The original documents are located in Box 2, folder "Clemency Law Reporter (4)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

CLEMENCY LAW REPORTER
SPECIAL EDITION
VOL. 1 NO. 3 - - JUNE 17, 1975

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

The CLR is an unofficial document prepared for the exclusive use of the PCB staff.

FULL BOARD CLARIFIES AGGRAVATING FACTORS

Today the Full Board clarified its policies regarding ten of the twelve aggravating factors. Effective immediately, all Panel Counsels, Action Attorneys, and Quality Control Professionals should apply the aggravating factor descriptions set forth in the second edition of the Clemency Law Reporter, as modified below:

AGG #1: A "felony conviction" means a conviction for any crime for which the sentence is or could have been imprisonment for one year or more. Some reference to state law may be necessary. The Board also reaffirmed that any such conviction, whether prior to or subsequent to the qualifying offense, gives rise to this factor.

AGG #4: According to the Board, going AWOL directly from Vietnam brings rise to this factor automatically. Going AWOL from R&R or home leave does not constitute this factor -- but does constitute aggravating factor #10.

AGG #5: The Board will first determine whether evidence of selfish and manipulative reasons is present (i.e., whether aggravating #5 has its regular application). If no such evidence is found, a "weak" aggravating #5 will be applied in circumstances where a reasonable inference may be drawn that the offense had been committed for selfish and manipulative reasons. Such an inference may be drawn even if there are no apparent reasons in the record for the qualifying offense. However, this "weak" application of aggravating #5 will not arise if any of the mitigating factors #1, #2, #3, #8, #10, or #12 are present, except in unusual circumstances where these mitigating factors bear no relationship to the qualifying offense. This "weak" aggravating #5 application is a matter of Board discretion and should not be marked by Action Attorneys.

AGG #6: The religious exception to this factor applies only in circumstances where an applicant had bona fide religious reasons for his offense.

NEWS BULLETIN: The President has confirmed that the Board may recommend pardons for applicants with Undesirable Discharges.

AGG #7: This factor applies to military as well as civilian cases. Also, it applies to any violation of probation or parole subsequent to a felony (or military court-martial) conviction, even if the conviction had been for a non-qualifying offense.

AGG #8: Non-qualifying (i.e., pre-1964) and unpunished AWOLs are to be counted in applying this factor.

AGG #9: If the last AWOL offense resulted in an NJP or a court-martial conviction, only those AWOL offenses specified in the NJP or court-martial charges are counted in assessing the length of AWOL. If the last AWOL offense did not result in an NJP or a court-martial conviction (even if it directly led to an applicant's discharge), all unpunished AWOL offenses subsequent to the last punished AWOL offense are to be included in the assessment of the length of AWOL.

AGG #10: Alaska and Hawaii are not included in this factor. In addition, this factor applies in full force only to any failure to report to Vietnam or to any overseas staging area for Vietnam (e.g., Okinawa) for all other overseas assignments (e.g., Germany or Korea), a "weak" aggravating #10 applies.

AGG #11: This factor applies only to punished offenses in UD-Unfitness cases. Summary court-martial convictions and NJPs for non-qualifying offenses are included in its scope. This factor does not apply to UD-Chapter 10, BCD, or DD cases.

AGG #12: Only the last qualifying offense counts, and some evidence of apprehension is necessary. If the applicant did not willfully evade authorities (e.g., if he lived openly at home) prior to his apprehension, a "weak" aggravating #12 is applied.

CLEMENCY LAW REPORTER

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
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VOL.1 NUMBER FOUR - July 2, 1975

HIGHLIGHTS

INTRODUCTION

The Clemency Law Reporter is an unofficial document, the contents of which neither constitute nor imply the official position of the Board, but are intended as an informal guide for the exclusive use of the PCB Staff.

The Clemency Law Reporter is prepared by the PCB Planning, Management and Evaluation Staff. For information, please contact Wil Ebel or Bob Terzian. Room 901, Tel. 634-4823.

INDEX

LEGAL NOTES

The Legal Notes Section will be devoted to information of professional interest to the PCB attorney. It will include such matters as new procedural developments of common concern, and analysis of legal issues current to the PCB. Contributions of ideas and work product from the staff are especially critical to a full understanding of the law applicable to the PCB.

AWARDS AND DECORATIONS

Vietnam Cross of Gallantry w/Palm. A personal decoration awarded by RVN.

RVN Gallantry Cross Unit Citation. A unit citation awarded for valorous combat achievement.

Kevin Greene

PRESIDENTIAL PARDONS

ARTICLE II, Section 2, Clause 1, Constitution of the United States of America: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several states, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

The following is an excerpt from Constitution of the United States of America -- Analysis and Interpretation which was prepared by the Legislative Reference Service of the Library of Congress.

PARDONS AND REPRIEVES

The Legal Nature of a Pardon

In the first case to be decided concerning the pardoning power, Chief Justice Marshall, speaking for the Court, said: "As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance; we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated offically to the Court. *** A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force it on him." Marshall thereupon proceeded to lay down the doctrine, that "a pardon is a deed to the validity of which delivery is essential, and delivery is not complete without acceptance"; and that to be noticed judicially this deed must be pleaded, like any private instrument.[2]

In the case of Burdick v. United States,[3] decided in 1915, Marshall's doctrine was put to a test that seems to have overtaxed it, perhaps fatally. Burdick, having declined to testify before a federal grand jury on the ground that his testimony would tend to incriminate him, was proffered by President Wilson "a full and unconditional pardon for all offenses against the United States" which he might have committed or participated in in connection with the matter he had been questioned about. Burdick, nevertheless, refused to accept the

pardon and persisted in his contumacy with the unanimous support of the Supreme Court. "The grace of a pardon," remarked Justice McKenna sententiously, "may be only a pretense * * * involving consequences of even greater disgrace than those from which it purports to relieve. Circumstances may be made to bring innocence under the penalties of the law. If so brought, escape by confession of guilt implied in the acceptance of a pardon may be rejected,* * *." [4] Nor did the Court give any attention to the fact that the President had accompanied his proffer to Burdick with a proclamation, although a similar procedure had been held to bring President Johnson's amnesties to the Court's notice.[5] In 1927, however, in sustaining the right of the President to commute a sentence of death to one of life imprisonment, against the will of the prisoner, the Court abandoned this view. "A pardon in our days," it said, "is not a private act of grace from an individual happening to possess power. It is a part of the contitutional scheme. When granted it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed." [6] Whether these words sound the death knell of the acceptance doctrine is perhaps doubtful.[7] They seem clearly to indicate that by substantiating a commutation order for a deed of pardon, a President can always have his way in such matters, provided the substituted penalty is authorized by law and does not in common understanding exceed the original penalty.[8]

Scope of the Power

The power embraces all "offences against the United States," except cases of impeachment, and includes the power to remit fines, penalties, and forfeitures, except as to money covered into the Treasury or paid in informer;[9] also the power to pardon absolutely or conditionally; and includes the power to commute sentences, which, as seen above, is effective without the convict's consent.[10] It has been held, moreover, in face of earlier English practice, the indefinite suspension of sentence by a court of the United States is an invasion of the presidential prerogative, amounting as it does to a condonation of the offense.[11] It was early assumed that the power included the power to pardon specified classes or communities wholesale, in short, the power to amnesty, which is usually exercised by proclamation. General amnesties were issued by Washington in 1795, by Adams in 1800, by Madison in 1815, by Lincoln in 1863, by Johnson in 1865, 1867 and 1868, and by the first Roosevelt-to Aguinaldo's followers-in 1902. [12] Not, however, till after the Civil War was the point adjudicated, when it was decided in favor of presidential prerogative. [13]

Offenses against the United States; contempt of court. - In the first place, such offenses are not offenses against the States. In the second place, they are completed offenses; [14] the President cannot pardon by anticipation, otherwise he would be invested with the power to dispense with the laws, his claim to which was the principal cause of James II's forced abdication.[15] Lastly, the term has been held to include criminal contempts of court. Such was the holding Ex parte Grossman,[16] where Chief Justice Taft, speaking for the Court, resorted once more to English conceptions as being authoritative in construing this clause of the Constitution. Siad he: "The King of England before our Revolution, in the exercise of his prerogative, had always exercised the power to pardon contempts

of court, just as he did ordinary crimes and misdemeanors and as he has done to the present day. In the mind of a common law lawyer of the eighteenth century the word pardon included within its scope the ending by the King's grace of the punishment of such derelictions, whether it was imposed by the court without a jury or upon indictment, for both forms of trial for contempts were had. (Citing cases.) These cases also show that, long before our Constitution, a distinction had been recognized at common law between the effect of the King's pardon to wipe out the effect of a sentence for contempt in so far as it had been imposed to punish the contemnor for violating the dignity of the court and the King, in the public interest, and its inefficacy to halt or interfere with the remedial part of the court's order necessary to secure the rights of the injured suitor. Blackstone IV, 285,397,398; Hawkins Pleas of the Crown, 6th Ed. (1787), Vol. 2,553. The same distinction, nowadays referred to as the difference between Civil and criminal contempts, is still maintained in English law." [17] Nor was any new or special danger to be apprehended from this view of the pardoning power. "If," says the Chief Justice, "we could conjure up in our minds a President willing to paralyze courts by pardoning all criminal contempts, why not a President ordering a general jail delivery?" Indeed, he queries further, in view of the peculiarities of procedure in contempt cases, "may it not be fairly said that in order to avoid possible mistake, undue prejudice or needless severity, the chance of pardon should exist at least as much in favor of a person convicted by a judge without a jury as in favor of one convicted in a jury trial?" [18]

Effects of a pardon: Ex parte Garland.- The great leading case is Ex parte Garland, [19] which was decided shortly after the Civil War. By an act passed in 1865 Congress had prescribed that before any person should be permitted to practice in a federal court he must take oath asserting that he had never voluntarily borne arms against the United States, had never given aid or comfort to enemies of the United States, and so on. Garland, who had been a Confederate sympathizer and so was unable to take the oath, had however received from President Johnson the same year "a full pardon 'for all offences by him committed, arising from participation, direct or implied, in the Rebellion,'* * *" The question before the Court was whether, armed with this pardon, Garland was entitled to practice in the federal courts despite the act of Congress just mentioned. Said Justice Field for a sharply divided Court: "The inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching (thereto); if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity." [20] Justice Miller speaking for the minority protested that the act of Congress involved was not penal in character, but merely laid down an appropriate test of fitness to practice the law. "The man who, by counterfeiting, by theft, by

by murder, or by treason, is rendered unfit to exercise the functions of an attorney or counsellor at law, may be saved by the executive pardon from the penitentiary or the gallows, but he is not thereby restored to the qualifications which are essential to admission to the bar."[21] Justice Field's language must today be regarded as much too sweeping in light of a decision rendered in 1914 in the case of Carlesi v. New York. [22] Carlesi had some years before been convicted of committing a federal offense. In the instant case the prisoner was being tried for a subsequent offense committed in New York. He was convicted as a second offender, although the President had pardoned him for the earlier federal offense. In other words, the fact of prior conviction by a federal court was considered in determining the punishment for a subsequent State offense. This conviction and sentence were upheld by the Supreme Court. While this case involved offenses against different sovereignties, the Court declared by way of dictum that its decision "must not be understood as in the slightest degree intimating that a pardon would operate to limit the power of the United States in punishing crimes against its authority to provide for taking into consideration past offenses committed by the accused as a circumstance of aggravation even although for such past offenses there had been a pardon granted." [23]

Limits to the efficacy of a pardon.-But Justice Field's latitudinarian view of the effect of a pardon undoubtedly still applies ordinarily where the pardon is issued before conviction. He is also correct in saying that a full pardon restores a convict to his "civil rights," and this is so even though simple completion of the convict's sentence would not have had that effect. One such right is the right to testify in court, and in Boyd v. United States the Court held that the disability to testify being a consequence, according to principles of the common law, of the judgment of conviction, the pardon obliterated that effect.[24] But a pardon cannot "make amends for the past. It affords no relief for what has been suffered by the offender in his person by imprisonment, forced labor, or otherwise; it does not give compensation for what has been done or suffered, nor does it impose upon the government any obligation to give it. The offence being established by judicial proceedings, that which has been done or suffered while they were in force is presumed to have been rightfully done and justly suffered; and no satisfaction for it can be required. Neither does the pardon affect any rights which have vested in others directly by the execution of the judgment for the offence, or which have been acquired by others whilst that judgment was in force. If, for example, by the judgment a sale of the offender's property has been had, the purchaser will hold the property notwithstanding the subsequent pardon. And if the proceeds of the sale have been paid to a party to whom the law has assigned them, they cannot be subsequently reached and recovered by the offender. The rights of the parties have become vested, and are as complete as if they were acquired in any other legal way. So, also, if the proceeds have been paid into the treasury, the right to them has so far become vested in the United States that they can only be secured to the former owner of the property through an act of Congress. Moneys once in the treasury can only be withdrawn by an appropriation by law." [25]

Congress and Amnesty

Congress cannot limit the effects of a Presidential amnesty. Thus the act of July 12, 1870, making proof of loyalty necessary to recover property abandoned and sold by the Government during the Civil War, notwithstanding any executive proclamation, pardon, amnesty, or other act of condonation or oblivion, was pronounced void. Said Chief Justice Chase for the majority: "* * * the legislature cannot change the effect of such a pardon any more than the executive can change a law. Yet this is attempted by the provision under consideration. The Court is required to receive special pardons as evidence of guilt and to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny them their legal effect. This certainly impairs the executive authority and directs the Court to be instrumental to that end." [26] On the other hand, Congress itself, under the necessary and proper clause, may enact amnesty laws remitting penalties incurred under the national statutes. [27]

Notes

1/See Corwin, The President: Office and Powers, 19,61,79-85,211,295-299, 312,320-323, 490-493 (1957). The only question of a constitutional nature that has arisen concerning the Cabinet meeting is as to its right to meet, on the call of the Secretary of State, in the President's absence. Corwin, The President: Office and Powers, 402 (3d ed. 1948).

2/ United States v. Wilson, 7 Pet. 150,160-161 (1833).

3/ 236 U.S. 79,86 (1915).

4/ Ibid. 90-91

5/ Armstrong v. United States, 13 Wall. 154,156 (1872). In Brown v. Walker, 161 U.S. 591 (1896), the Court had said: "It is almost a necessary corollary of the above propositions that, if the witness has already received a pardon, he cannot longer set up his privilege, since he stands with respect to such offence as if it had never been committed." Ibid. 599, citing British cases.

6/ Biddle v. Perovich, 247 U.S. 480, 486 (1927).

7/ Cf. Humbert, The Pardoning Power of the President, 73 (1941).

8/ Biddle v. Perovich, 274U.S. at 486.

9/ 23 Ops. Att'y Gen. 360,363 (1901); Illinois Central Railroad v. Bosworth, 133 U.S. 92 (1890).

10/ Ex parte William Wells, 18 How. 307 (1856). For the contrary view, see some early opinions of the Attorney General, 1 Ops. Att'y Gen. 341 (1820); 2 Ops. Att'y Gen. 275 (1829); 5 Ops. Att'y Gen. 687 (1795); cf. 4 Ops. Att'y Gen. 458 (1845); United States v. Wilson, 7 Pet. 150, 161 (1833).

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11/ Ex parte United States, 242 U.S. 27 (1916). Amendment of sentence, however, (within the same term of court) by shortening the term of imprisonment, although defendant had already been committed, is a judicial act and no infringement of the pardoning power. United States v. Benz, 282 U.S. 304 (1931).

12/ See 1 Messages and Papers of the Presidents, 173,293; 2:543; 7:3414,3508; 8:3853; 14:6690.

13/ United States v. Klein, 13 Wall. 128, 147 (1872). See also United States v. Padelford, 9 Wall. 531 (1870).

14/ Ex parte Garland, 4 Wall, 333,380 (1867).

15/ Maitland, Constitutional History of England, 302-306 (1920); 1 Ops. Att'y Gen. 342 (1820).

16/ 267 U.S. 87 (1925).

17/ Ibid, 110-111.

18/ Ibid. 121,122.

19/ 4 Wall.333,381 (1867).

20/ Ibid. 380.

21/ Ibid. 396-397.

22/ 233 U.S. 51 (1914).
23/ Ibid. 59.
24/ 142 U.S. 450 (1892).

25/ Knote v. United States, 95 U.S. 149, 153-154(1877).

26/ United States v. Klein, 13 Wall, 128,143,148 (1872).

27/ The Laura, 114 U.S. 411 (1885).

SPEEDY TRIAL

The Author proposes that Mitigating Factor No. 8 (Substantial Evidence of Personal or Procedural Unfairness) should be applied in the case of any PCB applicant held in pre-trial confinement by the military for a period in excess of 90 days.

In U.S. v. Burton, 21 USCMA 112, 44 CMR 166 (1971), Chief Judge Darden, writing the opinion of the court, addressed the speedy trial issue and recognized that "in some situations the length and circumstances of pretrial confinement can be prejudicial in themselves. U.S. v. Keaton, 18 USCMA 500, 40 CMR 212 (1969)." In his two to one opinion, Judge Darden establishes the following rule and gets away from the older reasonable-time standard: "For offenses occurring after the date of this opinion (17 Dec. 71) we adopt the suggestion of appellate defense counsel that in the absence of defense requests for continuance, a presumption of an Article 10 violation will exist when pretrial confinement exceeds three months. In such cases, this presumption will place a heavy burden on the Government to show diligence and in the absence of such a showing the charges should be dismissed." U.S. v. Burton, 21 USCMA 112 at 118 (1971).

Judge Darden continued, "when the defense requests a speedy disposition of the charges, the Government must respond to the request and either proceed immediately or show adequate cause for any further delay. A failure to respond to a request for a prompt trial or to order such a trial may justify extraordinary relief." 21 USCMA 112 at 118.

In 1973, Chief Judge Darden had an opportunity to reconsider his opinion in Burton. In U.S. v. Marshall 47 CMR 409 (1973) Judge Darden now writing for a unanimous court, re-states the rule in Burton and says that "the Government must demonstrate that really extraordinary circumstances beyond such normal problems as mistakes in drafting, manpower shortages, illnesses, and leave contributed to the delay." U.S. v. Marshall, 47 CMR 409 at 413 (1973).

It is suggested by the writer that the scope of Mitigating Factor No. 8 should be said specifically to cover and include situations in which excessive periods of pre-trial confinement are found. Perhaps a "weak 8" should apply to situations which occurred prior to Burton (17 Dec. 71) and a "strong 8" should be assigned to situations arising thereafter.

Meinert Toberer

FEDERAL SENTENCING ALTERNATIVES

"It is perhaps ironic that trends in modern corrections toward more humane treatment and greater emphasis on rehabilitation and community supervision have increasingly raised issues of fair process and the rights of offenders. At one time an offender's correctional course was largely determined at trial. If he was sentenced to prison, he went and served the term appointed for him by the judge or statute, and by and large he was treated in prison just like everybody else. But today correctional decisions are far more numerous and complex, and many of them are made administratively by correctional staff rather than by a judge or statute."

The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 12 (1967)

The federal district court judge has a wide range of sentencing choices. The action attorney should be aware of the different alternatives which a judge considers in imposing a sentence.

A person convicted of an offense not punishable by death or life imprisonment may be granted probation under such terms and conditions as the court deems best, provided that the judge is satisfied that the ends of justice, the best interest of the public, as well as that of the defendant, are met. The court may order a split sentence where the offender will serve a term in prison not to exceed six months and will then serve the remainder of the sentence on probation. As a procedural matter in these cases, the judge will impose a prison sentence in excess of six months, then suspend execution of the sentence on the condition that the offender serve the split sentence as described above.

Where an offense is punishable by a fine or imprisonment or both, probation may be granted. Payment of the fine may be imposed as a condition of probation. An offender may be placed on probation for as long as five years, although the maximum sentence for the committed offense may be less than the period of imposed probation. Courts may revoke or modify any condition of probation or may change the period of probation in accord with principles governing proper exercise of judicial discretion. Probation may be revoked when the offender violates the conditions. Then the offender will be jailed for the balance of the originally imposed sentence or any lesser sentence.

If the court, at time of sentencing, suspends imposition of the sentence and subsequently imposes probation, then it, at the time of revocation, may impose any sentence up to maximum allowed for the original offense.

A person may be arrested for violations of probation conditions at any time within five years after the end of probation. If the probation violation is proved, he will be required to serve the balance of his sentence.

The Attorney General may order that the offender serve his sentence in a non-federal institution.

A prisoner whose record shows that he has observed the rules of the institution in which he is confined is eligible for parole if he meets the following conditions:
(a) He is serving a definite term longer than 180 days and
(b) he has served at least one-third of his sentence or
(c) if serving a sentence of life or excedding 45 years, that he has served 15 years.

The courts, in imposing any sentence greater than one year, may set eligibility for consideration for parole at any term of less than one-third of the sentence. The court may sentence the offender to a fixed term of imprisonment, then order that the offender will be eligible for parole at any time which the Board of Parole may determine.

An offender may be committed for a period of study and observation which is deemed to be the maximum sentence. Upon completion of the study, the court may affirms the maximum sentence, impose a lesser sentence or grant probation.

A person is eligible for the National Addicts Rehabilitation Act post-conviction program if he is a drug addict likely to be rehabilitated and if he has not been convicted of a crime of violence, drug trafficking or convicted of felonies on two separate, prior occasions. Under the program, he shall serve the lesser of the maximum sentence for the crime of which he is convicted or ten years.

Any individual under 22 years of age at the time of conviction who will derive maximum from treatment by the Youth Correction Division of the Board of Parole prior to the expiration of six years from the date of conviction may be sentenced under the provisions of the Federal Youth Corrections Act.

Tom O'Hare
Mike Remington

rules and regulations

Title 2—Clemency

CHAPTER I—PRESIDENTIAL CLEMENCY BOARD

PART 101—ADMINISTRATIVE PROCEDURES

Administrative Procedures and Substantive Standards

The Presidential Clemency Board published its administrative procedures and substantive standards on March 21, 1975 (40 FR 12763). It is the intent of the Board to provide notice to the public of the standards it uses to make recommendations to the President concerning individual applications for clemency. The Board also wishes to ensure equity and consistency for applicants under the President's clemency program.

As previously indicated, the Board does not consider itself bound by the Administrative Procedures Act. However, in its attempt to adhere to principles of substantive and procedural due process, the Board has published its regulations and will publish changes in those regulations as new circumstances are presented to it. The following is an explanation of such changes which seem to the Board to be the most significant since the last time its regulations were published. Therefore, §§ 101.2, 101.8(b), 101.8(d), and 101.9(a) are amended to read as follows:

§ 101.2 General definitions.

"Action attorney" means any individual on the staff of the Board who is assigned an applicant's case.

* * * * *

§ 101.8 Initial case summary.

* * * * *

(b) The initial case summary is sent by certified mail to the applicant or his representative. The summary is accompanied by an instruction describing the method by which the summary was prepared, by a copy of the guidelines used by the Board for the determination of cases and by a copy of these regulations, as amended. Applicants are encouraged to review the initial case summary for accuracy and completeness and are advised of their right to submit additional sworn and unsworn material. Additional material may be submitted in any length. Nothing over three (3) single-spaced, typewritten letter-sized pages in length is read verbatim to the Board. When necessary, therefore, an applicant should summarize his additional material to comply with this verbatim presentation requirement. If this is not done, the action attorney does so.

* * * * *

(d) An applicant's case is ready for Board consideration upon preparation of the initial case summary, and may be heard at any time after the summary is mailed to the applicant. However, the applicant may send any information which contradicts, amends, or supplements the initial case summary within thirty (30) days after the postmark date. An applicant's request for an extension of this time will be liberally construed provided the request is timely. If an applicant's case has been heard by the Board prior to the receipt of a timely submission amending, contradicting, or supplementing a case summary, the case will be presented *de novo* to another panel of the Board, other than that which heard the case originally if the submission contains relevant information which could have affected the disposition of the case. See § 101.11 for rules concerning reconsideration of cases.

* * * * *

§ 101.9 Consideration before the Board.

(a) At a regularly scheduled meeting of the Board, an applicant's case is considered. The Board may decide, however, that cases will be considered by panels of not less than three Board members. Any case may be brought before a majority of the full Board for consideration at the request of any panel member. Panel recommendations will be considered final decisions of the full Board unless a case is scheduled to be reviewed by a majority of the full Board.

* * * * *

These amendments will become effective immediately.

Issued in Washington, D.C. on June 10, 1975.

CHARLES E. GOODELL,
Chairman, Presidential Clemency Board, The White House.

[FR Doc. 75-15510 Filed 6-11-75;9:36 am]

POLICY NOTES

The Clemency Law Reporter will include a Policy Notes Section that will highlight items of current interest. You can help us by calling our attention to articles dealing with clemency that appear in newspapers and periodicals and that you find relevant to the PCB Staff effort.

We would be pleased to consider any staff-submitted manuscript (not over 1,000 words, please) for possible publication in the Clemency Law Reporter. Send to Wil Ebel or Bob Terzian. Room 901, Tel, 634-4823.

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The Comprehensive Employment and Training Act of 1973 (PL 93-203) provides that special consideration shall be given to veterans in filling emergency public service jobs. Former military personnel who are given undesirable discharges under the clemency program are considered for CETA purposes as veterans.

Recently introduced legislation would exclude from certain Federal job preference programs, former military personnel participating in the Presidential Clemency Program.

The proposed legislation would amend §2011 (2) of title 38, U.S.C. by adding the following:

> "The term 'veteran of the Vietnam era' does not include any person who was discharged or released from active duty with an other than dishonorable discharge obtained pursuant to the operation of the clemency and reconciliation program implemented pursuant to Executive Order 11804, dated September 16, 1974."

RESTORATION OF CITIZENSHIP

Legislation (H.R. 7893) has been introduced that would permit Americans who renounced their citizenship during the time of the U.S. military involvement in Vietnam to petition for restoration of U.S. citizenship.

The text of the bill follows:

A bill to restore citizenship to persons who renounced or otherwise lost American nationality because of opposition to American military action in Indochina, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any person formerly a citizen of the United States who lost his nationality through any action taken by such person solely or partially because of disapproval of or opposition to the involvement of the United States in military action in Indochina shall, upon petition to any district court of the United States by such person or a legal representative, in accordance with subsection (b), be fully and unconditionally restored to United States citizenship.

(b) Any petition submitted pursuant to subsection (a) shall include a statement sworn to or affirmed by the petitioner stating that the loss of nationality of such petitioner resulted from action taken by such petitioner solely or partially because of disapproval of or opposition to the involvement of the United States in military action in Indochina. Such oath or affirmation shall be conclusive evidence of such fact in case of any person who--

(1) is male and reached the age of eighteen years during the period beginning May 13, 1961, and ending April 29, 1975, or

(2) took such action during such period.

Sec. 2. The Commissioner of Immigration and Naturalization shall, upon receipt of a sworn written statement from any former citizen of the United States stating that such person lost his nationality through action taken solely or partially because of disapproval of or opposition to the involvement of the United States in military action in Indochina, exempt such person from the provisions of section 212 (a) (22) of the Immigration and Nationality Act.

DRAFT CLASSIFICATIONS

1-A	Available for military duty not considered eligible for any lower class.
1-A-O	C.O. available for non-combatant duty only.
1-O	C.O. opposed to both combatant and non-combatant military duty and available for assignment to civilian work.
I-S	High school student, 1-S(H), under 20 years of age or college student, 1-S(C), who has received an order to report for induction and is deferred to complete his school year.
1-Y	Qualified for military or alternative service only in time of war or national emergency.
11-A	Deferred for full-time junior college or approved apprenticeship programs and for some essential civilian employment claimed before April 23, 1970.
11-C	Deferred because of essential agricultural employment claimed before April 23, 1970.
11-S	Deferred for full-time undergraduate study and for study in the health sciences.
1-D	Member of reserve unit of the armed forces, or student taking military training.
111-A	Deferred because induction would cause extreme hardship for dependents. 111-A mandatory if prior to April 23, 1970, registrant notified local board of child (born or conceived), and bona fide family relationship maintained.
1V-B	Officials deferred by law.
1V-C	Aliens who are not exempt from registration, including non-immigrants resident for less than one year and those who waive citizenship rights, and alien registrants while outside the U.S.
1V-D	Ministers and full time students preparing for the ministry under the direction of a recognized church or religious organization.
1V-F	Not qualified for any service.
1V-A	Completed military duty; sole surviving son.
V-A	Over age: 26 years old for registrants not deferred on or after June 19, 1951; 35 years old for those with "extended liability".
1-W	C.O.'s in assigned civilian service. Upon satisfactory completion of 24 months of civilian service or upon earlier release, COs are classified 1-W (Rel.) until past the age of liability for the draft when they are reclassified V-A.
1-C	Member of the Armed Forces.

LIBRARY NOTES

The Planning, Management and Evaluation Staff is building a PCB Library. The library will be housed in Room 901 (turn left as you leave the elevators). The PCB Library will serve three purposes:

-Reference library for the Professional Staff

-Research material for PCB's final report to the President

-Historical data to be archived.

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A sampling of clemency-related articles in the PCB Library (Room 901):

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LETTER TO THE CLEMENCY LAW REPORTER

A panel decision to recommend no clemency in a particular case is a grave disposition which clearly should be made only in instances where serious aggravating factors are present. Given the gravity of such decisions, however, and the intent of the PCB, it seems advisable that cases for which no clemency is recommended be referred to the full Board as a matter of course. This policy would serve two functions: (1) provide review of the decisions arguably having the most severe impact upon individual applicants and (2) assist the panels and full Board in developing guidelines for cases for which no clemency seems warranted. Panel recommendations for the restoration of benefits now must be considered by the full Board, and it is illogical to deny an applicant any benefit of the program without comparable careful scrutiny.

Ed Rundell
Hilbert Team

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POLICY PRECEDENTS

The Policy Precedents Section of the Clemency Law Reporter will include periodic updates of the Kodak-Lohff analysis of the Board's application of aggravating and mitigating factors. You should keep these materials in a loose-leaf binder to permit insertion of new or revised textual analysis.

No attempt is made to identify which were the controlling facts directly affecting any particular case disposition; nor is it noted whether the Board marked any factor as "weak" or "strong." Facts which led to findings of other aggravating or mitigating factors (and which may have had the greatest effect upon the Board's ultimate disposition) have not been included in the summary extracts. Therefore, it is not possible to use the extracts to account for any particular case disposition by the Board.

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CORRECTION
CLR, Volume Two, Page 41
(Strauss Formula - Military Case)
Line 7 SHOULD READ
+2 for Mitigating #12,#13,#15,
or any combination

CLEMENCY LAW REPORTER

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

VOL.1 NUMBER FIVE 23 JULY 1975

This Edition of the Clemency Law Reporter contains updated texts for the Aggravating and Mitigating Factors. Major changes are the clarification of Mitigating #8 and #9, the inclusion of drugs under Mitigating #3, and two changes in Mitigating #2. The attached texts supersede those published in the Policy Precedents Section of previous issues of the CLR.

Amendments to the Code of Federal Regulations, Title 2, Chapter I, Part 102 reflecting the new Aggravating/Mitigating texts are reproduced for your information.

The Clemency Law Reporter is an unofficial document, the contents of which neither constitute nor imply the official position of the Board, but are intended as an informal guide for the exclusive use of the PCB Staff.

The Clemency Law Reporter is prepared by the PCB Planning, Management and Evaluation Staff. For information, please contact Wil Ebel or Bob Terzian. Room 901, Tel. 634-4823.

AMENDMENT TO CODE OF FEDERAL REGULATIONS

Title 2 - CLEMENCY

Chapter I - Presidential Clemency Board

Part 102 - Substantive Standards

Administrative Procedures and Substantive Standards

The Presidential Clemency Board published its administrative procedures and substantive standards on March 21, 1975 (40 FR 12763), and amended Sections 101.2, 101.8(b), 101.8(d), and 101.9(a) on June 13, 1975 (40 FR 25199). It is the intent of the Board to provide notice to the public of the standards it uses to make recommendations to the President concerning individual applications for clemency. The Board also wishes to ensure equity and consistency for applicants under the President's clemency program.

As previously indicated, the Board does not consider itself bound by the Administrative Procedure Act. However, in its attempt to adhere to principles of substantive and procedural due process, the Board has published its regulations and will publish changes in those regulations as new circumstances are presented to it. The following is an explanation of such changes which seem to the Board to be the most significant since the last time its regulations were amended. Therefore, Sec. 102.3 (Aggravating circumstances) and Sec. 102.4 (Mitigating circumstances) are amended to incorporate the addition of three new Aggravating Factors (Secs. 102.3(b)(10), (11), and (12)), and one new Mitigating Factor (Sec. 102.4(b)(16)); as well as additions modifying two Mitigating Factors (Secs. 102.4(b)(5) and (9)).

Section 102.3 Aggravating circumstances.

(a) Presence of any of the aggravating circumstances listed below may either disqualify an individual for executive clemency or cause the Board to recommend to the President a period of alternative service exceeding the applicant's "baseline period of alternative service," as determined under Sec. 102.5.

(b) Aggravating circumstances of which the Board takes notice are:

(1) Other adult criminal convictions;

(2) False statement by applicant to the Presidential Clemency Board;

(3) Use of force by applicant collaterally to AWOL, desertion, or missing movement or civilian draft evasion offense;

(4) Desertion during combat;

(5) Evidence that applicant committed offense for obviously manipulative and selfish reasons;

(6) Prior refusal to fulfill court ordered alternative service;

(7) Violation of probation or parole;

(8) Multiple AWOL/UA offenses;

(9) AWOL/UA of extended length;

(10) Failure to report for overseas assignment;

(11) Other offenses contributing to undesirable discharge (this factor only applies to dischargee for unfitness); and

(12) Apprehension by authorities.

(c) Whenever an additional aggravating circumstance not listed is considered by the Board in the discussion of a particular case,

and is material to the disposition of that case, the Board postpones final decision of the case and immediately informs the applicant and his representative of their opportunity to submit evidence material to the additional circumstance.

Section 102.4 Mitigating circumstances.

(a) Presence of any of any of the mitigating circumstances listed below or of any other appropriate mitigating circumstance is considered as cause for recommending that the President grant executive clemency to an applicant, and as cause for reducing the applicant's alternative service below the baseline period, as determined under Sec. 102.5.

(b) Mitigating circumstances of which the Board takes notice are:

(1) Lack of sufficient education or ability to understand obligations or remedies available under the law;

(2) Personal and family problems either at the time of offense or if applicant were to perform alternative service;

(3) Mental or physical condition;

(4) Employment and other activities of service to the public;

(5) Service-connected disability;

(6) Period of creditable military service;

(7) Tours of service in the war zone;

(8) Substantial evidence of personal or procedural unfairness;

(9) Denial of conscientious objector status on procedural, technical, or improper grounds, or on grounds which have subsequently

been held unlawful by the judiciary;

(10) Evidence that an applicant acted for conscientious, not manipulative or selfish reasons;

(11) Voluntary submission to authorities by applicant;

(12) Behavior which reflects mental stress caused by combat;

(13) Volunteering for combat, or extension of service while in combat;

(14) Above average military conduct and proficiency;

(15) Personal decorations for valor; and

(16) Wounds in combat.

(c) An applicant may bring to the Board's attention any other factor which he believes should be considered.

These amendments will become effective immediately.

Issued in Washington, D.C. on July 23, 1975.

Charles E. Goodell,
Chairman, Presidential Clemency Board,
The White House.

Aggravating Factor: 1

Other Adult Convictions: This factor indicates any civilian felony conviction or conviction by a Special or General Court-Martial of any offense, either prior or subsequent to the qualifying offense. A felony conviction is any civilian conviction for any offense for which the sentence is or could have been imprisonment for one year or more. In determining whether a civilian felony conviction has occurred, some reference to the state law may be necessary. Non-judicial punishments, arrests, acquittals, misdemeanors, youthful offender convictions resulting in set-asides, juvenile convictions, or pre-trial confinements are not "felony convictions." A juvenile conviction results when the defendant is 18 years or younger, unless State law provides otherwise.

1. Other Adult Convictions

(No. 1825) Applicant plead guilty to a Federal Charge that he violated the Dyer Act, in that he transported a stolen motor vehicle across a state line.

(No. 1286) The applicant was arrested for possession of barbiturates, after which he jumped bond and assumed his wife's maiden name. He was extradited ans subsequently convicted for failure to keep his local board notified of his current address, and was placed on 2 years probation. He was also convicted of the old state charge and served a 6 month sentence.

(No. 1371) Applicant was tried by Special Court-Martial. Following this he escaped but voluntarily returned. His current sentence was meted out at the subsequent Special Court-Martial trial.

(No. 2722) Applicant was discharged in lieu of court-martial. He is presently incarcerated in a minimum security installation in Tennessee for grand larcency.

(No. 2368) After receiving his U.D. applicant was convicted by civilian authorities of arson in the first degree and was sentenced to six months to three years in the State Penitentiary.

Aggravating Factor: 2

False Statement by Applicant to the Presidential Clemency Board - This factor indicates any willful misrepresentation of a material fact by an applicant in his application form, letters, or other communications to the Board. A material fact is one which could affect a Board determination of baseline, aggravating factors, or mitigating factors. Mere conflicts are not cited unless there is evidence of an intent to mislead.

False Statement by Applicant to PCB

(No. 388) In his letter the applicant reports serving in Vietnam and also reports that he was confined one and a half years in the stockade without trial. There is nothing in his military file to reflect these facts except a DD 214 entry which was found to be erroneous.

(No. 368) The applicant wrote the PCB and indicated that he had a clean record with no prior courts-martial; however, his military personnel file indicates one prior court-martial and one Article 15 for AWOL offenses.

(No. 3604) Applicant listed as his name on the PCB application the alias he used while in the military. (The action attorney discovered the use of a false name when he contacted ths State prison where applicant is presently incarcerated.)

Aggravating Factor: 3

Use of Force by Applicant Collaterally to AWOL, Desertion, on Missing Movement or Civilian Draft Evasion Offense- This factor indicates the use of physical force by an applicant to aid in the commencement or continuation of his offense. The use of force not directly related to a qualifying AWOL or draft offense is not relevant.

Use of Force by Applicant Collaterally to AWOL, Desertion, on Missing Movement or Civilian Draft Evasion Offense

(No. 3752) Applicant escaped from confinement, damaging military property in the process.

(No. 3073) On two occasions applicant escaped from confinement by attacking a guard with a razor or knife.

(No. 3389) Applicant effected his AWOL by breaking away from an arresting officer.

Aggravating Factor: 4

Desertion During Combat or Leaving Combat Zone: This factor indicates that an applicant went AWOL from his unit either during actual enemy attack or before any reasonably anticipated enemy attack. Going AWOL directly from Vietnam gives automatic rise to this factor. However, departing AWOL from R&R outside of Vietnam or home leave from Vietnam does not constitute this factor though it does constitute aggravating factor #10. An applicant's reasons for his qualifying offense do not affect the applicability of this factor.

Desertion During Combat or Leaving Combat Zone: 4

(No. 8410) Applicant was an infantryman in Vietnam when he went AWOL. He was picked up in a rear area by MP's and ordered back to the field by two lieutenants. He refused to fly out to join his company.

(No. 7163) Applicant commenced the first of three AWOLs while in Vietnam. He flew back to California His subsequent AWOLs occurred after his apprehension in the U.S.

(No. 6307) Applicant stated at his trial that he became extremely frightened in combat. He went AWOL after he was sent to a rear area for chills and fever.

(No. 5554) Applicant bought orders to return to the U.S. from Vietnam.

(No. 2411) Applicant received an undesirable discharge for unfitness; two of four AWOL offenses occurred while applicant was in Vietnam.

Aggravating Factor: 5

Evidence the Applicant Committed Offense for Obviously Manipulative and Selfish Reasons- This factor applies in a wide range of factual situations. It indicates that an applicant committed his qualifying offense for reasons other than conscientious opposition to the war, family hardship, or some other reasonable justification. Typically, an applicant to whom this factor applies committed his offense because of personal convenience or whim. This factor can also be present if an applicant goes AWOL to solve a family problem, then fails to return for an unreasonable period of time after the problem is solved. For the factor to apply in full force, there must be reliable evidence demonstrating selfish purposes for the offense.

The Board will first determine whether evidence of selfish and manipulative reasons is present (i.e., whether aggravating #5 has its regular application). If no such evidence is found, a "weak" aggravating #5 will be applied in circumstances where a reasonable inference may be drawn that the offense had been committed for selfish and manipulative reasons. Such an inference may be drawn if there are no apparent reasons in the record for the qualifying offense. However, this "weak" application of aggravating #5 will not arise if any of the mitigating factors #1, #2, #3, #8, #10, or #12 are present, except in unusual circumstances where these mitigating factors bear no relationship to the qualifying offense.

5. Evidence that Applicant Committed Offense for Obviously Manipulative Selfish Reasons.

(No. 29.) Applicant's parents reared their children in the Moorish faith. The Muslim faith was the basis of the applicant's refusal to be inducted. Following high school, applicant became associated with a group of other Muslims, who because of their delinquent ways, were known as Outlaw Muslims. While a part of this group, he participated in a bank robbery.

(No. 1200) Upon return from overseas, applicant requested leave to marry his girlfriend, who was pregnant. Since leave was refused, he felt his only recourse was to leave without permission.

(No. 241) A few days before applicant was due to report to an Army Overseas Replacement Station, his wife threatened to commit suicide unless he promised not to report, as she was positive he was going to Vietnam and would be killed. Applicant subsequently divorced his first wife but did not then return to military control because he had debts he wanted to pay before returning.

(No. 612) Applicant stated that he went AWOL for approximately three months knowing that after that period of time he could come back and request a discharge.

(No. 417) Applicant testified at his court-martial that, before being inducted, he had requested a delay due to his mother's poor mental health and financial condition. He was subsequently inducted. While in basic training applicant applied for a hardship discharge; however, it was turned down because of insufficient documentation. Shortly thereafter, applicant's mother was hospitalized because of a car accident, and he went home on emergency leave. At the end of his leave, applicant did not return to his base because his mother was bedridden and there was no one to take care of her and provide for his younger brothers and sisters. He remained at home for a year and a half and worked under an alias. He stated that he held his obligation to his family higher than his obligation to his country. Applicant has numerous AWOLs in his record.

After returning from his AWOL, he was ordered to another base to complete his disrupted military training. He went AWOL again, never appearing at his new station.

(No. 344) Applicant went UA the first time "just for something to do" he left the second time because he "got involved with a woman." The third and fourth times he went UA were to go home and support his family as he was in a no-pay status with the Marine Corps.

(No. 206) Circumstances of offense. According to testimony the applicant met his wife, a Danish citizen, shortly after arriving in Germany. She became pregnant and he attempted to obtain permission to marry her. When he was unsuccessful he went AWOL on 14 Oct 66. After turning himself in, he was returned to Germany and placed in pretrial confinement. Shortly thereafter, he escaped and went to Sweden, where he applied for asylum. While in Sweden, he had numerous arrests on thefts and narcotic charges, received a sentence of 10 months imprisonment, and was deported back to the U.S.

(No. 243) Applicant began his first AWOL shortly after his being drafted. He had a history of repeated AWOLs. There is little to explain the repeated AWOLs but that he did not want to be in the Army.

(No. 122) On or about 16 Nov 70 he went UA and did not return to Marine Corps control until 29 Nov 73, when he was apprehended by the FBI. He asserted at the trial that he orginally went UA because a man from a rental car agency with whom he had dealt told him to pay the money he owned or he (the rental agent) would "make sure I go to the brig." He used an alias in all activities.

(No. 161) On 18 Sept 69 he went AWOL for over four and one-half years. He stated that he did not have any concrete reason for going AWOL.

(No. 173) Applicant escaped from the stockade by fleeing a police detail. At the time of his escape he was serving a sentence adjudged by a special court for previous AWOL.

(No. 98) On 13 Jan 71, applicant was ordered to report for military induction. On 26 May 71 he requested postponement claiming hardship dependency. After several requests for postponement having been denied, applicant filed to complete processing for induction. He surrendered to the FBI on 29 Jan 73. He insisted throughout his trial that he did not wilfully evade

induction, that he simply failed to conform with Selective Service procedures. He cited numerous family problems as distractions: his father's illness, his mother's unemployment, his sister's drug addiction, and the fact that his immediate family is economically deprived.

(No. 1036) Applicant admits that he never gave much thought to his feelings about war until he received his induction notice. He was given the opportunity to serve as a non-combatant, but admits that he procrastinated until he was no longer eligible.

(No. 1285) In response to Selective Service inquiries, the applicant's parents notified the Board that their son was in Canada, and they did not know where. From about July 1969 until May 1973 the applicant apparently lived and worked in Canada.

(No. 1560) Applicant's explanation for AWOL is that he thought he was being unjustly selected for an overseas assignment. The file does not contain information either supporting or denying this feeling.

(No. 1902) Applicant stated that he went AWOL because he does not like the Army.

Aggravating Factor: 6

Prior Refusal to Fulfill Alternative Service: This factor applies to applicants who failed to perform Draft-Board ordered alternative service which was imposed after applicant had been granted Conscientious Objector Status, or court-ordered alternative service imposed as a condition of probation or parole. This factor applies automatically to members of Jehovah's Witness, Muslim, Quaker, or other religious sects (who cannot abide by Selective Service orders to perform alternative service) only when they refuse to complete alternative service subsequent to a judicial order. Any member of such a religious sect must have had a bona fide religious reason for his offense. This factor does not apply in case of any stated or implied unwillingness to perform alternative service assigned by the Presidential Clemency Board.

6/10/75

(No. 92) Applicant received 2 years probation for a Selective Service violation with the condition that he work 4 hours per week at Public Works. He failed to comply.

(No. 55) Applicant was classified 1-O in 1966 and was ordered to report to his local board for instructions on how to proceed to an alternative service job. He failed to appear at the local board and was convicted in 1973 on a guilty plea to failure to report for alternative service.

(No. 779) Applicant was classified I-O because of his religious beliefs as a Jehovah's Witness. When offered alternative civil employment, he engaged in dilatory tactics and made token appearances on the job.

(No. 560) Applicant was classified 1-A and ordered to report for induction. He reported but failed to submit and was sentenced to 3 years in the custody of the Attorney General, execution suspended, with 5 years probation, 2 years of which were to be in work of national importance. After working for one year at a Pennsylvania hospital, the applicant resigned his job and notified the sentencing judge that he, in good conscience, could no longer cooperate and requested revocation of his probation. The judge, therefore, revoked probation and gave the applicant a one year jail sentence. He was released after serving 10 months in prison.

(No.1027) The applicant's probation officer indicates that his performance of alternative service was "rather poor".

Aggravating Factor: 7

Violation of Probation or Parole: If an applicant violated the probation or parole to which he was sentenced by a Civilian court, or failed to fulfill the conditions attached to a suspended sentence of a military court-martial, this factor may apply. The violation must have been serious enough to have caused the revocation of that probation or parole, or the vacation of the suspended court-martial sentence.

7. Violation of Probation or Parole

(No. 10) Applicant pled guilty to a Selective Service violation, and was placed on three years probation on 30 December 1970. This probation was subsequently revoked for, among other items, failure to comply with the specific terms of his probation "to make a bonda fide effort to enlist, and if that failed, to perform alternate service under supervision for three years."

(No. 1600) Shortly after being placed on probation, applicant was returned to Court due to his failure to perform the ordered work. Probation was reinstated and extended three years from that date. Applicant has complied with the conditions of probation. He was discharged from probation prior to the expiration of the maximum period and his conviction was set aside pursuant to the Youth Correction Act.

(No. 1023) Applicant was convicted of failure to report for induction and sentenced to 5 years probation. Following conviction and while on probation, applicant was arrested and pled guilty to state felony charges. Applicant's federal probation was revoked following his state conviction.

(No. 1671) In early 1974 applicant moved to Arizona without the knowledge of the Michigan probation authorities.

(No. 139) Applicant received a BCD and 6 months confinement for an AWOL offense, but the sentence was suspended for 6 months. When applicant realized his sentence would return him to action duty, he went AWOL again and the suspension was vacated.

Aggravating Factor: 8

Multiple AWOL/UA Offenses: This factor indicates that an applicant went AWOL more than once. Along with all punished AWOL offenses, it also includes all AWOLs not resulting in NJP or court-martial punishment occurring subsequent to the date of the last AWOL which was punished by NJP or court-martial. It does not include unpunished AWOL offenses occurring prior to the last punished AWOL offense. If there is a prior AWOL general or special court-martial conviction, both #1 and #8 are to be marked in aggravation.

Multiple AWOL/UA Offenses: 8

(No. 3444) Applicant received a SCM for two periods of AWOL (1 day each)and one charge of missing movement. He then received a NJP for one AWOL (1 day) another NJP for three AWOLs (1; 1; 10 days), and one NJP for two AWOLs (7; 1 days). He then received a SPCM for two AWOLs (2 months 17 days; 3 months 19 days) He accepted an undesirable discharge in lieu of court martial for one period of desertion (2 yrs. 10 months 20 days), five periods of qualifying AWOL (8 days; 3 months 28 days; 1 mo. 2 days; 2 months 13 days; 6 months 29 days) and one period of non-qualifying AWOL (3 months 28 days). This is a total of 1 period of desertion, 15 periods of qualifying AWOL and one non-qualifying AWOL (total of 5 yrs.)

(No. 1022) Applicant was charged with four periods of AWOL for which he accepted a discharge in lieu of court-martial.

(No. 8255) Applicant was discharged for frequent involvement; one AWOL of 19 days was punished by an SCM. The only other AWOL of 22 days precipitated his discharge.

(No. 6710) This applicant was discharged in lieu of court-martial. There are two qualifying AWOLs--one of 1 month, 7 days, the other of 1 month, 18 days.

(No. 1664) Applicant received an NJP for a 5 day AWOL. He accepted a discharge in lieu of court-martial for two AWOL's of one day, breaking restriction, and disobedience.

(No. 3167) Applicant accepted a discharge in lieu of court-martial for one AWOL. However, he received an NJP, and two SPCM's for previous AWOLs.

(No. 5558) Applicant received a BCD for one 2 month AWOL. He had one NJP for previous AWOL.

Aggravating Factor: 9

AWOL/UA of Extended Length: This factor indicates the combined length of qualifying AWOL offenses. If the last AWOL offense resulted in an NJP or a court-martial conviction, only those AWOL offenses specified in the NJP or court-martial charges are counted in assessing the length of AWOL. If the last AWOL offense did not result in either an NJP or court-martial conviction (even if it directly led to applicant's discharge), then all unpunished AWOL offenses subsequent to the last punished AWOL offense are to be included in the assessment of the length of the AWOL. This factor does not apply if the applicant had been AWOL for a total of two months or less. It is "weak" if the AWOLs total two to six months, and it applies in full force if the AWOLs total over six months.

AWOL/UA of Extended Length: 9

(No. 5554) Applicant had an AWOL of 4 years, 11 months, and 9 days. He received a BCD.

(No. 1022) Applicant had 4 AWOLs of 1 month 28 days; 17 days; 15 days, and 1 month, 18 days, respectively. He took a U.D. in lieu of court martial. (weak)

(No. 4045) Applicant was discharged for unfitness. He had three AWOLs of a total of 5 months, 1 day. (weak)

(No. 8160) Applicant received a UD in lieu of court-martial for an AWOL of 1 year, 2 months, 11 days.

(No. 8167) Applicant had an AWOL of 1 year, 3 months, 12 days for which he received a BCD.

Aggravating Factor: 10

Failure to Report for Overseas Assignment: This factor applies where the applicant has been ordered to report for military duty outside the United States (Vietnam or elsewhere) and goes AWOL before reporting to the overseas assignment. Alaska and Hawaii are not included in this factor. In addition, this factor applies with full force only to a failure to report to Vietnam or any overseas staging area for Vietnam (e.g. Okinawa). For all other overseas assignments (e.g. Germany or Korea), a "weak" aggravating 10 applies.

(No. 1807) One day before applicant was scheduled to be sent overseas, his destination not being clear on the record, he went AWOL.

(No. 3328) Applicant went AWOL when he failed to report to Overseas Replacement Station for assignment to Vietnam.

(No. 3584) During advanced training, applicant decided that he did not want to kill anyone, and he applied for a C.O. status-which was refused. Later, orders came to report to Vietnam. While on leave, before this assignment was to begin, the applicant requested help from his Congressman so that he would not be sent overseas. He also applied for an extension of his departure date on the grounds that his wife was 8 months pregnant and that he was an alien. His request was denied and, consequently, applicant went AWOL.

(No. 507) After entering the Army, applicant requested removal from the Officer Candidate School list, stating that he was opposed to killing and did not believe in the Vietnam war. Shortly thereafter, he formally applied for a conscientious objector separation from the service. He thereafter failed to report to a west coast personnel center for movement to Vietnam.

(No. 8453) Applicant went AWOL before he was scheduled to report for assignment to Germany. (Weak)

(No. 7377) Applicant was wounded in Vietnam and sent to a hospital in Japan and then to a hospital in U.S. There he learned about marital and financial problems; he was also told that he would be sent back to Vietnam after his release from the hospital. He went AWOL from the hospital.

(No. 6665) Applicant was stationed in Germany when he received a Red Cross message about his grandfather. Emergency leave was denied but regular leave was approved. Applicant did not return from leave. (weak)

(No. 1364) Applicant was stationed in Thailand when he went home on emergency leave because of his father's illness. After failing to obtain a hardship discharge or a compassionate reassignment applicant went AWOL rather than report back.

(No. 4366) Applicant was assigned to Vietnam when he returned to U.S. on emergency leave because of his father's impending death. After his father's death he applied for hardship discharge; when it was denied he went AWOL.

(No. 5600) Applicant had just returned from Vietnam when he received orders to report to Korea. He went AWOL because his family could not accompany him. (weak)

Aggravating Factor: 11

Other Offenses Contributing to Discharge: This factor applies only to punished offenses in UD-Unfitness cases. Summary court-martial convictions and NJPs for non-qualifying offenses are included in its scope. This factor does not apply in UD-Chapter 10 (discharge in lieu of court-martial) or punitive discharge cases (e.g. cases in which applicant was discharged by reason of court martial conviction for the qualifying offense).

Other Offense Contributing to Discharge: 11

(No. 8334) Applicant received an undesirable discharge for unfitness, with multiple reasons. In addition to an NJP for leaving his duty post and an SPCM for AWOL, he received an NJP for wrongful possession of 4 liberty cards and an SPCM for false claims against the government.

(No. 4995) Applicant has an NJP for AWOL and two NJP's for AWOL and failure to obey a lawful order. He also received NJP's for disrespect and for assault. He had an SCM for larceny. He received an undesirable discharge for unfitness.

(No. 13926) Applicant received an undesirable discharge for unfitness. He had one NJP for AWOL, one SPCM for 3 AWOLs, and one SCM for AWOL, and stealing. He also had three NJP's for failure to obey an order, one NJP for disrespect, one SCM for disrespect, and an SPCM for disrespect and assault.

Aggravating Factor: 12

Apprehension by Authorities: This factor applies whenever the applicant is apprehended for the last of his qualifying offenses. There must be some evidence of apprehension. If the applicant did not willfully evade authorities prior to his apprehension (e.g. if he lived openly in his home town under his own name), a "weak" aggravating #12 applies. In the absence of sufficient information, neither aggravating #12 nor mitigating #11 (surrender) applies.

Apprehension by Authorities 12

(No. 11067) Applicant was arrested in Chicago for a violation of the Federal Firearms Act while AWOL.

(No. 9434) Applicant was arrested by civilian authorities while he was visiting his parents to discuss his AWOL. He said he was planning to turn himself in. (weak)

(No. 8334) Applicant was apprehended in September 1964. He stated he intended to voluntarily return to military control in December 1964.

(No. 5027) While AWOL applicant was injured in an automobile accident. Civilian hospital authorities turned him over to Navy hospital authorities.

(No. 7172) Applicant's AWOL was terminated by apprehension by the F.B.I.

(No. 3171) Applicant had four AWOL's; for the first three, he voluntarily surrendered; for the last, he was apprehended.

(No. 2891) Applicant was arrested in June 1971 after a grand jury had indicted him in February 1971 for failure to report for his physical.

(No. 2848) Applicant was arrested on June 19, 1968, and transported to the induction center. He refused to be inducted and left the center. He was rearrested December 21, 1968.

(No. 1542) Applicant was aware that he was being sought by authorities after his indictment in July 1973 but did not attempt to evade apprehension. He was arrested in January 1974.

(No. 1039) Applicant refused to report for induction. He was located and arrested by F.B.I. agents.

Mitigating Factors: 1

Lack of Sufficient Education or Ability to Understand Obligations or Remedies Available Under the Law. This factor arises from scores reported by IQ tests and military tests that approximate IQ tests. As a general rule, an IQ score of 80 or below is sufficient for this factor to apply. (Note: the Navy GCT score is roughly half the equivalent IQ score. The Marine Corps GCT and Army GT provide a rough IQ equivalent.) An AFQT score of less than 30 (Categories IV and V) makes this factor apply unless other IQ scores are in the average range or above. However, an AFQT in the 30's (Category III), accompanied by a low GT or IQ score, also makes it apply. This factor can apply even if there is a conflict between high and low scores.

Data other than test scores are sometimes used to establish this factor: for example, a grade-school-level reading ability, or a psychiatrist's statement that an applicant is retarded. The Board has also marked this factor despite high educational achievement or satisfactory military proficiency scores, where there is evidence of a deficiency in ability to understand his obligations. This is particularly true where there appears to be language or cultural difficulties in relating to other individuals.

Mitigating Factors

1. Lack of Sufficient Education or Ability to Understand Obligations or Remedies Available Under the Law.

(No. 216) (A strong No. 1) He completed the 10th grade and quit school because he lost interest. His GT score measures 68 and his AFQT score is 12 (Category IV).

(No. 83) (A strong No. 1) Applicant has a sixth grade education and a Beta IQ of 49.

(No. 583) The applicant completed the 10th grade in public school, but at training school he was returned to the eight grade. His IQ was tested on the Wechsler Intelligence Test for Children at 62. During the present classification his Beta IQ was reported at 84.

(No. 439) This applicant is a high school graduate with three years of college. His GT score is 95, however, his AFQT score is 7, Category V.

(No. 397) He withdrew from school during the 11th grade. His AFQT score is 18 (Category IV), considered low, and his GT score is 93, considered average.

(No. 79) Applicant dropped out of high school at either the ninth or the eleventh grade (record unclear) to help mother with finances. School record indicates recurrent history of class failure and non-attendance. Revised Beta score was 76 and GATB was not administered due to poor reading level. However, it is noted that applicant has a tested "border-line intelligence."

(No. 70) The applicant's mother is approximately 58 years old and reportedly is somewhat primitive, illiterate and slightly retarded. The applicant completed the third grade by 14 and had a Beta score of 69.

(No. 45) The applicant lived in British Honduras until he immigrated to New York City with his mother in 1969. During the two years following he worked in a dental laboratory training program and attended a night high school. In 1970 the applicant attended university on a New York City social services grant. There is no information on academic achievements or IQ tests.

(No. 2091) Though the record is scant as to personal background on the applicant, it is known that he completed 9 years of education and spent 3 years in an institution as an emotionally disturbed child. His GT is 108; his AFQT 78 (Group II).

(No. 1944) Applicant quit school at age 16 after completing the eight grade. Applicant's GT score is 85, and his AFQT score is 32 (Category III).

Mitigating Factors : 2

Personal and Family Problems Either at the Time of Offense or if Applicant Were to Perform Alternative Service. This factor reflects significant emotional, psychological, financial, marital, or other personal difficulties faced by the applicant or his immediate family prior to, at the time of, or after his qualifying offense. His immediate family includes spouse , intended spouse (only if pregnant), children, parents, guardians, grandparents, and aunts and uncles. This factor applies only if these problems contributed to the offense or its continuation, or if these problems would substantially impair an applicant's ability to perform alternative service.

The Board will first determine whether evidence of personal and family problems is present (i.e., whether Mitigating #2 has its regular application). If no such evidence is found, a "weak" mitigating #2 will be applied in circumstances where a reasonable inference may be drawn that the offense had been committed for personal and family problems. Such an inference may be drawn from general circumstances or statements even if there are no specific reasons in the record for the qualifying offense.

2. Personal and Immediate Family Problems Either at the Time of Offense or if Applicant were to Perform Alternative Service.

(No. 710) His father had a bad criminal record and was awaiting trial for murder.

(No. 474) Applicant states that while at his army base he received a letter from his mother stating that his father's eyesight was failing and the family was having financial problems as a result of his father's inability to work. He applied for a hardship discharge, but it was denied. He was transferred back to his home base, where he learned by mail that his father's eye condition had worsened. Subsequently, he left the military control and went home where he worked continuously for a construction company.

(No. 236) (weak No. 2) His mother's health began to fail when the applicant was 16 years of age, and consequently the family was receiving welfare assistance. He reportedly went AWOL in order to help his mother pay bills and to get off welfare.

(No. 506) While he was waiting at an army base, his records were shipped to Europe and he was not paid for 45 days. He reported his family was having financial problems, and he requested Red Cross help and emergency leave to deal with the difficulty. His family was put out of its apartment, was forced to live in its automobile, and had no food.

(No. 7856) Applicant supported his mother, who lived alone. While he was in the service, his wife deserted him, and he went AWOL to find her. Later he found that she had become pregnant by another man.

(No. 7611) Applicant went AWOL for four short periods because his wife was determined to be pregnant by civilian doctors and not pregnant according to military authorities. It was finally determined that she had large cysts on her ovaries.

(No. 2316) Applicant's father died in 1962. Over the past years, his mother's poor health impaired her ability to raise her family and caused her to become an alcoholic.

(No. 3573) Applicant and his siblings are the offspring of a broken home. The parents went through considerable marital difficulties prior to a divorce. Family history indicates that the father committed himself to a psychiatric hospital for 2 weeks and then continued to be an outpatient. The parents were divorced in 1970 and in the same year the mother remarried.

(No. 189) This applicant, who is an American Indian, was raised by his aunt and uncle in a small community in the South. During his AWOL he worked for his tribe earning $2.00 an hour to support his aunt and uncle, the latter being crippled.

(No. 385) Applicant's natural parents died in an automobile accident and he was adopted at the age of 5. His adoptive parents died when the applicant was 14 years old. The applicant is unmarried and has an older sister but he does not know where she lives. He dropped out of school after completing the tenth grade but was encouraged by his principal to join the Army. Consequently, applicant enlisted at the age of 17.

(No. 121) Applicant's first AWOL began because his father was seriously ill and had his leg amputated. Applicant's brother was in prison. Applicant felt he was needed at home. The most recent AWOL was committed because applicant's father was critically ill. Applicant's wife and family were having serious financial and medical problems. His wife has suffered from a disease of the blood cells, and according to applicant, "almost died two times."

(No. 332) Applicant was granted emergency leave in the ten months of service in Vietnam upon verification by the Red Cross that his mother had lapsed into psychiatric depression and had threatened suicide. Her psychiatric crisis was precipitated by the physical trauma and sequelae she sustained from an automobile accident in May 1969. The accident left her with an abnormal thyroid condition, causing enlargement of the gland and cardiac impairment rendering her unable to work.

(No. 3538) Applicant fathered a son born to a Vietnamese woman. He later sought permission to marry her, which was denied. Two days later he received orders to leave Vietnam when he thought he had 4 months left on his tour. After returning to the U.S., he applied to return to Vietnam but was not sent there. He attempted to have his Vietnamese girlfriend and his son brought to the U.S., but was told this was impossible because he was not married to the woman. He stated that he went AWOL in despair.

Mitigating Factor: 3.

Mental or Physical Condition. This factor reflects mental problems or physical diseases and disabilities. The condition must be serious enough to have caused some personal hardship or incapacity. Also, it must have contributed to an applicant's offense or may affect his ability to perform alternative service. Alcholism and drug addiction are covered by this factor. The physical and mental problems may be related to the quality of medical treatment received by the applicant during his military service, but that relationship is not necessary to the finding of this factor. If the physical condition existed before or at the time of enlistment or induction and continued throughout the applicant's military career, both Mitigating Factors #3 and #8 apply. Intelligence defects are not included in this factor.

Mental or Physical Condition

(No. 194) While applicant had been on leave, he was hospitalized for treatment of Infectious Hepatitis. Applicant states that after the diagnosis of infectious hepatitis had been made by a civilian doctor, the doctor had told him that "his resistance was low and that he would live to be 30 years old." Applicant's shock and fear at this statement, coupled with the realization that, if true, he had only a relatively short time to live, precipitated his absence. Defense exhibits admitted at trial confirm applicant's contraction of viral hepatitis and the fact that he was treated at a veterans' hospital after his visit to the civilian doctor.

(No. 309) During boot camp applicant, a Mexican-American, had been subjected to verbal and physical abuse and therefore absented himself. Applicant wept hysterically at the trial when he recalled his experience. Finding training intolerable, applicant sought advice from his mother, who advised him to absent himself. At his trial, applicant introduced an affidavit by a Navy psychologist which states that the applicant is passive, dependent, schizoid. A civilian psychiatrist found the applicant to have "passive, dependent personalities severe." Applicant also introduced testimony of three sucidal attempts.

(No. 510) Applicant explains that he was sent to Korea shortly after enlisting and while there he contracted pheumonia and had a cold his entire duty. Applicant was medically evacuated from Korea to the United States for lung surgery, when a part of one of his lungs was removed.

(No. 342) (weak No. 3) Evidence in the record of trial indicated the applicant was upset and nervous and unhappy with his orders to Vietnam. A letter from a psychiatrist was introduced on behalf of the applicant, and it stated that he was suffering from extreme anxiety brought on by his infantry training and his orders to Vietnam. The letter explains that the applicant had an extreme fear of physical mutilation brought on by his having been in two car accidents and the fact that some of his friends were killed in Vietnam.

(No. 446) Applicant sustained a serious back injury in an auto accident in the midwest. He was treated at both a civilian and a VA hospital. He returned to his base where he attempted to obtain further medical treatment for his back. Applicant became frustrated at the lack of treatment for his injured back and went AWOL. He received medical treatment at home.

(No. 184) Applicant had a history of severe migraine headaches at times of tension and stress. He requested medical evaluation for his headaches during basic training and advanced infantry training. He did not receive medical attention. He then went AWOL.

(No. 208) While AWOL, applicant was involved in an automobile accident, severely injuring his arm. It was then discovered that he was suffering from a thyroid condition which caused him to lose 70 pounds. A psychiatrist concluded that he had the typical thyroid symptoms of depression, irritability, impulsivity, feelings of persecution and low tolerance for stress; these problems were probably precipitated by his induction, illness and confinements, marriage and accident; this was most noticeably shown by his weight loss; and that, although he could distinguish right from wrong, his illness seriously impaired his ability to adhere to the right or to form a specific intent.

(No. 227) Applicant suffers from a physical disability, an apparent birth defect, defined as pseudarthosis of the lumbar spine with fusion at joints L5 S1. The defect causes applicant to have severe lower back pains, preventing him from engaging in any vigorous activity. Applicant mentioned his back problem when he was being examined at the Induction Station. This disclosure was ignored. Such a condition is normally an acceptable basis for rejection at induction. However, applicant was inducted into the Army.

(No. 121) Applicant suffers from a kidney problem which causes blood to be presented in his urine. He is deeply in debt because of his family's medical problems.

(No. 7590) After being discharged, the applicant worked several places, the latest being for a large industrial company. He was hospitalized for Nervous Disorder and remains under out-patient, psychiatric care. His emotional difficulties caused him to terminate the above described employment.

(No. 188) During his combat tour in Vietnam, applicant's platoon leader, with whom he shared a brotherly relationship, was killed while the latter was awakening applicant to start his guard duty. The platoon had set up an ambush point because they had come upon an enemy complex and the platoon leader was mistaken for a Viet Cong and shot by one of his own men. This event was extremely traumatic to applicant, and he experienced nightmares. In an attempt to cope with this experience, applicant turned to the use of heroin to which he became addicted. During his absence, he overcame his drug addiction only to become an alcoholic. After obtaining help and curing his alcoholism, he turned himself in.

(No. 74) Applicant states that he started drinking when he was eleven years old, feels that he has had a serious drinking problem, has attempted to secure assistance, but was not able to follow through. Most of his juvenile and adult offenses appear to be related to excessive drinking.

(No. 3284) Applicant stated, at the time of his discharge request, that he had always had a problem with his heel which bothered him so much during Basic Training that he knew he could not make it. He stated in his medical records that it had been operated on when he was 8 years old.

(No. 3478) Applicant suffered brain damage as a result of a car accident when he was 6 years old, and experiences severe pain in his chest and back, occasionally loses consciousness, his sense of balance, and sight in both eyes.

(No. 3473) Prior to his enlistment, the applicant attempted suicide by shooting himself in his left chest with a rifle. According to Army medical reports, the applicant is emotionally unstable, and one doctor stated that the applicant was not mentally competent during his period of service. After his discharge, the applicant went home to his father who was so concerned about applicant's mental state that he had applicant committed to a state mental institution.

Mitigating Factors: 4.

Employment and Other Activities of Service to the Public. This factor includes employment prior to, during, or subsequent to the qualifying offense. The employment can be, but need not be, comparable to alternative service under the clemency program; for example, it may include hospital work, police work, assistance to the underprivileged, or church missionary work. This factor also includes work performed as a condition of probation. The period of service must be at least several months, but a summer job would be enough to qualify. If wages are paid for the service, this factor is less likely to apply in non-probation cases. The period in which this work is performed under conscientious objector or judicial order not only affects the calculation for baseline alternative service, but also makes this factor apply.

Employment and Other Activities of Service to the Public

(No. 2304) Applicant performed 6 months of alternative service at a state hospital for the mentally retarded.

(No. 3258) As a condition of probation applicant did volunteer work for a local church under the supervision of the pastor. He also volunteered his time to help impoverished potato farmers harvest their crops.

(No. 3384) As a condition of probation, applicant worked full-time for Goodwill Industries, a non-profit organization which provides jobs for disabled citizens. Applicant managed a store for the organization and received only a token salary.

(No. 583) Applicant has spent the bulk of his time, while in and since leaving school, teaching handicapped and impoverished children.

(No. 142) As a civilian, applicant did a great deal of undercover work for the local police and sheriff's department in his home town.

(No. 171) While applicant was AWOL, he worked as the music director for a number of free concerts and shows which were designed to attract underprivileged, inter-city youths and to serve as a preventive measure against juvenile crime and drug abuse. In addition, he contributed his talents to projects of his home town's youth musicians Association.

Mitigating Factors: 5.

Service-Connected Disability. This factor indicates some long-term or permanent physical or mental injury resulting from military duty. Combat wounds are included only if they result in permanent disabilities (in which case both this factor and Mitigating #16 apply). Also drug-related problems arising during military service are not included in this factor (but are included in Mitigating #3). It is not necessary that the injury satisfy the disability requirements of the Veterans' Administration.

Service Connected Disability

(No. 5963) Applicant suffered a serious back injury while in the Army. After a back operation, he was returned to only limited duty.

(No. 9402) The applicant, while undergoing weapons training, was injured while operating a 155 mm Howitzer during a fire mission. He was admitted to an Army hospital for emergency surgery which resulted in the partial amputation of his right middle finger.

(No. 13418) During one of applicants combat missions, a hostile mine explosion caused him to suffer leg and ear injuries. As a result of his hearing loss he was restricted from assignments involving loud noises.

(No. 4048) Applicant was wounded in the leg and has a permanent disability in that one leg is 3 inches shorter than the other.

(No. 6869) Applicant contracted meningitis during his basic training. His legs, particularily his left leg, continued to give him trouble thereafter as a result.

(No. 7094) Applicant lost his index finger of his right hand while changing a tire on the last day of leave before entering aviation mechanic's school. He was not allowed to attend the school.

(No. 11229) Applicant fell into a foxhole and injured his right knee. Surgery was performed and a Medical Board gave him a rating of a permanent minor impairment.

(No. 5233) Applicant was medically evacuated from Vietnam because of malaria and an acute drug induced brain syndrome. Since his discharge, he has been either institutionalized or under constant psychiatric supervision.

Mitigating Factor: 6.

Extended Period of Creditable Military Service. This factor reflects the length of an applicant's military service, excluding time spent AWOL or in military confinement. It bears no relationship to the quality of an applicant's military service (See Mitigating Factor #14). If the service period is less than 6 months, this factor does not apply; if between 6 months and one year, it is "weak"; and if over 1 year, it applies in full force.

Extended Period of Creditable Military Service

(No. 6035) Applicant had 7 years, 11 months, and 12 days creditable service.

(No. 13838) Applicant had 2 years, 11 months, and 22 days creditable service, including tours in Germany and Vietnam.

(No. 9954) Applicant had 2 years, 11 months, 16 days creditable service during which he had 3 NJPs, 1 Summary Court Martial, and 1 Special Court Martial.

(No. 7104) Applicant had 1 year 10 days creditable service, although he was only in the service for 6 months and 14 days before beginning the first of 6 AWOLs for which he was court martialed. The time between AWOLs counted as good time.

(No. 9356) Applicant had 11 months and 10 days creditable service, including 2 months between AWOLs. (weak)

(No. 7842) Applicant had 7 months and 16 days creditable service, 5 months of which occured before the first AWOL. (Weak)

Mitigating Factors: 7.

Tours of Service in the War Zone - This factor is applicable in cases where the applicant has served a minimum of three months in Vietnam or on a Navy Ship that had a sea patrol off the coast of Vietnam. It can be applied where the applicant had not completed a tour, but while on authorized leave from Vietnam assumed an unauthorized absence status. Shorter periods of Vietnam service are not covered, unless the applicant was injured in Vietnam or transferred out of the war zone by the military service for reasons other than serious military or non-military offenses (including AWOL offenses).

Tours of Service in the War Zone

(No. 5144) During his initial enlistment, applicant served as a military policeman and spent 13 months in that capacity in Korea. He then served two tours of duty in Vietnam, as an assistant squad leader during the first tour and as a squad leader and chief of an armored car section during the second.

(No. 4470) Applicant served in Vietnam from 7 Oct. 67 to 11 Nov. 68.

(No. 6941) Applicant served in Vietnam with the 101st airborne as a light weapons infantryman . His tour lasted 4 months, 22 days. From 17 december 1967 until 8 May 1968, he returned to the United States on emergency leave. Applicant stated that he went AWOL because he could not face going back to Vietnam, due to the incompetence of his officers and the killing of civilians.

(No. 9491) The applicant served in Vietnam three months, from 4 September 1967 through 4 December 1967, in a combat status. While in Vietnam, he was given emergency leave back to the United States because of the death of his mother. Applicant overstayed his leave and became AWOL on 5 January 1968. He was apprehended shortly thereafter.

(No. 1817) Applicant saw service in Vietnam for a period of 2 months, 13 days. He served as a combat medic. While in Vietnam, he broke his ankle. He was operated on and was evacuated for rehabilitation.

(No. 9894) Applicant served in Vietnam from 23 August 68 to 3 May 1969 as a mortar specialist and participated in two combat campaigns. On 25 Mar 69 he received fragment wounds necessitating evacuation to Japan and then the U.S.

(No. 8528) Applicant was wounded after 3 months in Vietnam requiring two operations and prolonged convalesence.

(No. 14514) Applicant served aboard the USS Buchanan from Jan. 68 to July 68 off the coast of Vietnam.

Mitigating Factors: #8

Substantial Evidence of Personal or Procedural Unfairness. This factor does not apply to any denial of conscientious objector status (which is covered by Mitigating #9). It does apply to other examples of unfairness on the part of either the Selective Service or the military. The factor includes, but is not limited to, the following situations:

(a) Denial of a Selective Service deferment, exemption, (other than a C.O. exemption), or postponement of induction, on grounds that are technical, procedural, improper, or which have subsequently been held unlawful by the judiciary.

(b) Irregularities resulting in the induction or enlistment of an applicant who should never have been in the military in the first place.

(c) Attempt by the applicant to resort to legitimate remedies (such as hardship and administrative discharges, compassionate reassignments, and emergency and regular leave) to solve his difficulties, followed by a denial of those remedies on technical, procedural, or improper grounds, or grounds which have subsequently been held unlawful by the judiciary.

(d) Improper denial of pay or other benefits.

(e) Failure to receive proper leadership, advice, or assistance.

(f) Unfair military policies, procedures, or actions sufficient to produce a reasonable loss of faith in or unwillingness to serve in the military.

(g) Racial discrimination.

(h) Instructions by a superior to go home and await orders which never arrive.

(i) Inducing or misleading the applicant into requesting a discharge in lieu of court martial, such as by promising him a general discharge.

In any of the above situations, if the legitimate demands of the military outweigh an applicant's personal needs, this factor may not apply.

Substantial Evidence of Personal or Procedural Unfairness

(No. 9421) Applicant was denied both C.O. status and a hardship deferment solely on the grounds that he had applied after receiving induction orders. Applicant had a sincere and deep-rooted philosophy of non-violence which might have qualified him for C.O. status, and his father had both brain damage and a drinking problem which might have qualified him for a hardship discharge. (Mitigating Factor #9 also applies)

(No. 2462) Applicant was classified 1-Y and then reclassified 4-F. Applicant states that he enlisted with the cooperation of his probation officer and the Army recruiter.

(No. 222) The applicant was inducted under Project 100,000. He had stated that he had previously been rejected by the Marines and had failed the Army's mental test, but claimed that his papers had been changed so that he would qualify.

(No. 4498) A chaplain trained in psychology indicated that applicant had a severe character disorder or neurosis when he entered the service. Had it been detected, applicant would not have been allowed to enter the service.

(No. 227) Applicant suffers from a physical disability of the lumbar spine, an apparent birth defect. The defect causes the applicant to have severe lower back pains, preventing him from engaging in any vigorous activity. Applicant mentioned his back problem when he was being examined at the induction station. Hie disclosure was ignored, although such a condition is an accepted basis for rejection for induction.

(No. 13967) Applicant was rejected in 1967 because he could not pass the mental test. At the time he enlisted he had a 3-A (hardship deferment) and could not have been drafted.

(No. 191) Applicant commenced his absence from a leave status because of his father's failing health and his mother's poor economic prospects. He had applied twice for hardship discharges prior to his offense. While AWOL his father died of a stroke on 28 Aug. 1972, leaving his mother with a pension of $22 a month. She was a polio victim and was unable to work.

(No. 165) Applicant stated that he received a letter from his grandmother in which she indicated her need for further financial support and the fact that her home was in a state of disrepair, bordering upon inhabitability. Since his take home pay was insufficient to sustain both himself and his grandmother, he went to his commanding officer for help. Applicant was told that he had no problem and that all he wanted was to get out of the service. As a result, applicant assumed a status of unauthorized absence. During his absence he purchased and fully paid for a home trailer for his grandmother.

(No. 454) Applicant applied for a hardship discharge in January 1967 because his wife was a deaf mute and had given birth to their second child while he was in basic training. His application was denied.

(No. 215) Applicant relates that he went AWOL because he was having family problems. His Army pay record was in disorder, which resulted in his not being able to support his family. He testified that he attempted to obtain an administrative discharge from the Army before going AWOL,but his request was denied.

(No. 13653) While in Vietnam applicant submitted a request for compassionate reassignment to Puerto Rico which was denied because the statement was not substantiated by medical evidence. When the medical evidence was later submitted,the request was denied because the problems were chronic in nature. However, a 30-day leave was granted. When home on leave,applicant discovered that his wife was mentally ill and unable to care for their child. His parents were also having serious emotional problems. Applicant tried again to arrange a transfer but was told he would have to return to Vietnam and iron out the problem there. Applicant remained in Puerto Rico in an AWOL status.

(No. 10316-) Applicant's family was being evicted from their apartment for failure to pay rent caused by the Army's failure to pay the applicant. Applicant requested emergency leave but was denied . He then went AWOL. Applicants second AWOL also occured after his request for leave to settle family problems was denied.

(No. 3168) Applicant was advised to apply for a hardship discharge and was provided assistance in filling out the necessary forms by the Red Cross. When applicant attempted to file the hardship discharge papers, the papers were thrown in the trash by the First Sergeant, who also reprimanded the applicant for being a coward. As a result of such treatment, applicant became disillusioned with the Army and went AWOL.

(No. 10738)- Applicant received a summary court martial for refusing to take part in a parachute jump. Although medical records show applicant had a broken rib, his commanding officer would not excuse him because his medical profile was not available at the time. Applicant had planned to contest his discharge but relented when his commander promised him a general discharge. Applicant received an undesirable discharge.

(No. 172) Applicant attributed his absence to financial and family problems. He was told that he was not receiving any pay because he had been overpaid by $1500 which was allegedly sent to his wife by allotment. Applicant testified that neither he nor his wife received this money and that one of his children was also in the hospital at that time with bronchial asthma.

(No. 4188) Applicant's immediate Commanding Officer recognized applicants severe financial problems and recommended a general discharge. Applicant received a UD.

(No. 4603) A summary statement in applicant's file indicates he signed a letter requesting discharge in lieu of court martial and was advised of the implications. Applicant states he did no such thing but that his commanding officer had told him to sign some papers. His records contain no copy of either a letter requesting discharge or statement acknowledging that he had been advised of his rights and the implications of the discharge. Applicant submits that he would have demanded a trial instead. He appealed his discharge within two days of receiving it.

(No. 10887) Applicant was punished for failing to obey a superior NCO. Applicant states that this NCO had made derogatory remarks about applicant's brother who had died in Vietnam. Applicant felt his punishment was unfair, so he went AWOL.

(No. 397) Upon entering the Army, applicant complained of stomach pains, and it was subsequently discovered that he had a duodenal ulcer Shortly thereafter, his condition worsened and he was hospitalized for ten days. Applicant wanted to remain on the same diet that he was on in the hospital but this was not available at his post mess hall. He was advised by a doctor to eat in the post cafeteria which he did not think was right. Applicant then went AWOL. Applicant recently suffered another bleeding ulcer attack, which required hospitalization.

(No. 305) Applicant served as a rifleman in Vietnam, and he was in combat for almost an entire year. He left Vietnam on his own a few days before his tour of duty was up, because he was not taken out of combat within the customary seven days prior to outprocessing. He felt that his Company Commander was making an exception with him and that it was not justified.

(N6. 4977) Applicant reenlisted at the end of his Vietnam Tour for Japan. He took a routine urinalysis test for narcotics which showed positive; a subsequent hospital test was negative. Nonetheless, applicant was sent to the United States and assigned to a supply squadron there, despite outstanding orders for Japan. He subsequently

began an acrimonious relationship with his First Seargeant who, among other things, refused to support applicant's orders to subordinates, denied him leave to get married, and refused to let him discuss his personal problems with authorities. There was a racial overtone to the problem as applicant was the only black NCO on the Post. Applicant was promised a general discharge but received an undesirable discharge in lieu of court martial.

(No. 229) Applicant was enthusiastic about his induction into the Army, believing that he would have financial security and would receive a technical training. His lack of physical agility and difficulties in reading and writing impeded his progress in basic training. Consequently, he was recycled for his failure to achieve passing training test scores. It took him 9 months to finish basic training (normally a six-week stint). After basic, applicant was sent to another base for advanced individual training as a tank driver. He continued to have learning problems in advanced training. Applicant attributes his absences to frustration and discouragement caused by his inability to learn and to earn the respect of his associates.

(No. 506) Applicant was ordered to report to a new base for assignment to Europe. While he was waiting at Ft. Dix his records were shipped to Europe and he was not paid for 45 days. He reported his family was having financial problems and he requested Red Cross help and emergency leave to deal with the difficulty. His family was put out of their apartment, was forced to live in their automobile, and had no food. He traveled to the Pentagon and was reportedly told to go home to await the results of a telegram to Europe regarding his pay records. He called back twice, but reportedly no one knew of his situation nor had heard of him. He reported he was committed to his course of action, so he continued to stay at home, which resulted in his being AWOL. He found a job but was still forced to declare bankruptcy.

(No. 433) The applicant contracted a rash and fever. He went to Fort MacArthur for medical treatment and was ordered to stay at home until he had recovered. He was told to expect orders following his recovery. No new orders were received, so he contacted his Congressman to find out what had happened. He received a reply that the Army had no information about his movement. He contacted an Army Inspector General following that, but never heard about his orders. There is some evidence he thought he would have been eligible for a medical discharge related to curvature of the spine.

Mitigating Factor: #9

Denial of Conscientious Objector Status. This factor is applied when a draft board or military review board denied a Conscientious Objector classification on grounds that were technical, procedural, improper, or under circumstances previously or subsequently held unlawful by the judiciary. The Board looks for some evidence that the C.O. claim was sincere and not frivolous.

Several Selective Service situations are particularly important. First, prior to June 1970 it was not a valid C.O. claim if the person alleged personal, moral, or ethical values against war or killings not founded on religious tenets. The Welsh case reversed this rule. Applicants denied C.O. status prior to Welsh qualify for this factor, even if no procedural unfairness occurred , on the grounds that the denial of the C.O. claim was "technical".

A "late-blooming" realization of C.O. will be presumed legitimate. As the U.S. Supreme Court stated in Ehlert. "The very assertion of crystallization just before induction might cast doubt upon the genuineness of some claims, but there is no reason to support that such claims could not be every bit as bona fide and substantial as the claims of those whose conscientious objection ripens before notice or after induction." The Board looks closely at the evidence whenever a C.O. claim is made, and if it finds sincerity, this factor applies.

If this factor is found in conjunction with Mitigating Factor #10, a strong presumption exists that applicant will receive a pardon without any alternative service.

Denial of Conscientious Objector Status

(No. 14) Applicant applied for C.O. status after his student deferment had expired. Applicant opposed the Vietnam War on an ideological basis, and he sincerely believed he was a conscientious objector. He did hospital work to support his beliefs, but he failed to comply with time requirements for status changes under the Selective Service Act. Applicant's request for C.O. status was denied, consequently, he refused induction.

(No. 53) Prior to the expiration of his student classification, applicant applied for conscientious objector status. The Board denied this request as it did not feel his beliefs were deeply and sincerely held. The Board also noted that he did not claim C.O. status until he no longer qualified for any form of deferment. The applicant appealed the decision of the local board and the local board's decision was upheld. He was ordered to report for induction, but he refused to submit.

(No. 4217) Applicant was a Jehovah's Witness. Within one month of his registration for the draft, he applied for C.O. status. This petition was denied, presumably because applicant was too much of a novice in Jehovah's Witnesses, not having been baptized nor functioning as a minister of this religion.

(No. 1778) Applicant refused classification as 2-S in view of his moral convictions but had never filed a claim as a conscientious objector until after his refusal of induction. Upon advice of counsel, applicant then requested C.O. status. The Board refused to reopen classification to consider the claim on the grounds that there was no indication of a change of circumstances beyond the control of the registrant.

(No. 10402) For a year and a half after he was drafted, the applicant tried to obtain C.O. status, because he did not believe in killing human beings. He talked to his Captain and the Red Cross. Neither found his aversion to taking human life to be persuasive. The applicant is minimally articulate but states that even if someone was trying to kill him, he could not kill in return. When he had exhausted the applications for C.O. status and was scheduled for Vietnam, he went AWOL.

(No. 7506) Applicant was inducted in 1967. Applicant applied for C.O. status in 1969 and was given orders for Vietnam before his application was reviewed. He complained to his commanding officer who ordered him to Vietnam nevertheless. Applicant then went AWOL to seek outside help. He was advised by civilian counselors that he remain AWOL for at least 30 days so that he would be able to bring to the attention of a court martial the illegality of ignoring the C.O. application. The court martial refused to enter copies of the C.O. application on the grounds that the applicant's copies could not be introduced into evidence because they were not certified (Mitigating Factor #8 also applied)

(No. 8549) After the applicant was inducted, he filed a request for a 1-AO classification for non-combatant duty. He described his belief in support of his C.O. claim by claiming "man does not have the right to kill man," and that "under no circumstances" did he believe in the use of force.

(No. 769) Applicant felt he could not morally participate in war. He did not apply for C.O. status before because he was told he probably would not qualify. Three days after induction he reenlisted for 3 years to go to Preventive Medical Specialist School as an alternative to combatant duty because he felt he owed an obligation to his country. Applicant also had psychological and emotional problems, and the conflict between his moral principles and duty intensified them.

(No. 10402) For a year and a half after he was drafted, applicant tried to obtain C.O. status, because he did not believe in killing human beings. Applicant states that even if someone was trying to kill him, he could not kill in return. He went AWOL when scheduled for Vietnam.

(No. 3158) Applicant became a member of the Jehovah's Witnesses while in the service. He applied for discharge as a conscientious objector, but his request was denied.

(No. 3285) Applicant decided he could not conscientiously remain in the Army, and went to Canada where he worked in a civilian hospital. According to a statement prior to his discharge, applicant states "In being part of the Army I am filled with guilt. That guilt comes from the death we bring. The tremendous ecological damage we do, the destruction of nations, the uprooting of whole families plus the millions of dollars wasted each year on scrapped projects and abuse of supplies. I am as guilty as the man who shoots the civilian in his village...My being part of the Army makes me just as guilty of war crimes as the offender."

Mitigating Factors: 10.

Evidence that an Applicant Acted for Conscientious, Not Manipulative or Selfish Reasons - This factor applies when it can be shown from the statements and actions of the applicant that he did not report for induction or alternate service, or that he went AWOL out of sincere, ethical or religious belief. For example, beliefs of Jehovah's Witnesses or Black Muslims which compel an individual not to perform military service, qualify an applicant for this mitigating factor, as does any evidence of deeply held opposition to the Vietnam War. An applicant need not have formally requested conscientious objector status for this factor to apply.

Evidence that an Applicant Acted for Conscientious, Not Manipulative or Selfish Reasons -

(No. 30) Applicant grounded his resistance to induction on his religious beliefs as a registered Muslim. He stated that conscientious objector status was unacceptable to him and that he would accept imprisonment. He did indicate a willingness to perform alternative service of national importance after conferring with his religious advisor.

(No. 72) Applicant pled not guilty and made no conscientious objection to service on original registration. He initially had an II-S. He then requested C.O. status which was denied. Defendant states that he is a pacifist and objects to killing and to war.

(No. 9157) Because of the applicant's belief that 'peace among human beings is of the ultimate necessity,' he became involved in anti-war demonstrations.

(No. 91) As a Jehovah's Witness applicant applied for and received C.O. status from his local draft board, which subsequently ordered him to perform civilian alternative service. He failed to report for such duty. Applicant contended that he was a minister of the Jehovah's Witness faith, and that to accept alternative service under orders from Selective Service would be to compromise his religious belief.

(No. 2742) While in college, applicant came under the influence of and actually worked with a group of Quakers. It was then that he developed conscientious objection to war.

(No. 11066) Applicant has been described as a person who is both sincere in his beliefs and of uncompromising moral principle; he repeatedly stated his willingness to go to jail for what he believed to be right. Applicant's wife reports that he applied for C.O. status but was refused on grounds that he applied after his induction date.

(No. 9838) Applicant returned to the U.S. from Vietnam with orders to report to Fort Knox to train armor crewmen going to Vietnam. He did not want this assignment because he had "come not to believe in what was going on over there." He said, "I was not exactly a conscientious objector because I had done my part in the war, but I had decided that I could not train others to go there to fight."

Mitigating Factors: 11.

Voluntary Submission to Authorities. This factor indicates that the applicant voluntarily turned himself in, even if only by telephone, when he returned from his last qualifying offense. Whether prior qualifying offenses ended in surrender is irrelevant. For civilians, the factor indicates that an applicant voluntarily surrendered to authorities before his trial, even if he had been a fugitive before his surrender. It applies even if he submits pursuant to a warrant or a subpoena. In the absence of any evidence as to voluntary submission or apprehension, neither aggravating factor #12 (Apprehension) or mitigating factor #11 applies.

Voluntary Submission to Authorities

(No. 4378) Applicant appeared in Court for appointment of Counsel.

(No. 4380) Applicant voluntarily surrendered himself for trial in response to letters from the court and from retained counsel.

(No. 4563) Applicant failed to keep the Draft Board informed of his address from 28 Oct. 1969 to 8 Mar. 1971. He informed the draft Board of his address on 31 May 72 and was arrested 21 June 1972 without offering resistance.

(No. 1407) Upon notification by his parents that a warrant for his arrest was about to be issued, he submitted himself to the U.S. marshal in the locale where he was employed.

(No. 1651) While in New Zealand he decided to return to the U.S. to face the charge of failure to report for induction.

(No. 14040) When AWOL, applicant always went home to his parents who either turned him in or sent him back.

(No. 9783) Applicant was a French Canadian who was drafted. He went to Canada twice. During his second AWOL he wrote to request a discharge and was told he would have to return to the Army. He did so, was charged, and requested a discharge in lieu of court martial.

(No. 9507) Applicant went AWOL seven times, at least one of which was terminated by apprehension. The last AWOL, however, was terminated by surrender.

(No. 11373) Applicant went AWOL and was apprehended by civilian authorities. At his court martial he pleaded guilty but went AWOL again before sentence could be imposed. He surrendered after that AWOL. At the second court martial he was given a BCD.

(No. 11095) Applicant realized he should resolve his difficulties with the military so he voluntarily turned himself in.

(No. 7621) Applicant surrendered to the FBI.

(No. 3483) The applicant telephoned the FBI and indicated that he was then living in the Detroit area. He was then arrested.

Mitigating Factors: 12.

Behavior which Reflects Mental Stress Caused by Combat. This factor is present when an applicant's offense resulted from any emotional or psychological after-effects of being in Vietnam. Some evidence is necessary to document this, such as a traumatic incident or a drastic change in a behavior pattern after leaving the war zone. Combat-induced drug use would qualify an applicant for this factor, if it led directly to his AWOL.

Behavior Which Reflects Mental Stress Caused by Combat

(No. 188) During applicant's tour in Vietnam, his platoon leader, with whom he had a brotherly relationship, was killed while awakening the applicant to start guard duty. This event was extremely traumatic, and applicant began to have nightmares. In an attempt to cope with this experience, applicant turned to the use of heroin and became addicted. Because he was afraid of detection, applicant went AWOL after returning to the U.S.

(No. 5233) Applicant participated in 17 combat operations in Vietnam. He was medically evacuated from Vietnam because of malaria and an "acute drug induced brain syndrome". That his behavior reflects mental stress caused by combat can be inferred from the fact that applicant commenced his AWOL offenses shortly after being released from hospitalization and the fact that subsequent to his discharge he has either been institutionalized or under constant psychiatric supervision.

(No. 4250) When applicant arrived in Vietnam he was a young E-5, without combat experience. He was made a reconnaissance platoon leader, a job normally held by a commissioned officer. Applicant started going out on operations immediately to accomplish this mission he began to take methadrine to stay awake. He noticed the methadrine making a marked change in his personality; he began jumping on people, his nerves were on edge. He started to take opium tinctura to counteract this effect, "to mellow him out", and became addicted. After Vietnam he was transferred to Germany where he kept his addiction secret although the problem was beginning to grow out of control. Applicant was sent back to the U.S. with a 45 day leave authorized. Applicant planned to enter a private German drug abuse clinic within 3 to 4 weeks but the clinic could not accept him immediately. He made the decision to wait in an AWOL status rather than go back as an addict. He was continuously put off until he was just drifting around and finally apprehended by German police.

(No. 4364) Applicant's basic training and AIT records reveal no difficulties adjusting to Army life. Applicant's term in Vietnam was also free of incident, but after returning to the U.S. he was unable to adapt to spit and polish regimentation. Applicant began to believe that his service in Vietnam had been for naught.

Mitigating Factors: 13.

Volunteering for Combat or Extension of Service while in Combat. This factor applies if an applicant either volunteers for a first or subsequent Vietnam tour, volunteers for a combat assignment while in Vietnam, or volunteers for re-enlistment for an extended Vietnam tour.

Volunteering for Combat or Extension of Service While in Combat.

(No. 1626) Applicant served two tours in Vietnam then requested a third tour. At the end of his third tour he extended for 6 months. He went AWOL after his request for a second extension was denied.

(No. 5899) Applicant received his second Honorable Discharge and immediately reenlisted for the specific purpose of being transferred to Vietnam for 3 years.

(No. 12344) While in Germany, applicant volunteered for field duty in Vietnam.

(No. 9650) Applicant worked in supply and transportation in Vietnam for 32 months. He went to Vietnam in August 68. He extended his tour until Jan 70 when he reenlisted for Vietnam.

(No. 9235) Applicant reenlisted for Vietnam. At the end of his normal tour, he extended for six months.

(No. 8806) While in Vietnam, applicant's enlistment expired. He reenlisted, continuing to serve in Vietnam and finally extending for another six months.

(No. 7666) Applicant was extended past his normal date to return from Vietnam.

(No. 6728) Applicant went AWOL when his request to be transferred to Vietnam was denied.

(No. 2819) Applicant re-enlisted for Vietnam but never reported for overseas assignment because of personal problems.

Mitigating Factors: 14

Above Average Military Conduct and Proficiency or Unit Citations - This factor normally indicates the conduct and proficiency (efficiency) ratings received before or after his qualifying offense by an applicant except for those poor ratings which demonstrably resulted from an applicant's AWOL offenses. In measuring this factor ratings are averaged and compared with the standards shown below:

The Army reports conduct and efficiency ratings on a one word description basis (excellent, good, unsatisfactory). Excellent ratings are required.

The Navy reports conduct and proficiency ratings on a scale of 0 to 4.0. Average conduct scores above 3.0 and average proficiency scores above 2.7 are sufficient.

The Marine Corps reports conduct and proficiency on a scale of 0 to 5.0. Average scores above 4.0 are sufficient.

The Air Force reports a series of ratings on a scale of 1.0 to 9.0. Average scores above 7.0 are sufficient.

If the applicant's creditable service is less than six months, this factor does not apply. It applies in a "weak" form for service between six months and one year. Over one year of creditable service makes the factor apply in full force.

Even if the applicant does not have above average ratings, the factor will apply if the applicant earned a unit citation. In the absence of either above average ratings or unit citations, the Board may choose to give weight to letters of commendation, decorations other than for valor, and other indications of applicant's performance.

Above Average Military Conduct and Proficiency and Unit Citations

(No. 11095) Every conduct and efficiency rating of the applicant while he was in the Army was excellent until his first AWOL.

(No. 14046) While in the Army, applicant received three excellent conduct and efficiency ratings.

(No. 7537) While in the Army, applicant had all excellent ratings for conduct and efficiency both in Germany and Vietnam. He also earned the Vietnamese Presidential Unit Citation with palm.

(No. 7298) While in the Army, applicant received excellent conduct efficiency ratings except when he was AWOL. He also received numerous awards and decorations.

(No. 8388) Applicant's average trait rating for performance, appearance, conduct, adaptability, and leadership potential was 3.6 in the Navy, which earned him a promotion to E-3.

(No. 11174) While in the Navy, applicant received one rating of 3.6 in conduct prior to his initial AWOL offense.

(No. 6683) While in the Navy, applicant's enlisted evaluation ratings were 3.2 or higher until the last ones, which ranged from 2.8 to 3.6

(No. 3800) While in the Marines, applicant had average conduct and proficiency ratings of 4.6 before his offenses.

(No. 5384) While in the Marines, applicant's average conduct and proficiency ratings were 4.1 and 3.9 respectively.

(No. 4470) Although applicant only received average conduct and proficiency ratings of 3.8, while in the Marines he was awarded a Presidential Unit Citation.

(No. 9406) No conduct/efficiency ratings are reported, but applicant has one letter of commendation in his file.

Mitigating Factors: 15.

Personal Decorations for Valor - Some decorations (such as the Medal of Honor, Distinguished Service Cross (Army), Navy Cross, Air Force Cross and Silver Star) are awarded only for valor. Other decorations (such as the Legion of Merit, Bronze Star, Air Medal, and Commendation medals) may be considered as decorations for valor only if accompanied by a "V" device, which is normally recorded immediately after the award in the personnel files. Vietnamese awards for gallantry are included under this factor if awarded to the applicant (normally indicated by a palm device). Unit citations and awards without the valor citation fall under Mitigating Factor #14. Purple Hearts qualify the applicant for Mitigating Factor #16. The Awards memo (CLR Vol 1, #1) provides further clarification of this factor.

Personal Decorations for Valor

(No. 1751) Applicant received the Silver Star.

(No. 10612) Applicant received the Bronze Star with "V" device and Oak leaf cluster and the Vietnamese Gallantry Cross with Bronze Star.

(No. 14488) Applicant received the Army Commendation Medal with "V" device.

(No. 7621) Applicant received the Naval Commendation Medal with "V" device for combat.

(No. 14075) Applicant received the Vietnam Gallantry Cross with Palm.

Mitigating Factors: 16.

Wounds in Combat - This factor indicates that an applicant suffered bodily injury while in Vietnam. A Purple Heart is sufficient to bring about this factor, but is not necessary if the wound is otherwise corroborated. Any injury, however slight, suffices to bring about this factor. If the injury resulted in a permanent disfigurement or disability, then Mitigating Factor #5 also applies.

Wounds in Combat

(No. 11013) Applicant served in Vietnam from 26 March 1967 to 22 March 1968 as an infantryman and grenadier. On 12 May 1967, applicant was wounded when he found an enemy booby-trapped grenade . He told the men in his platoon to get down but the grenade exploded in his hands as he attempted to destroy it. He was awarded the purple heart.

(No. 8386) Applicant states he received "light wounds"to his left leg due to an exploding shell. Hospital personnel removed small fragments from the affected area and he returned to duty immediately. He suffered very little pain and no after effects or complications.

(No. 8739) While in Vietnam, applicant was wounded by contusions to the body when the Sheridan Tank he was driving on a combat operation hit a hostile mine.

(No. 7863) Applicant was wounded in action, but never received a purple heart.

(No. 14046) As a result of hostile action, applicant received a fragment wound for which he received the purple heart.

(No. 13348) During his first tour in Vietnam applicant was wounded in the hand, necessitating his evacuation to the U.S.

(No. 9894) Applicant received fragment wounds to his face, right forearm and thumb from an exploding shell while in combat. He was evacuated to Japan and then to the U.S. Upon his return to the U.S., he was restricted in the type of assignments he could perform: no handling of heavy equipment, no overhead work, or no pushing or pulling. He continues to complain of numbness and pain in his right forearm and thumb.