

EFFECTIVE DATE OF AWARDS OF DEATH COMPENSA-  
TION IN CASES OF PERSONS MISSING IN ACTION

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Mr. CLARK of Missouri, from the Committee on Finance, submitted the following

## REPORT

[To accompany S. 1508]

The Committee on Finance, to whom was referred the bill (S. 1508) to provide effective date of awards of death pension or compensation in cases of persons missing or missing in action, to authorize payment of such benefits from the date of death of such person, as reported or found by the Secretary of War or the Secretary of the Navy, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The proposed legislation was recommended by the Administrator of Veterans' Affairs in a letter to the President of the Senate, which fully explains the purposes of the bill and which is included below as a part of this report. The committee amendment makes the legislation effective as of December 7, 1941.

The letter from the Administrator of Veterans' Affairs is as follows:

VETERANS' ADMINISTRATION,  
Washington, September 20, 1943.

The PRESIDENT OF THE SENATE,  
The Capitol, Washington, D. C.

SIR: There are forwarded herewith two copies of a draft of a proposed bill entitled "A bill to provide effective date of awards of death pension or compensation in cases of persons missing or missing in action to authorize payment of such benefits from the date of death of such person as reported or found by the Secretary of War or the Secretary of the Navy, and for other purposes," with the request that same be introduced and referred to the appropriate committee for consideration.

The purpose of the bill is to prevent concurrent payments of death pension or compensation and family allowance under the act of June 23, 1942 (Public, No. 625, 77th Cong., as amended) or allotment of pay under the act of March 7, 1942 (Public, No. 490, 77th Cong., as amended) or of active service pay, exclusive of the 6 months' death gratuity, over the same period in any case where a factual determination of the date of death made by the Veterans' Administration as required by law or regulation for the purpose of making payments of death pension or compensation benefits under laws administered by the Veterans' Administration, antedates the date of a finding of death made by the War Department or

Navy Department pursuant to section 5 of Public, No. 490, Seventy-seventh Congress, March 7, 1942, as amended by Public, No. 848, Seventy-seventh Congress, approved December 24, 1942. (Nothing herein stated applies to insurance contracts as benefits thereunder accrue from actual date of death.)

Section 5 of Public, No. 490, Seventy-seventh Congress, as amended by Public, No. 848, Seventy-seventh Congress, December 24, 1942, provides, as to persons missing or missing in action, for a review of the case by the Secretary of War or Navy, as case may be, and for a continuance of the person's missing status after a period of 12 months has elapsed from the date of commencement of such absence if the person may reasonably be presumed to be living, or for a finding of death by the service department concerned. The law requires, when a finding of death is made, that it shall include the date upon which death shall be presumed to have occurred for the purposes of termination of crediting pay and allowances, settlement of accounts, and payment of death gratuities and that such date shall be the day following the day of expiration of an absence of 12 months, or in cases in which the missing status shall have been continued, a day to be determined by the head of the department. This finding of death, in other words, is a date arbitrarily fixed pursuant to law for the purposes above stated.

At the time the proposed amendment to section 5 of Public, No. 490, Seventy-seventh Congress, was under consideration (S. 2917; H. R. 7844, 77th Cong.), which thereafter was enacted into law as Public, No. 848, Seventy-seventh Congress, December 24, 1942, I pointed out in a report dated December 4, 1942, to the Director, Bureau of the Budget, who advised that there would be no objection to submission of the report to the Senate Committee on Naval Affairs, that the proposed amendment would authorize the head of the service department concerned to make a finding of death without any evidence to support such finding other than absence of the individual for a period of 12 months or more and that such finding would not relieve the Veterans' Administration of the necessity of determining the fact of death in claims for benefits under laws administered by the Veterans' Administration. To overcome this objectionable feature of the bill, I proposed a substitute provision which would have authorized continuance of the absentee in a missing status where there was no affirmative evidence of his death, otherwise, the issuance of a report of death based upon satisfactory evidence which would have been sufficient for the Veterans' Administration to accept as it does other official reports of deaths occurring in service. This proposal was rejected by the War and Navy Departments on the ground that they specifically desired authority to make such finding when the circumstances under which the absentee disappeared made it appear probable to the head of the department that the absentee should be presumed to be dead, such presumptive finding being necessary in order that they might close and settle their accounts. In lieu of the proposal of the Veterans' Administration, the War and Navy Departments agreed to a modification of the pending bill and assured the Veterans' Administration that information available in connection with adjudication of claims would be furnished the Veterans' Administration in every case where practical and proper to do so and, eventually, in all cases.

Because of the strong conviction of the War and Navy Departments concerning the need of authority to make presumptive findings of death under the circumstances covered by the proposed amendment of section 5 of Public No. 490, Seventy-seventh Congress, and the admitted necessity of permitting such departments to function on a practical basis, I reluctantly concluded I should not oppose enactment of the bill. I felt confident at that time that both in principle and from the standpoint of good administration, the recommendations of the Veterans' Administration were sound and that experience would make clear the necessity for further legislation on this subject. After the enrolled bill was received, conferences were held, and after the bill was approved further conferences, at the direction of the President, were held among representatives of the War and Navy Departments, the Bureau of the Budget, and the Veterans' Administration. As a result, certain agreements were reached as to operation under the statute with a clear understanding that the Veterans' Administration would recommend such amendatory legislation as might be found necessary with respect to the laws pertaining to veterans. This recommendation is made accordingly.

In the adjudication of claims for death benefits under laws administered by the Veterans' Administration neither the provisions of section 5 of Public, No. 490, Seventy-seventh Congress, as amended, nor the agreement of February 4, 1943, contemplate or require of the Veterans' Administration that a person who disappeared under circumstances which would lead to the reasonable conclusion

that such person died on the date of disappearance should be carried as missing solely because his body was not recovered, nor does a finding by the service department concerned that such person has been missing for a period of 12 months or more and that he died at the end of that period preclude the Veterans' Administration from examining the facts including the finding to determine for purposes of the laws administered by it the date of death. In adjudicating such claims, the date of death, in the majority of cases, is important. For example, awards of death pension granted to dependents of deceased veterans of World War II are effective as of the day following the date of death of the veteran if claim is filed within 1 year following date of death, otherwise the award becomes effective from date of claim. Under regulations promulgated pursuant to law prescribing the evidence required to establish proof of death, it is provided that in cases wherein proof of death cannot be furnished, a finding of fact of death may be made where death is otherwise shown by competent evidence. The best evidence, which from the nature of the case is supposed to exist, must be furnished in these cases. Hence, in cases of persons reported as missing or missing in action, where a finding of death has been made by the service department concerned, the Veterans' Administration in adjudicating claims of death benefits is required to make a factual determination of the date of death, and in many instances this factual determination based upon the evidence will antedate the finding of death made by the service department concerned for Public, No. 490 purposes only. Further, in a rather large number of cases the report of death is made by the service department promptly upon receipt of proof of death but months after actual date of death allowances having been paid in the meantime. Death pension or compensation in such cases under the present law is payable from date of death of the veteran if claim is filed within 1 year thereafter and may cover the same period during which family allowance, allotment of pay or active service pay has been paid or is payable by the War or Navy Departments.

During the First World War, allotments and family allowances were originally authorized under sections 200 to 210 of the act of October 6, 1917 (40 Stat. 402-405). Section 307 of that act provided:

"Sec. 307. That compensation shall not be payable for death in the course of the service until the death be officially recorded in the department under which he may be serving. No compensation shall be payable for a period during which the man has been reported 'missing' and a family allowance has been paid for him under the provisions of Article II."

A similar provision was contained in section 207 of the World War Veterans' Act, 1924, as amended (U. S. C., title 38, sec. 496). In the absence of a similar provision in the law now in force, prohibiting payment of death pension or compensation benefits for any period during which a person in service has been reported as missing or missing in action and family allowance, or allotment of pay or active service pay has been paid or is payable, the Veterans' Administration under the circumstances described in the preceding paragraph would make payments of death pension or compensation to the dependents of such person and concurrent payments of family allowance or allotment of pay or active service pay.

The proposed legislation will meet the purpose heretofore stated by providing that as to death pension or compensation the effective date of an award under Public Law No. 2, Seventy-third Congress, shall be the day following the date fixed by the Secretary of War or the Secretary of the Navy as the date of death in his report of death or finding of death, if claim be filed prior to 1 year after report or finding of death is made. Such provision will prevent concurrent payments of death pension or compensation and pay and allowances, allotments or family allowances over the same period where the date of death as factually determined by the Veterans' Administration antedates the report of death or finding of death by the Secretary of War or the Secretary of the Navy and claim is filed within 1 year from date of death as factually determined under laws administered by the Veterans' Administration. It would also remove an injustice which would result where payments of death pension or compensation would have to be made effective, under existing law, from date of claim due to the inability of the claimant to file claim within 1 year from the date of death as factually determined by the Veterans' Administration where such factual finding made antedated the finding of death by the service department by more than 1 year. It is further provided that death pension or compensation under the laws administered by the Veterans' Administration shall not be payable to any dependent for any period for which such dependent has received, or is entitled to receive, an allowance, allotment, or service pay of the deceased. This provision

is to cover cases where allowance, allotment or service pay has been paid for any period after the date of death fixed by the Secretary of War or the Secretary of the Navy.

Due to the number of casualties in the present war in the category of missing persons, all of which give rise to potential claims for death pension or compensation benefits, the need for such legislation is apparent, and it is urgent that such legislation be secured at the earliest possible date.

The enclosed draft of bill has been prepared in collaboration with representatives of the War and Navy Departments and those Departments join in recommending its enactment.

Advice has been received from the Bureau of the Budget that there would be no objection to this proposed legislation being submitted to the Congress for its consideration.

Respectfully,

FRANK T. HINES, *Administrator.*

