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SENATE

} REPORT
} No. 1850

GRANTING PENSIONS AND INCREASES OF PENSIONS TO NEEDY WAR VETERANS

APRIL 20 (calendar day, MAY 23), 1938.—Ordered to be printed

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

REPORT

[To accompany H. R. 8729]

The Committee on Finance, to whom was referred the bill (H. R. 8729), granting pensions and increases of pensions to needy war veterans, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The bill has two definite objectives: (1) To liberalize the definition of permanent and total disability; (2) to restore the \$40 rate for permanent total non-service-connected disability which was reduced to \$30 per month under the Economy Act (Public, No. 2, 73d Cong.)

The important question involved in this legislation is the method or the yardstick to be used in determining the question as to whether or not a veteran is permanently and totally disabled. Under the present laws and regulations, the Administrator of Veterans' Affairs is authorized to rate, as far as practicable, on a basis of average impairments in earning capacity. This authority has been construed by the Veterans' Administration to permit the consideration of cases on an individual, rather than on an average basis, when the veteran is unemployable as a result of any severe disability. It is the opinion of the Veterans' Administration that the substitution of the provision "to earn a support by the performance of manual labor" for the language "to follow a substantially gainful occupation" would effect no change in practice, for the reason that the term "manual labor" as used in the Spanish-American War Pension Acts is defined by the Veterans' Administration as "work of a useful character requiring physical or mental effort, but does not necessarily mean work such as work with a pick and shovel."

The practice of the Veterans' Administration with reference to determination of permanent total disability is governed particularly by paragraphs 1155 and 1166 of Veterans' Administration Regulations and Procedure, which read as follows:

1155. (A) When there are two or more ratable disabilities, combined ratings, following the tables and rules prescribed in the appropriate schedule, are authorized

under the 1933 schedule or the 1925 schedule, whichever is applicable in the individual case.

(B) Under Veterans' Regulation No. 1 (a), part IV, a combined rating under the 1933 schedule is authorized as between ratings for one or more disabilities resulting from wartime service and ratings for one or more disabilities resulting from peacetime service.

(C) For the purpose of determining the existence of permanent and total disability under Veterans' Regulation No. 1 (a), part III, evaluations for diseases or injuries service-connected under Veterans' Regulation No. 1 (a) parts I and II, may be combined with evaluations for diseases or injuries not shown to be connected with active military or naval service.

(D) Pursuant to section 202 (15), World War Veterans Act, 1924, as amended, reenacted by Public, No. 141, Seventy-third Congress, a veteran of the World War, as defined by Public, No. 141, Seventy-third Congress, suffering from a disability of compensable degree connected with World War service, who is entitled to a pension for a service-connected disability by reason of other military or naval service, is entitled to the evaluation and combination of his compensable and pensionable service-connected disabilities in accordance with the Schedule of Disability Ratings, 1925, and extensions thereto. Therefore when a World War veteran served in other war or peacetime service, it is necessary to evaluate his disabilities incident to such other service under the Schedule of Disability Ratings, 1925, and the Schedule for Rating Disabilities, 1933, provided, however, that no evaluations will be made pursuant to the latter schedule for disabilities incident to service prior to April 21, 1898.

(E) Ratings for disabilities acquired in peacetime service may not under section 202 (15), World War Veterans' Act, 1924, as amended, be combined with a rating for a disability acquired prior to April 6, 1917, merely because the compensation being paid for the latter disability on March 19, 1933, is protected by section 28, title III, Public, No. 141, Seventy-third Congress.

(F) Where there is doubt as to whether a veteran, who served during a war period and a peacetime enlistment, is entitled to combination and payment at wartime rates because of disabilities connected with peacetime service, or there is doubt as to the manner of combination, the case will be submitted to the veterans' claims service, central office, for review and appropriate advice (January 25, 1936).

1166. (A) Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation; provided, that permanent total disability shall be taken to exist when the impairment is reasonably certain to continue throughout the life of the disabled person.

(B) The following will be considered to be permanent total disability: The permanent loss of the use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or permanently bedridden.

(C) Total disability ratings, however, may be assigned without regard to the specific provisions of the rating schedule, except as outlined herein, when the disabled person has for a period of 6 months or more, been unable, by reason of impairment of mind or body to follow a substantially gainful occupation, that his physical or mental disabilities are deemed by the rating agency to be sufficiently severe to produce this occupational incapacity, and that, if there is only one disability, this disability shall be ratable at 70 percent or more under the rating schedule, and if there are two or more disabilities, there shall be at least one disability ratable at 60 percent or more, and sufficient additional disability to bring the combined rating to 80 percent or more; provided, that ratings of total disability will not be predicated on single disabilities for which the rating schedule fixes a rating of less than total for maximum severity. Nothing contained in this paragraph will prevent a total disability rating for such disabilities and combinations of disabilities, including loss of use of two extremities, or loss of sight of both eyes, or being helpless or bedridden, and other disabilities, as are assigned specific ratings of 100 percent for the severity in question; but if the disabled person is employable, exact compliance with the terms of the schedule for such ratings will be required. When total disability under this paragraph is under consideration the veteran will be required to submit a statement in affidavit form covering his employment, or unemployment, over a period of at least 1 year.

(D) The authority granted the Administrator under Veterans Regulation No. 1 (b) for purposes of part III, Veterans Regulation No. 1 (a), to classify as permanent total those diseases and disorders, the nature and extent of which, in

his judgment, will justify such a determination, will be exercised on proper submission under Regulations and Procedure R-1142 (January 25, 1936).

(E) With actual progressive deterioration of the vision, so that the disabled person becomes blind in both eyes, or so nearly blind as to qualify under Regulations and Procedure R-1166 (C), a permanent and total rating will not be withheld, notwithstanding that the underlying diagnosis is a congenital defect, provided the other requirements for the benefit are met. It is to be borne in mind that the essential requirement in this regard is actual reduction of the vision, so that the person, formerly able to see well, or fairly well, has become, as a result of physical changes, occupationally blind (October 14, 1936).

The Veterans' Administration reports that in view of the existing authority and the comment, as stated above, the same result would obtain if the proposed amendment were confined only to section 2 of the committee amendment which increases the rate from \$30 to \$40 a month.

Under the existing regulations, claims are rated on the basis of average as well as on the basis of individual impairments in earning capacity. It is the belief of the committee that in substituting the language "individual to earn a support by the performance of manual labor" does and will liberalize the existing regulations and believes that the language in the present law "average person to follow a substantially gainful occupation" is a bit more restrictive than the language used in this amendment. This viewpoint was strongly presented and urged before the committee by the representative of the Veterans of Foreign Wars and it is the opinion of the committee that the more flexible authority contained in the language of the committee amendment should be included in the existing regulations.

In no manner, can this bill, as amended, be considered as a general service pension. It is primarily a bill, first, to restore to needy war veterans, a benefit which was taken away under the provisions of the Economy Act, and second, to liberalize the method of determining permanent total disability. This bill will affect Spanish War and World War veterans. It is estimated that 43,100 veterans will receive an increase under the provisions of this bill, at an annual increased cost of \$5,182,000 for the year of 1939.

