

**VETERAN AND NONVETERAN
SHOULD BE SUBJECT TO EQUAL
EMPLOYER SCRUTINY**

Mr. KOCH. Mr. Speaker, I am today introducing legislation with Senator George McGovern to make it an unlawful employment practice for an employer to request papers or information from an employee or applicant for employment with regard to the military service of that individual, unless such a request is directly job related or involves a question of prior criminal convictions. I would like to provide a brief history of the problems which have resulted from the availability of discharge papers and other military service records to employers, and which have led us to call for this legislation.

In 1974, Representative Les Aspin and I introduced legislation to eliminate the application of separation program numbers—SPNs—on discharge papers, as did Senator McGovern on the Senate side, and to require that they be treated as confidential in a veteran's file. Over 50 Members of the House cosponsored that bill and, through the concerted efforts of many House and Senate Members, the administration changed its policy in the matter, voiding the necessity for legislative action.

At the time of discharge, a serviceman is given a discharge paper, DD form 214, Report of Separation from Active Duty. Prior to 1974, that form contained a numerical code specifying the reason for release. The code, called separation program numbers—SPNs—could penalize a veteran for life. The code numbers and what they designate, while intended to be confidential, became publically known. The consequent invasion of privacy is still unended for many a veteran with a prejudicial SPN. Employers who were able to get copies of the number designation often used this information in an adverse way, undoubtedly preventing veterans from obtaining jobs when they were either equally or better qualified than nonveteran applicants. These veterans were not guilty of an offense under military or civilian law. They were not permitted a hearing before an administrative board—nor were they permitted counsel. Some of these SPNs have such disparaging connotations as "bedwetting," "homosexual tendencies," "inaptitude," and "apathy." In every case the SPN was the result of an arbitrary decision made by others, and the serviceman could have been unaware of its meaning or significance.

Though they were successful in having the SPNs removed from discharge papers, our goal was not accomplished. Although the DD 214 no longer contains a SPN, many employers are aware that a narrative summary describing the reason for separation and reenlistment eligibility is available upon request to the veteran. When an employer knows someone has been in the service, some will either ask the veteran to furnish a copy of the narrative summary or have him sign a routine waiver allowing the company to get the summary. Of course, many veterans who were discharged

prior to 1974 are not aware that SPNs exist on their discharge papers and, therefore, have failed even to obtain an expurgated copy of the DD 214, to which they are entitled.

Then there are the problems caused by the character of the discharges themselves. These are honorable, general, undesirable, bad conduct, and dishonorable. Only the latter two kinds follow a court-martial; the other are administrative in nature. The administrative discharges have been criticized from many standpoints. For example, under the administrative procedures of the general and undesirable discharges, the veteran is not entitled to the legal defense he would automatically receive in the case of a court-martial where the rules of evidence apply and where the government must prove its case. In 1969 legislation adding even greater due process to the court-martial system was enacted.

Ironically, that reform is one of several factors which has caused the average number of general and undesirable discharges to jump from 33,000 in 1969 to 81,000 in 1972, as officers do not use the courts-martial process because of inability to prove their case in a court subject to the rules of evidence. Other reasons range from political dissension and drug abuse to friction with one's immediate superior. SPNs may have been removed from post-1974 discharge papers, but the character of the discharge remains. That discharge can label an employee or applicant for employment as undesirable, though acts which earn administrative discharges are often neither criminal nor serious.

Our purpose in introducing this legislation is to provide the veteran with equal protection under the law while at the same time allowing industry and the society at large to protect itself from undue risk. For example, questions for the purpose of ascertaining whether a veteran has been convicted by court-martial would be permitted under our bill. We have deemed this to be allowable because neither the Federal Government nor the States consider requests regarding prior convictions to be an unfair employment practice, per se. Under our bill, the criminal history of both the veteran and the nonveteran would simply be subject to equal scrutiny. Questions relating to work experience and training in the Armed Forces, as they are job related, would also be permissible under our bill. Some veterans might wish to present their discharge papers to an employer as a positive recommendation for employment, and nothing in our bill denies the veteran that right. But an employer could not demand such records, nor could he coerce a veteran into providing the company with a routine waiver.

Whether by SPN code, narrative summary or character of the discharge, documentation of an individual's inability to conform to military life can haunt him throughout his future career. I believe that veterans are entitled to at least the same consideration for employment or promotion which we have guaranteed to the nonveteran. The indiscriminate use of military records in determining a per-

son's fitness for employment constitutes an invasion of personal privacy, as well as being an unfair employment practice, and should be prohibited.