder. The secretary-recorder shall have the authority contained in Article 136, Uniform Code of Military Justice, and perform such other duties as may be prescribed by the president. The secretary-recorder will not serve as counsel for the applicant or for the Government.

*This regulation supersedes AR 15-180, 7 March 1960.

3. Administrative personnel. Such administrative personnel as are required for the proper functioning of the board will be furnished by the Secretary of the Army.

4. Application for review. *a.* The applicant will submit a written request for a review by the board and such other statements or affidavits as he desires to present.

b. The request will be made on DD Form 293 (Application for Review of Discharge or Separation from the Armed Forces of the United States) which may be requisitioned through normal publications supply channels. The request will state in brief the full name, service number, and grade and organization or assignment at date of discharge of the person whose discharge or dismissal is in question; the date and place of discharge; the type and nature of the discharge or dismissal; the basis of the claim for review; what corrective action is desired of the board; whether the applicant desires to appear personally before the board; whether the applicant desires to be represented by counsel before the board and, if so, the name and address of counsel so designated; and the address to which all correspondence in connection with the review is to be sent.

c. The request will be signed by the former officer or enlisted man or woman or, if deceased, by the surviving spouse, next-of-kin, or legal representative. If former member is deceased, proof of death must accompany the request. If the applicant is mentally incompetent, his or her spouse, next-of-kin, or legal guardian will sign the request. Such requests must be accompanied by legal proof of the mental incompetency.

d. No application for review will be granted unless received by the Department of the Army within 15 years after the date of the discharge or dismissal.

e. The request for review will be forwarded to:

Commanding Officer,
U.S. Army Administration Center
The Adjutant General's Office
9700 Page Boulevard
St. Louis, Mo. 63132

f. Upon receipt of an application, The Adjutant General will verify that the provisions of *b* and *c* above have been met. The Adjutant General will then assemble the originals or certified copies of all available Department of the Army records pertaining to the former service man or woman named in such application. Such records, together with the application and any supporting documents, will be transmitted to the president of the board.

5. Convening of board. *a.* The board will be convened at the call of its president in Washington, D.C., at the time and place indicated by him, and will recess or adjourn at his order. In the event of the absence or incapacity of the president, the next senior member will serve as acting president for all purposes.

b. The board will assemble in open or closed session for the consideration and determination of cases presented to it. Cases in which no request for a hearing in person is made by the applicant will be considered in closed session on the basis of all documentary evidence presented to the board, including any briefs submitted by or on behalf of the applicant.

6. Hearings. *a. General.*

(1) An applicant, upon request, is entitled by law to appear before the board in open session either in person or by counsel of his own selection. As used in this regulation, the term "counsel" will be construed to include members of the Federal bar in good standing, the bar of any State in good standing, accredited representatives of veterans' organizations recognized by the Veterans Administration under 72 Stat. 1238; 38 U.S.C. 3402 and such other persons not barred by law, regulations, or customs who, in the opinion of the board, are considered to be competent to present equitably and comprehensively the claim of the applicant for review. In no case will the expenses or compensation of counsel for the applicant be paid by the Government.

(2) In every case in which a hearing is requested, the board will transmit to the applicant and to designated counsel for the applicant, if any, a written notice stating the time and place of hearing. The record will contain evidence that written notice to the applicant and his counsel, if any, has been given.

(3) An applicant who requests a hearing in person and who, after being duly advised of the time and place of hearing, fails to appear without previous satisfactory arrangement with the board will be considered as having waived his right of appearance and his case will be reviewed on the evidence contained in his military records and such other evidence as may be presented by the applicant.

b. Conduct of hearing.

(1) Conduct of hearings will be in accordance with this regulation. Applicant and/or his counsel may have access to the records in the case except such classified material the disclosure of which would jeopardize defense interests of the United States. When necessary to acquaint the applicant with the substance of a document classified by intelligence agencies, the Assistant Chief of Staff for Intelligence, Department of the Army, on the request of the board, will prepare a summary of, or extract from, the document, deleting all references to sources of information and other matter the disclosure of which, in his opinion, would be detrimental to the defense interests of the United States.

(2) In the conduct of its inquiries, the board will not be limited by the restrictions of common law rules of evidence.

(3) In all cases in which the applicant appears in person or is represented by counsel, a reporter will record the proceedings of the board and the testimony taken before it. Shorthand may be used in the initial instance.

c. Witnesses. The testimony of witnesses may be presented either in person or by affidavits. If a witness testifies in person he will be subject to examination by members of the board.

d. Continuances. The board may continue a hearing on its own motion. A request for continuance by or on behalf of the applicant may be granted, at the board's discretion, if a continuance appears necessary to insure a full and fair hearing.

e. Withdrawal. An applicant may withdraw his request for review at any time without prejudice.

f. Expenses. Expenses incurred by the applicant, his witnesses, or in the procurement of their testimony, whether in person, by affidavit, or by deposition, will not be paid by the Government.

g. Challenges. Challenges shall be for cause only, and will be ruled on by the president, or the next senior member if the president is challenged.

7. Finding and conclusion of the board. *a.* The board will make a finding in closed session in each case as to whether the applicant was or was not properly discharged.

b. On the basis of its finding in each case, the board, in closed session, will prepare a conclusion as to whether corrective action will be taken by the Department of the Army with respect to the discharge under consideration. No corrective action which exceeds the jurisdiction of the board, as defined in paragraph 1, will be taken.

c. The finding and conclusion of a majority of the board will constitute the finding and conclusion of the board.

8. Minority reports. In case of a disagreement between members of the board, a minority report may be submitted. The reasons for the minority report must be stated clearly.

9. Directive to The Adjutant General. The president or acting president of the board will, in the name of the Secretary of the Army, issue a directive to The Adjutant General specifying the action to be taken.

10. Record of proceedings. *a.* When the board has concluded its proceedings in any case, the secretary will prepare a complete record thereof. Such record will include the application for review; a transcript of the hearing, if any; affidavits, papers, and documents considered by the board; all briefs and written arguments filed in the case; the finding and conclusion of the board; the directive to The Adjutant General; any minority report prepared by dissenting members of the board; and all other papers and documents necessary to reflect a true and complete history of the proceedings. The record so prepared will be signed by the president and authenticated by the secretary-recorder as being true and complete. In the event of the absence or incapacity of the secretary-recorder, the record may be authenticated by a designated alternate secretary-recorder.

b. Release of information from such records will be in accordance with AR 345–20.

11. Transmittal of records and action by the

Adjutant General. The record of proceedings in each case, including a transcript of the testimony before the board, will be transmitted by the secretary-recorder to The Adjutant General for appropriate Department of the Army action to carry out the directions of the board. The Adjutant General will perform such administrative acts as may be necessary, and thereafter will notify the applicant and his counsel, if any, of the action taken. Written notice specifying the action taken and the date thereof will be transmitted by The Adjutant General to the president of the board to be filed as a part of the records of the board pertaining to each case. The Adjutant General will, upon written request from the applicant, his guardian, or legal representative, furnish a copy of a transcript of the testimony, if any, and a copy of the directive of the Secretary of the Army. If it should appear that furnishing a copy of the transcript of the testimony would prove injurious to the physical or mental health of the applicant, such information will be furnished only to the guardian or legal representative of the applicant.

12. Consideration on the board's own motion. The board may, at any time, on its own motion consider and determine a case which appears, on the face of the record, likely to result in a decision favorable to the former member without the knowledge or presence of the former member. If such a case does not result in a decision favorable to such member, it will be returned to the files with no formal action recorded and will be considered without prejudice if and when an appeal is made by the former member. If, upon consideration by the board on its own motion, such a case results in a decision favorable to the former member, The Adjutant General will be directed to notify the member at his last known address.

13. Rehearings. When the board has formally considered the case of an applicant and its decision has been approved in the name of the Secretary of the Army, it will not grant a rehearing unless the basis of the request indicates material evidence, not available at the time of the original hearing, which will likely result in a decision contrary to that reached at the original hearing.

14. Changes in procedure of board. The board may initiate recommendation for such changes in procedures as established herein as may be deemed necessary for the proper functioning of the board. Such changes will be subject to the approval of the Secretary of the Army.

15. Army—Navy—Air Force Coordination. Periodic liaison will be conducted with similar boards of the Navy and Air Force to exchange ideas and to discuss common problems.

The proponent of this regulation is the Office of the Secretary of the Army. Users are invited to send comments and suggested improvements to Director, Army Council of Review Boards, OSA, Department of the Army, Washington, D.C. 20310.

By Order of the Secretary of the Army:

HAROLD K. JOHNSON,
General, United States Army,
Chief of Staff.

Official:
KENNETH G. WICKHAM,
Major General, United States Army,
The Adjutant General.

Distribution:
Active Army, NG, and USAR: To be distributed in accordance with DA Form 12-9 requirements for Organization and Functions—D.

TAGO 735A
GPO 938-386

ARMY REGULATION
No. 15–185

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, *4 June 1974*

BOARDS, COMMISSIONS, AND COMMITTEES

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

Effective 1 July 1974

This revision clarifies consideration of an application; release of privileged information; delegation of authority to the Board to grant relief in specified categories of appeals; provide for DA staff support; and provides for filing of application, proceedings and decision. Local supplementation of this regulation is prohibited.

Section I. GENERAL

1. Purpose. This regulation establishes procedures for making application, and the consideration of applications, for the correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (hereinafter referred to as the Board).

2. Authority. Section 131 of the Legislative Reorganization Act of 1946 (60 Stat. 831; 2 U.S.C. 190g) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records, shall be received or considered

* **This regulation supersedes AR 15–185, 28 August 1970**

in either the Senate or the House of Representatives. Section 1552 of Title 10, United States Code, which restates and codifies Section 207 of the same act, as amended, provides—

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or anothers service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs. Aug. 10, 1956, ch. 1041 70A Stat. 116, as amended June 29, 1960, § 1(4), 74 Stat. 246.

Section II. ESTABLISHMENT, FUNCTIONS, AND JURISDICTION OF THE BOARD

3. Establishment and composition. *a.* Pursuant to the foregoing statutory authority, the Army Board for Correction of Military Records is established in the Office of the Secretary of the Army.

b. The Board will consist of civilian officers or employees of the Department of the Army in such number, not less than three, as may be appointed by the Secretary of the Army. Three members present will constitute a quorum of the Board. The Secretary of the Army will designate one member as the Chairman. In the event of absence or incapacity of the Chairman, an Acting Chairman chosen by the Board will act as Chairman for all purposes.

4. Functions. The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice.

5. Jurisdiction. The Board will have jurisdiction to review and determine all matters properly brought before it consistent with existing law.

Section III. APPLICATION FOR CORRECTION

6. General requirements. *a.* The application for correction should be submitted on DD Form 149 (Application for Correction of Military or Naval Record) and should be addressed to Army Board for Correction of Military Records, Department of the Army, WASH DC 20310. Forms and explanatory matter may be obtained from The Adjutant General, WASH DC 20310. For those applicants in the military service, these forms may be obtained through normal AG publications supply channels.

b. Except as provided in *c* below, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim. (Title 18, U.S. Code, secs. 287, 1001.)

c. When the record in question is that of a person who is incapable of making application himself, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the matter before the Board the application may be made by a spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted as may be be required by the Board.

7. Time limit for filing application. A claimant, his heir, or legal representative must file the application for correction of a record within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, his heir, or legal representative files an application more than 3 years after he discovers the error or injustice, he must include in his application his reasons why the Board should find it is in the interest of justice to excuse the failure to file application within the time prescribed above.

8. Exhaustion of other remedies. No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

9. Other proceedings not stayed. The application to the Board for correction of a record will not operate as a stay of any proceedings being taken with respect to the person involved.

10. Consideration of application. *a.* Each application and the available military or naval records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason that the applicant has not exhausted all other effective administrative remedies available to him, that effective relief cannot be granted, or for the reason the applicant did not file the application within 3 years after he discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years.

b. The Board may deny an application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a Board for the correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate the existence of probable material error or injustice is without prejudice to further consideration in the event new relevant evidence is submitted. The applicant will be informed of his privilege to submit newly discovered relevant evidence for consideration.

c. When an application is denied without a hearing, written findings, conclusions, and recommendations are not required.

Section IV. ENTITLEMENT TO HEARING

11. General. In each case in which the Board determines that a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

12. Notice. *a.* In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

b. Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at the hearing, will be considered in accordance with paragraph 17*b*.

13. Counsel. As used in this regulation, the term "counsel" will be construed to include members in good standing of the Federal bar or the bar of any State, accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under Section 3402 of Title 38, United States Code, and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

14. Witnesses. The applicant will be permitted to present witnesses in his behalf at hearings before

the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

15. Access to records. *a.* The applicant will be assured access to all official records that are necessary to an adequate presentation of his case consistent with regulations governing privileged or classified material. It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Army as he desires to present in support of his case.

b. The Board shall not release classified or privileged material to the applicant or to his counsel or personal representative. In such cases the Board shall take steps in accordance with established regulations to obtain a review of the material to determine whether declassification is possible so that the evidence can be released to the applicant; or if declassification is not possible, prepare or cause to be prepared a summary of the content of such material in sufficient detail, consistent with the interests of national security, to enable the applicant to prepare a response.

c. This regulation does not authorize the furnishing of copies of official records by the Board. Requests for copies of official records should be processed in accordance with AR 340–17.

Section V. HEARING

16. Convening of Board. The Board will be convened at the call of the Chairman and will recess or adjourn at his order.

17. Conduct of hearing. *a.* The hearing will be conducted by the Chairman, and will be subject to his rulings so as to insure a full and fair hearing. The Board will not be limited by legal rules of evidence but will maintain reasonable bounds of competency, relevancy, and materiality.

b. If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

c. If the applicant, after being duly notified, has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with *b* above, or will make such other disposition of the case as is indicated under the circumstances.

d. All testimony before the Board will be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

18. Continuance. The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

Section VI. ACTION ON APPLICATIONS

19. Action by the Board. *a. Deliberations, findings, conclusions, and recommendations.*

(1) Only members of the Board and its staff will be present during the deliberations of the Board.

(2) Whenever, during the course of its review of the case, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) Following a hearing, the Board will make written findings, conclusions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and will be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Secretary of the Army as to matters arising from but not directly related to the issues of any case, such comments and recommendations will be the subject of separate communication.

b. Minority report. In case of a disagreement between members of the Board a minority report may be submitted, either as to the findings, conclusions, or the recommendations or to all, including the reasons therefor.

c. Record of proceedings. When the Board has completed its proceedings, a record thereof will be prepared. Such record will indicate whether or not a quorum was present at the hearing and at the Board's deliberations. The record will include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments filed in the case, the findings, conclusions and recommendations of the Board, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the Chairman or his designee as being true and complete.

d. Withdrawal. The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Secretary of the Army.

e. Delegation of authority to correct certain military records.

(1) The Army Board for Correction of Military Records is authorized to take final action on behalf of the Secretary of the Army, under 10 U.S.C. 1552, in approving the correction of military records, provided such action (a) has been recommended by the Army Staff; (b) is agreed to by the Board; and (c) falls into one of the following categories:

(*a*) Restoration of leave unduly charged to applicants.

(*b*) Promotion retroactively of applicants who would have been promoted during regular promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(*c*) Adjustment of enlisted grades and promotion of applicants to grades held immediately prior to reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(*d*) Awards of basic allowance for subsistence, family separation allowance, dislocation allowance and travel allowance to applicants entitled thereto.

(*e*) Authorizing participation under the Retired Serviceman's Family Protection Plan and the Survivors Benefit Plan where failure to elect to participate was due to inadvertence, misunderstanding or through no fault of the service member.

(*f*) Placement in a temporary or permanent disability retired status, including appropriate percentage of disability, of applicants who were clearly physically unfit and were inadvertently or improperly separated.

(*g*) Award of variable reenlistment bonus, proficiency pay, enlistment and/or reenlistment bonus to applicants clearly entitled thereto.

(*h*) Change of home of record where upon entry on duty applicants erroneously reported other than actual home.

(*i*) Award of reserve participation credit in computation of years of satisfactory service where such service was improperly or erroneously credited.

(2) The Executive Secretary of the Board, after assuring compliance with the above conditions, will announce the final action on applications processed under this subparagraph.

20. Action by Secretary of the Army. The record of proceedings of the Board will be forwarded to the Secretary of the Army who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary.

21. Staff action. *a.* Upon final action by the Secretary of the Army or by the Board acting under the authority contained in paragraph 19*e*, the complete record in each case will be returned to the Board. The Board will transmit the decision of the Secretary of the Army to The Adjutant General or Commander, Military Personnel Center for appropriate action.

b. Upon receipt of the record of proceedings after final action by the Secretary of the Army, the Board will communicate the decision to the applicant and counsel, if any.

c. When all necessary administrative action has been completed the applicant will be informed of such action by The Adjutant General or Commander, Military Personnel Center as appropriate.

d. Written notice specifying the action taken and the date thereof will be transmitted to the Chairman of the Board.

e. The application for correction of military record, supporting documents, proceedings of the Board and decision of the Secretary of the Army will be filed in the permanent military record of the subject of the application except that where such action would nullify the relief granted, the application, etc. will be retained in the files of the Correction Board.

f. After action on the record by the Secretary of the Army, or by the Board acting under the authority contained in paragraph 19*e*, the applicant

or his counsel is entitled, upon request, to inspect the record of proceedings and to receive a copy of the Board's findings, conclusions, and recommendations, unless the Chairman considers that granting the request would be detrimental to the public interest.

22. Reconsideration. After final adjudication, further consideration will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Army.

Section VII. SETTLEMENT OF CLAIMS

23. Authority. *a.* The Department of the Army is authorized to pay claims in accordance with Section 1552, Title 10, United States Code (para 2).

b. The Department of the Army is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans Affairs.

24. Application for settlement. *a.* Settlement and payment of claims will be made only upon a claim of the person whose record has been corrected or of his legal representative, his heirs at law, or his beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

b. In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment; or if there is no such law covering order of payment, in the order set forth in Section 2771 of Title 10, United States Code; or as otherwise prescribed by the law applicable to that kind of payment.

c. Upon request, the applicant or applicants will be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

25. Settlement. *a.* Settlement of claims shall be based on the decision of the Secretary of the Army. Computation of the amounts due shall be made by the US Army Finance Support Agency, Indianapolis, Ind. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulations, amounts found due may be reduced by the amount of any existing indebtedness to the Government, arising from military service.

b. Prior to or at the time of payment, the person or persons to whom payments are to be made shall be advised by the US Army Finance Support Agency, as to the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

26. Report of settlement. In every case where payment is made, the amount of such payment and the names of the payee or payees will be reported to the Chairman of the Board.

Section VIII. MISCELLANEOUS

27. Staff assistance. *a.* At the request of the Board, The Adjutant General or Commander, Military Personnel Center, will assemble the original or certified copies of all available military records pertinent to the relief requested. Such records and all supporting papers will be transmitted to the Board.

b. The Board is authorized to call upon the Office of the Secretary of the Army and the Department of the Army General and Special Staffs for investigative and advisory services and upon any other Department of the Army agency for assistance, within the specialized jurisdiction of that agency.

28. Expenses. No expenses of any nature whatsoever voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf will be paid by the Government.

29. Changes in procedures. The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Secretary of the Army and of the Secretary of Defense.

The proponent agency of this regulation is the Army Board for Corrections of Military Records, Office, Secretary of the Army. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) direct to Chairman, Army Board for Correction of Military Records, Office, Secretary of the Army, ATTN: SFMR, Department of the Army, Washington, DC 20310.

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS
General, United States Army
Chief of Staff

Official:
VERNE L. BOWERS
Major General, United States Army
The Adjutant General

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