

Calendar No. 1636

70TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 1607

ESTATE OF HERBERT TOLL

JANUARY 31 (calendar day, FEBRUARY 2), 1929.—Ordered to be printed

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

REPORT

[To accompany S. 4938]

The Committee on Finance, to whom was referred the bill (S. 4938) granting war-risk insurance to the estate of Herbert Toll, having had the same under consideration, report it back to the Senate without amendment and recommend that the bill do pass.

It is adopted as the view of the committee that, as expressed in Treasury Decisions 48 and 54, referred to below, policies of insurance are in full force and effect during the 31-day period of grace provided for and the insurance money is absolutely payable when, as in the present case, the insured died within that period.

Following is a letter from the Director of the Veterans' Bureau reporting on the merits of the bill:

JANUARY 14, 1929.

Hon. REED SMOOT,
*Chairman Committee on Finance,
United States Senate, Washington, D. C.*

MY DEAR SENATOR SMOOT: Further reference is made to your letter of December 17, 1928, transmitting a copy of S. 4938, a bill granting war-risk insurance to the estate of Herbert Toll, for comment and report.

The bill proposes that, in the administration of the World War veterans' act, 1924, as amended, the war-risk insurance policy of Herbert Toll (XC-260475) shall be held to have been in force on the date on which he was killed in action.

The records of the bureau show that Herbert Toll enlisted in the military service on June 9, 1917, and was killed in action in Siberia on June 25, 1919.

While in the service, on February 1, 1918, Mr. Toll applied for and was granted war-risk term insurance in the amount of \$10,000, designating as beneficiary thereof: "Self." While still in the service, on April 29, 1919, the veteran requested cancellation of his insurance. Insurance premiums were deducted from his pay through April, 1919.

On December 23, 1920, the brother of the veteran made inquiry relative to the war-risk insurance carried by Mr. Toll during his service and was advised that the insurance having been canceled on April 29, 1919, was in a state of lapse at the date of death of the insured and, therefore, no insurance benefits were payable in this case.

Upon a review of the file on December 20, 1924, it was held that under the provisions of Treasury Decision 48 and Treasury Decision 54, promulgated September 29, 1918 (copies of which are inclosed for the information of the committee), the insurance did not lapse until 31 days next succeeding May 31, 1919, and accordingly the insurance was in force at the date of death of the veteran. The brother was advised of this fact and was requested to execute bureau Form 541, in order that it might be determined to whom the insurance was properly payable. Final evidence was not received in the bureau until subsequent to the amendment to section 303 of the World War veterans' act, approved March 4, 1925, which provided for the payment of insurance in a lump sum to the estate of the insured in those cases where no beneficiary had been designated or where the designated beneficiary died prior to receiving the full 240 installments. The interested parties were informed of this fact and requested to take proper steps toward the appointment of an administrator to receive the insurance and to furnish the bureau with a certified copy of letters of administration and a certificate showing that the court had been advised of the amount payable and that proper bond had been furnished.

Before payment of the insurance in this case was actually made the Comptroller General, in a decision dated April 27, 1926 (A-13532), held that Treasury Decisions 48 and 54 could have no retroactive effect. In view of this ruling the bureau is without authority to pay the insurance to the estate of Herbert Toll. The question as to whether or not the bureau may legally award insurance in this case, in view of the decision of the United States Circuit Court of Appeals for the Fifth Circuit in the case of John Thomas Baker *v.* United States, was submitted to the Comptroller General for a decision under date of September, 1928. On October 1, 1928, the Comptroller General rendered a decision (A-24372), copy of which is inclosed for the information of the committee, holding that insurance payments should not be made in the case of Herbert Toll.

It is believed that the committee will be able to determine for itself from the above report the merits of the bill and the propriety of its passage.

A copy of this letter is inclosed for your use.

Very truly yours,

FRANK T. HINES, *Director.*

