

DISABILITY AND DEATH BENEFITS FOR RESERVISTS

SEPTEMBER 16, 1964.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 11332]

The Committee on Finance, to whom was referred the bill (H.R. 11332) to authorize certain veterans' benefits for disability or death resulting from injuries sustained prior to January 1, 1957, by reservists while proceeding directly to or returning directly from active duty for training or inactive duty training, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

The bill would amend existing law to provide that any individual who was injured or killed on his way to or from active duty for training or inactive duty training prior to January 1, 1957, would be covered with the disability and death benefits now administered by the Veterans' Administration. In the case of disability, the monthly wartime payments of compensation range from \$20 a month for a 10-percent disability to \$250 for total disability for wartime cases, and even higher rates for the most severely disabled. Peacetime rates are 80 percent of the wartime rates. Death benefits are payable (dependency and indemnity compensation) for both wartime and peacetime service at the rate of \$120 a month plus 12 percent of the base pay of the man who served.

Under existing law individuals are given so-called portal-to-portal coverage for the purposes of both disability and death benefits for diseases contracted or injuries sustained by persons proceeding to or returning from extended active duty. In the case of active duty for training or inactive duty training, coverage is provided, for disability or death benefit purposes for injuries sustained while proceeding to or returning from such training only if the injury occurred on or after January 1, 1957. There is no particular significance to this date other

than that it was the effective date of Public Law 84-881 which provided the dependency and indemnity compensation program and extended the portal-to-portal coverage for that benefit prospectively. The Veterans' Administration, in its official statement, reproduced later in this report, states "all reservists who may have been injured while proceeding to or returning from such duty should be given the benefit of the portal-to-portal provision." The committee heartily concurs in this conclusion and the recommendation of the agency.

While the Veterans' Administration is unable to provide a definite estimate of cost, it does state that it "would be relatively small."

This legislation was formally recommended by the Veterans' Administration in a letter dated May 12, 1964, copy of which follows:

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., May 12, 1964.

HON. JOHN W. McCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith a draft bill to authorize certain veterans' benefits for disability or death resulting from injuries sustained prior to January 1, 1957, by reservists while proceeding directly to or returning directly from active duty for training or inactive duty training, with the request that it be introduced in order that it may be considered for enactment.

Until 1919, the laws providing for the grant of service-connected benefits required that the disability or death upon which they were predicated must have been incurred while the veteran was in an active duty status. In most cases, active duty was held to begin when the individual was finally accepted for service and took the oath, and to end when he was issued a discharge certificate. However, this presented a problem in a number of cases in which a draftee or enlistee contracted a disease or was injured after he reported to the draft board or military forces and was ordered to camp, but before he was examined at the camp and formally "accepted and enrolled for active service." A similar problem arose during the period between the time the veteran was given a discharge certificate and when he reached his home.

In a series of laws beginning with section 7 of Public Law 104, 66th Congress, December 24, 1919, and sections 24 and 25 of the World War Veterans' Act, 1924, June 7, 1924, compensation benefits were made available to persons who contracted diseases or suffered injuries or died as a result of having contracted diseases or sustained injuries during the preinduction or preenlistment period. These laws were applicable only to the World War I period, and included draftees, enlistees, and members of the National Guard. This protection was later extended to World War II and Korean conflict inductees, etc., by Public Law 300, 78th Congress, and Public Law 463, 83d Congress, respectively; 38 U.S.C. 106(b) now extends such coverage to all persons so disabled.

Legislation to grant comparable coverage for diseases and injuries sustained during the immediate postdischarge period was first enacted in 1956, by the Servicemen's and Veterans' Survivor Benefits Act, August 1, 1956—which law established the new dependency and

indemnity compensation benefit, effective January 1, 1957. Section 102(12) of that law provided that a veteran shall be deemed to continue on active duty immediately following his discharge for the time required to proceed to his home by the most direct route, and in any event until midnight of the date of his discharge. This provision, however, was applicable only with respect to death benefits and was restricted to individuals discharged or released on or after January 1, 1957; 38 U.S.C. 106(c) extended this principle to cases involving disability as well as death and, under the amendment of July 1, 1961 (Public Law 87-102), it is now applicable regardless of when the disease or injury was incurred.

On the other hand, such complete portal-to-portal coverage has not been extended to individuals performing active duty for training or inactive duty training. Generally "active duty for training" is the 2-week period per year of active duty performed by a reservist or member of the National Guard, and "inactive duty training" most commonly constitutes one night a week of military drill or other type of duty. In accordance with the provisions of title 38, United States Code, injuries or diseases sustained during active duty for training can be service connected, but only injuries incurred during inactive duty training can be service connected.

Prior to the enactment of the Servicemen's and Veterans' Survivor Benefits Act (effective January 1, 1957) the law did not provide any portal-to-portal coverage with respect to either of the mentioned types of training duty. Section 102(6)(B) of that law provided that an individual who died from an injury (but not a disease) incurred while proceeding to or returning from either type of training would be deemed to have been on such active or inactive duty training when injured. But again, the law applied only to death cases and was limited to cases in which the injury which resulted in death was sustained on or after January 1, 1957. When title 38, United States Code, was enacted by Public Law 85-857, section 106(d) thereof extended the portal-to-portal principle to cover injuries of living veterans. However, it retained the restriction of the earlier law that the injury must have been incurred on or after January 1, 1957.

To summarize the foregoing, under existing law individuals are granted coverage, for purposes of both disability and death benefits, for diseases contracted or injuries sustained while proceeding to or returning from extended active duty, regardless of when that duty was performed. However, with respect to active duty for training or inactive duty training, individuals are covered for purposes of disability or death benefits, for injuries sustained while proceeding to or returning from such training duty only if the injury occurred on or after January 1, 1957.

There is no particular significance to the date, January 1, 1957. As noted above, it was the effective date of the new death benefit (dependency and indemnity compensation) program and was later merely carried forward by the provision of Public Law 85-857 which extended the portal-to-portal principle in the case of veterans performing training duty, to disability benefits. The Veterans' Administration is aware of no impelling reason for differentiation between training duty performed before January 1, 1957, and such duty performed on or after that date in the application of this principle. Moreover, in view of the emphasis the military departments have placed on their

reserve training programs ever since the close of World War II, we believe that all reservists who may have been injured while proceeding to or returning from such duty should be given the benefit of the portal-to-portal provision.

Since we have no information as to the number of individuals who suffered disability or death prior to January 1, 1957, while en-route to or returning from training duty, we are unable to estimate the cost of the proposed legislation. It is believed, however, that the number would not be large and that the cost of the measure would be relatively small.

The Bureau of the Budget advises that there is no objection from the standpoint of the administration's program to the submission of the proposed legislation to the Congress.

Sincerely,

J. S. GLEASON, Jr.,
Administrator.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

SECTION 106, TITLE 38, UNITED STATES CODE

§ 106. Certain service deemed to be active service

(a) (1) Service as a member of the Women's Army Auxiliary Corps for ninety days or more by any woman who before October 1, 1943, was honorably discharged for disability incurred or aggravated in line of duty which rendered her physically unfit to perform further service in the Women's Army Auxiliary Corps or the Women's Army Corps shall be considered active duty for the purposes of all laws administered by the Veterans' Administration.

(2) Any person entitled to compensation or pension by reason of this subsection and to employees' compensation based upon the same service under the Federal Employees' Compensation Act must elect which benefit she will receive.

(b) Any person--

(1) who has applied for enlistment or enrollment in the active military, naval, or air service and has been provisionally accepted and directed or ordered to report to a place for final acceptance into such service; or

(2) who has been selected or drafted for service in the Armed Forces and has reported pursuant to the call of his local draft board and before rejection; or

(3) who has been called into the Federal service as a member of the National Guard, but has not been enrolled for the Federal service; and

who has suffered an injury or contracted a disease in line of duty while en route to or from, or at, a place for final acceptance or entry upon active duty, will, for the purposes of chapters 11, 13, 19, 21, 31, and 39 of this title, and for purposes of determining service-connection of a disability under chapter 17 of this title, be considered to have been

on active duty and to have incurred such disability in the active military, naval, or air service.

(c) For the purposes of this title, an individual discharged or released from a period of active duty shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for him to proceed to his home by the most direct route, and in any event he shall be deemed to have continued on active duty until midnight of the date of such discharge or release.

(d) For the purposes of this title, any individual—

(1) who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(2) who is disabled or dies from an injury incurred [after December 31, 1956,] by him while proceeding directly to or returning directly from such active duty for training or inactive duty training, as the case may be;

shall be deemed to have been on active duty for training or inactive duty training, as the case may be, at the time such injury was incurred. In determining whether or not such individual was so authorized or required to perform such duty, and whether or not he was disabled or died from injury so incurred, the Administrator shall take into account the hour on which he began so to proceed or to return; the hour on which he was scheduled to arrive for, or on which he ceased to perform, such duty; the method of travel employed; his itinerary the manner in which the travel was performed; and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this subsection, the burden of proof shall be on the claimant.

