

ETHEL HUDSON MORRISON

JUNE 1 (legislative day, MAY 28), 1953.—Ordered to be printed

Mr. MILLIKIN, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 754]

The Committee on Finance to whom was referred the bill (S. 754) for the relief of Ethel Hudson Morrison, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

Authorizes and directs the Administrator of Veterans' Affairs to assume that Ethel Hudson Morrison, aunt of the late Peter B. Bost, stood in loco parentis to said Peter B. Bost, and pay to Mrs. Morrison the remaining 58 unpaid monthly installments of his national service life insurance policy.

GENERAL STATEMENT

Mr. Bost entered active service in the United States Marine Corps on May 29, 1942, and died in active service on July 29, 1943. On June 26, 1942, he applied for and was granted \$10,000 national service life insurance for which he designated his mother, Mrs. Jennie Estelle Bost, as principal beneficiary without naming a contingent beneficiary. On June 8, 1943, he executed a beneficiary designation naming his aunt, Mrs. Ethel Hudson Morrison, as one of the contingent beneficiaries. On June 23, 1943, the Veterans' Administration wrote a letter to his commanding officer informing him that the persons named as contingent beneficiaries did not appear to be within the permitted class of beneficiaries under law and requested that the insured execute a new designation of beneficiaries. No reply was received to that letter; however, in the last letter written to his mother before his death he reiterated his desire to have his aunt named as contingent beneficiary. He further stated that the officer in charge had given him assurance that the law would soon be amended to bring secondary

beneficiaries within the eligibility class; and had allowed him to so designate his aunt and her son as contingent beneficiaries.

The insured died on July 29, 1943, and settlement was authorized in favor of the principal beneficiary, his mother Mrs. Jennie Estelle Bost. During her lifetime she received 62 installments before her death on September 6, 1948. Inasmuch as secondary beneficiaries were not brought within the permitted class until August 1946, the designation of Mrs. Morrison as contingent beneficiary was not recognized. Had the insured died after that date, there would have been no question in regard to the payment of the remaining 58 unpaid installments to Mrs. Morrison as stipulated by the insured.

Although your committee is cognizant that Mrs. Morrison has not legally established her claim that she stood in loco parentis to the insured, it is of the opinion that the following pertinent facts relative to her close association with the insured warrant favorable consideration: Mrs. Morrison moved into the home of the parents of the insured when he was born. She continued to live there and care for him until he entered college. The father of the insured died when he was 2 years old and the mother became the proprietor of a country store which necessitated her absence from the home and the full responsibility for the care of the son was assumed by Mrs. Morrison. After he entered college Mrs. Morrison was married but continued to give him money, gifts, and look after him as if he were her own son. When he became desperately ill she accompanied his mother to Washington and remained with him until his death.

In approving this measure it is not the intention of your committee to set a precedent with respect to similar private bills unless the facts involved parallel this particular case.

The report from the Veterans' Administration is as follows:

VETERANS' ADMINISTRATION,
Washington 25, D. C., March 9, 1953.

HON. EUGENE D. MILLIKIN,
Chairman, Committee on Finance,
United States Senate, Washington 25, D. C.

DEAR SENATOR MILLIKIN: This has further reference to your request for a report by the Veterans' Administration on S. 754, 83d Congress, a bill for the relief of Ethel Hudson Morrison, which provides as follows:

"That, in the administration of the National Service Life Insurance Act of 1940, as amended, the Administrator of Veterans' Affairs is authorized and directed to assume that Ethel Hudson Morrison, aunt of the late Peter B. Bost, stood in loco parentis to the said Peter B. Bost (file XC-3276509), who died in military service on July 29, 1943, and that the said Ethel Hudson Morrison was designated sole contingent beneficiary of the national service life insurance policy of the said Peter B. Bost."

S. 754 is identical with S. 784, 82d Congress, which was pending before your committee at the close of that Congress, and on which a Veterans' Administration report was furnished under date of April 16, 1951.

The records indicate that Peter B. Bost was born on December 20, 1905, entered upon active duty with the United States Marine Corps on May 29, 1942, and died in active service on July 29, 1943.

On June 26, 1942, he applied for and was granted \$10,000 national service life insurance, effective July 1, 1942, for which he designated Jennie Estelle Bost as principal beneficiary without naming a contingent beneficiary. On June 8, 1943, while the insured was stationed at Marine Barracks, St. Juliens Creek, Va., he executed a beneficiary designation wherein he designated Jennie Estelle Bost, "mother," as principal beneficiary. At the same time, he designated Ethel Hudson Morrison, "aunt," and William McKee Morrison, Jr., "cousin," as contingent beneficiaries. By letter dated June 23, 1943, the Veterans' Administration informed the commanding officer, United States Marine Corps, St. Juliens Creek, Portsmouth, Va., that the persons named as contingent beneficiaries

did not appear to be within the permitted class of beneficiaries and requested that the insured execute a new designation of beneficiaries on the appropriate form which was enclosed. There is no record that a reply from the insured was received. However, by communication dated July 26, 1943, addressed to the Veterans' Administration by the commanding officer, Marine Barracks, St. Juliens Creek, Va., information was furnished that the insured was transferred from that command on July 12, 1943, and that prior to the time of such transfer the insured was in a state of indecision as to what he wanted to do regarding the contingent beneficiary designation.

The insured died on July 29, 1943, and settlement was authorized in favor of the principal beneficiary, Jennie Estell Bost, whereby she was to receive the monthly installment of \$76.70, commencing with the first installment due July 29, 1943, and to continue throughout her lifetime with 120 such installments guaranteed. During her lifetime the principal beneficiary received 62 installments and on the date of her death, September 6, 1948, there remained 58 unpaid installments certain. A claim for these remaining unpaid installments certain was filed by Mrs. Ethel Hudson Morrison, aunt of the insured and one of the designated contingent beneficiaries. After full development of the evidence, her claim was denied by the office of original jurisdiction on the ground that she did not stand in loco parentis to the insured and was not within the permitted class of beneficiaries of national service life insurance maturing prior to August 1, 1946.

Mrs. Morrison filed an appeal and after a full hearing and consideration of all the evidence of record, the Board of Veterans' Appeals by decision dated July 15, 1949, affirmed the prior action of denial of her claim on the ground indicated. This constituted final administrative denial of her claim. Portions of the decision of the Board of Veterans' Appeals are quoted as follows:

"The natural mother, in a claim for pension or compensation which was under date of November 19, 1943, stated that the insured at all times during his minority was a member of her household and under her parental control. In letters received after the insured's death, the natural mother clearly expresses the strong affection she held for him and indicates clearly that she was not under the impression that she had relinquished her status as his mother.

* * * * *

"The evidence in this case shows that during the serviceman's entire minority his natural mother was living and that the appellant lived with them from several days after his birth until her marriage in 1919. During this time she was unquestionably an affectionate aunt to her nephew, the insured. * * * However, the relationship of loco parentis, due to the obligations and rights that arise out of such a relationship, is the result of intention to assume the parental status and the discharging of parental duties. In this case it is incumbent upon the appellant to show that she displaced the mother in the parental relationship with the intention of assuming the obligations of a mother. The natural mother clearly did not feel that the appellant had displaced her in the natural order of things as is shown by the statements in her claim for pension and in her letters received subsequent to the insured's death. It is not shown by the evidence that the insured felt that the relationship between him and his natural mother had been severed. * * * As stated above, the appellant is shown to have been an affectionate aunt to her nephew but there is no evidence of an intention on her part to assume the responsibilities of any other relationship, nor is the existence shown of any situation which is not explainable by and consistent with the relationship and affection usually existing between an aunt and nephew. It is now shown that the natural mother abandoned the veteran or otherwise relinquished her parental control."

It may also be noted in this regard that Marine Corps records disclose that the serviceman had given the name of his mother, Mrs. Jennie E. Bost, as emergency addressee and also had designated her as beneficiary in connection with the payment of death gratuity.

Clearly Mrs. Morrison's relationship as aunt of the insured is not within the permitted classes of beneficiaries set forth in section 602 (g) of the National Service Life Insurance Act of 1940 (54 Stat. 1010), as amended (38 U. S. C. 802 (g)), which applies to insurance maturing prior to August 1, 1946. This section provides in pertinent part:

"(g) The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent, brother, or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided * * *."

Section 601 (f) of the National Service Life Insurance Act of 1940 (56 Stat. 659), as amended (38 U. S. C. 801 (f)), provides:

"The terms 'parent,' 'father,' and 'mother' include a father, mother, father through adoption, mother through adoption, persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year, and a stepparent, if designated as beneficiary by the insured."

In view of the fact that it was determined that Ethel Hudson Morrison did not stand in loco parentis to the insured she does not come within the permitted class of beneficiaries, and there is no authority under existing law to authorize settlement in her favor.

In accordance with the provisions of section 617 of the National Service Life Insurance Act of 1940, as amended (38 U. S. C. 817), in the event of a disagreement as to any claim arising under such act, subject to certain conditions and limitations, suit may be brought either in the United States District Court for the District of Columbia, or in the district court of the United States in and for the district in which the claimant resides. Although the records of the Veterans' Administration contain correspondence from Mrs. Morrison which indicates that consideration was being given to institution of a suit to test the correctness of the decision of the Veterans' Administration in her case, it does not appear that such action has been taken.

The bill, if enacted into law, would be a conclusive legislative determination (contrary to fact) that the aunt, Ethel Hudson Morrison, stood in loco parentis to the insured and accordingly, is within the permitted class of beneficiaries of his national service life-insurance policy, and that she was designated sole contingent beneficiary of the policy. Any payment of the proceeds of such policy made under these circumstances would constitute a gratuity. The Veterans' Administration is not aware of any justification for payment of such a gratuity.

The provisions of S. 754 clearly indicate that if it is enacted into law the Administrator of Veterans' Affairs would be required to effect settlement of the remaining unpaid installments certain in favor of Mrs. Morrison. Since it has been determined that death of the insured was not traceable to the extra hazards of military or naval service, the national service life insurance fund (a trust fund for the benefit of policyholders and their qualified beneficiaries), would become obligated for the liability which would arise thereby. This interpretation is inevitable in the absence of any provision in the bill, or in existing law, authorizing payment of such liabilities from the national service life insurance appropriation. In view of the contract rights of existing policyholders, it is questionable constitutionally whether their rights may be impaired by the imposition of the potential liability which the bill would establish.

Enactment of the proposed legislation would be discriminatory in that it would single out the individual case of Mrs. Morrison for special legislative treatment to the exclusion of other cases which must be denied where the same or similar circumstances exist. Further, enactment of the bill might be a precedent for requests for like treatment in similar cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to the committee.

Sincerely yours,

CARL R. GRAY, JR., *Administrator.*

