

INCLUDING AS SPANISH-AMERICAN WAR SERVICE UNDER LAWS ADMINISTERED BY THE VETERANS' ADMINISTRATION CERTAIN SERVICE RENDERED BY STEPHEN SWAN OGLETREE DURING THE SPANISH-AMERICAN WAR

JULY 27, 1955.—Ordered to be printed

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

REPORT

[To accompany H. R. 6232]

The Committee on Finance, to whom was referred the bill (H. R. 6232) to include as Spanish-American War service under laws administered by the Veterans' Administration certain service rendered by Stephen Swan Ogletree during the Spanish-American War, having considered the same, report favorably thereon with an amendment, and recommend that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert:

That, for the purpose of laws administered by the Veterans' Administration, it shall be considered that Stephen Swan Ogletree was honorably discharged from Company G, Second Regiment Alabama Volunteer Infantry, after having rendered at least seventy days active military service therein during the Spanish-American War. No benefit shall be afforded hereunder for any period prior to the date of receipt of an application therefor filed subsequent to the date of enactment of this Act.

EXPLANATION OF AMENDMENT

The bill, in the form in which it passed the House of Representatives, if enacted into law would be ineffectual to provide any benefits to Mr. Ogletree under laws administered by the Veterans' Administration. Spanish-American War pension laws in addition to the requirement of 70 days' service, require an honorable discharge. This amendment perfects the bill.

GENERAL STATEMENT

After a careful review of the case file in the Veterans' Administration, it was apparent to the Committee on Finance that Mr. Ogletree did render service in Company G, 2d Alabama Volunteer Infantry,

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in 1898. In view of the conflict in testimony on file, the committee feels that an equitable solution would be to resolve the doubts in favor of Mr. Ogletree and recommend that the minimum of at least 70 days' service be recognized as Spanish-American War service for purposes of laws administered by the Veterans' Administration. The committee gave considerable weight to the affidavit of the Honorable William W. Brandon, former Governor of Alabama, who served as a major in the 2d Alabama Volunteer Infantry. He states that Mr. Ogletree reported to Company G at Camp Clark, Ala., was detailed to recruiting duty and served for some time. Governor Brandon states this company was moved to Spring Hill, Ala., and he was informed that Mr. Ogletree was discharged at Spring Hill for physical disability.

The House report on this bill sets forth more detailed information and is as follows:

PURPOSE

The purpose of the proposed legislation is to provide that, for the purpose of laws administered by the Veterans' Administration, it shall be considered that Stephen Swan Ogletree, who was a member of Company G, 2d Regiment, Alabama Volunteer Infantry, had at least 90 days' active military service during the Spanish-American War as of the date of enactment of the bill.

STATEMENT OF FACTS

Ogletree contends that during the the Spanish-American War he was a member of Company G, 2d Alabama Regiment, from Eufaula, Ala., his hometown; that he was a member of that company and went with that company to Mobile, Ala., and later was sent back to Eufaula as a recruiting officer to build up that company's strength, and that he was a member of that company for more than 90 days.

If his contentions are true, then Ogletree has been denied for many years the rights that he would have been entitled to, if his claim of facts had been accepted. Several private bills for relief of Ogletree have heretofore been filed, viz, H. R. 12543, 71st Congress; H. R. 6361, 72d Congress; H. R. 3609, 79th Congress; H. R. 1099, 83d Congress.

None of the above bills were enacted. Indeed, from the record before this subcommittee, none of them were passed on favorably or unfavorably. A study of the record furnishes abundant reason for the failure of any subcommittee to come to a conclusion for the sole reason that the evidence is practically impossible to reconcile. The record shows that Ogletree is now about 76 years of age, and this subcommittee realizes that if this matter is to be determined in the lifetime of Ogletree, this matter must be resolved and determined without further delay.

The question to be determined is: Was Ogletree a member of Company G, 2d Regiment, Alabama Infantry, in 1898, and, if so, did he as such a member have at least 90 days' active military service during the Spanish-American War? If that question is answered affirmatively, he was eligible for pension under the act of 1926 (44 Stat. 382), granting pensions to soldiers and sailors of the war with Spain, and was on January 7, 1928, the date he made application for pension, entitled to those pension rights. If he was as claimed, he has lost pension rights from January 7, 1928, to the date of the passage of this bill.

Ogletree has been denied pension rights on the premise that "an exhaustive search of the records of the Department of the Army shows that Ogletree's name does not appear on any muster roll or any other record that would indicate that he served with Company G, 2d Regiment, Alabama Volunteer Infantry, after it was mustered into the service of the United States, May 31, 1898."

This premise is taken from the report from the Department of the Army. The Department of the Army says, however, "After a long search a stub of a transportation request was found in a box entitled 'Miscellaneous record of regimental correspondence.'" This was the stub of a request for transportation, dated "Mobile, Ala., May 19, 1898," and directed to "The L. & N. RR. Co." for "John H. Nowland and 26 men" for transportation from "Mobile, Ala.," to "Eufaula, Ala." The following remark was recorded on the stub: "Recruits Co. G, 2 Regt. Ala. Vols. Rejected by Medical Board." On the reverse of this

stub were the names "John H. Nowland and Stephen S. Ogletree" and 25 other names including the name "James W. Winslette." It was the view of the Department of the Army, and a plausible conclusion, that Ogletree, Nowland, Winslette, and the other names recited on the back of the stub were released for medical disability before the company was mustered into the United States Army, and that this explains why the name of Ogletree has never appeared on any muster roll. This is persuasive indeed to this subcommittee.

But there is most persuasive evidence in favor of the contention of Ogletree. Congressman Andrews, the author of this present bill, testified before this subcommittee that he found in the papers of his predecessor, Congressman Steigel, who had introduced a similar bill for Ogletree, a notation to this effect: "I know of my own knowledge that this man served. I can almost testify to his service." Congressman Steigel, like Congressman Andrews, knew Ogletree. These Congressmen, along with Ogletree, lived their lives in a rural community, and the statement of Congressman Steigel reflects a personal knowledge that this subcommittee must take note of. It is evident that Congressman Steigel knew enough about this Eufaula company and Ogletree that he felt that he could almost swear positively that Ogletree was correct. In the file in the Bureau of Pensions will be found 10 affidavits, executed in 1927 and 1928 by former members of the 2d Regiment, Alabama Volunteer Infantry, and these affidavits are to the effect that Ogletree did serve as contended and that he served for more than 90 days, as required by law. Congressman Andrews testified before this subcommittee regarding the witnesses in behalf of Ogletree, and it appeared that Congressman Andrews knew L. H. Brazila, a member of that company; also W. T. Sheehan, who in later years was editor of the Montgomery Advertiser; also William W. Brandon, who later was Governor of the State of Alabama, and Congressman Andrews testified that it was his recollection that Brandon was a major in the outfit that Ogletree served. Indeed the affidavit of Brandon recites: "I served as captain of Company F and major of the 2d Alabama Infantry, United States Volunteers, and was with that regiment from the time it was mustered in to the time it was mustered out and Company G was commanded by J. H. Brazila," and that W. T. Sheehan was first sergeant in Company G, and he saw him there. Brandon testified that he knew Ogletree did serve with Company G. Sheehan made affidavit that Ogletree was a member of that company at the same time that he was, and that Ogletree remained with that company for a length of time that in his judgment exceeded 90 days, and that he knows as a matter of fact that Ogletree was in the service of the United States Army for 90 days or longer and that Ogletree's name should appear on the roster, because he called the roll, and knows the claimant Ogletree to be the identical Ogletree who was in that service.

What is going to be done with the testimony of 10 men of high repute who say that Ogletree did serve the length of time that would entitle him to the right he is asking for? Also, what is going to be done with the statement of Congressman Steigel, heretofore quoted above? It is plain that Congressman Andrews, from having lived in the section Ogletree resides in, and information acquired thereby, believed that Ogletree has been unjustly dealt with, and now should have relief.

This conflict in testimony could never be resolved beyond a reasonable doubt. On the other hand, this committee does not believe that is the test. Surely a preponderance of evidence is all that should be required, that is to say, that the evidence required should only be sufficient to incline the minds of reasonable men to one side of the issue, rather than to the other. It certainly is true that many men have served their country and their names have not appeared on the rolls. Indeed, members of this committee take judicial cognizance that such things have occurred, and have occurred without culpable fault on the part of the military. If Ogletree is granted this right now, unless he is exceedingly fortunate in living beyond his normal span of life, it will cost the Government little. If he is denied this right now, he may go to his grave knowing that he was a victim of unfortunate circumstances. This committee resolves the doubt in favor of Ogletree, and recommends that this bill be amended so that said Ogletree shall, from the enactment of this bill, be considered a member of Company G, 2d Regiment, Alabama Volunteer Infantry, and had at least 90 days' service during the Spanish-American War, and recommends its favorable consideration.

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DEPARTMENT OF THE ARMY,
Washington 25, D. C., August 27, 1953.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 1009, 83d Congress, a bill to include as Spanish-American War service under laws administered by the Veterans' Administration certain service rendered by Stephen Swan Ogletree during the Spanish-American War, and requesting a report on the merits of the bill.

This bill provides as follows: "That, for the purpose of laws administered by the Veterans' Administration, it shall be considered that Stephen Swan Ogletree, who was a member of Company G, Second Regiment, Alabama Volunteer Infantry, had at least ninety days active military service during the Spanish-American War."

A thorough search of the records of the Department of the Army fails to disclose that Stephen Swan Ogletree served in the military service of the United States during the Spanish-American War.

On January 7, 1928, Mr. Ogletree filed with the Department of the Interior, Bureau of Pensions, a declaration for pension under the act of May 1, 1926 (44 Stat. 382), entitled "An act granting pensions and increase of pensions to certain soldiers and sailors of the war with Spain, the Philippine insurrection, or the China relief expedition, to certain maimed soldiers, to certain widows, minor children, and helpless children of such soldiers and sailors, and for other purposes." Mr. Ogletree alleged that he was born in Quitman County, Ga., on October 4, 1879; that he enlisted in Company G, 2d Regiment, Alabama Volunteer Infantry, at Eufaula, Ala., in 1898, under the name "S. Swan Ogletree"; and that he was discharged at Spring Hill, Ala., in 1898.

Mr. Ogletree's application for a pension was rejected on May 18, 1928, on the ground that his name did not appear on the rolls of Company G, 2d Regiment, Alabama Volunteer Infantry.

In support of his declaration for a pension, Mr. Ogletree also filed 10 affidavits, executed in 1927 and 1928 by former members of the 2d Regiment, Alabama Volunteer Infantry. The affidavits, although they do not identify the events set forth therein by day, month, or year, each tell substantially the same story. Resolving all ambiguities and contradictions in favor of Mr. Ogletree, these affidavits state that Company G, 2d Regiment, Alabama Volunteer Infantry, was commonly known as the Eufaula Company; that Mr. Ogletree was a member of Company G at the time the company left Eufaula, Ala., "when called out for service by the United States War Department" during the Spanish-American War; that Mr. Ogletree accompanied Company G to Camp Clark near Monroe Park, Mobile County, Ala.; that he was accepted by the physical examiners at Camp Clark; that, while at Camp Clark, the commanding officer of Company G, Capt. J. R. Barr, sent Mr. Ogletree, together with others back to Eufaula, Ala., for recruiting duty; that "he remained out on this duty for some length of time which in my judgment extended beyond 90 days"; that the company moved to a new camp at Spring Hill, Ala.; that Mr. Ogletree rejoined the company at either Camp Clark or Spring Hill; and that, just prior to the time the company was ordered to Miami, Fla., Mr. Ogletree was rejected by the medical examiners at Spring Hill, on account of being underweight.

An exhaustive search of the records of the Department of the Army shows that Mr. Ogletree's name does not appear on any muster roll or other record that would indicate that he served with Company G, 2d Regiment, Alabama Volunteer Infantry, after it was mustered into the service of the United States on May 31, 1898. Furthermore, said search fails to disclose that Mr. Ogletree ever had any Federal military service with any component of the Army of the United States during the Spanish-American War. After a long search a stub of a transportation request was found in a box entitled "Miscellaneous record of regimental correspondence." This was the stub of a request for transportation, dated "Mobile, Ala., May 19, 1898", and directed to "The I. & N. R.R. Co." for "John H. Nowland and 26 men" for transportation from "Mobile, Ala.," to "Eufaula, Ala." The following remark was recorded on the stub:

"Recruits Co. G, 2 Regt. Ala. Vols.
"Rejected by Medical Board."

On the reverse of this stub were the names "John H. Nowland and Stephen S. Ogletree" and 25 other names, including the name "James W. Winslette." (A "Jim Winslett" executed one of the afore-mentioned affidavits submitted by Mr. Ogletree.)

It is apparent from an examination of this evidence that Mr. Ogletree was rejected for Federal military service by medical examiners over 10 days before Company G, 2d Regiment, Alabama Volunteer Infantry, was mustered into the service of the United States on May 31, 1898, and that he did not serve with said company while it was in the active Federal service.

In the light of the foregoing facts and circumstances there appears to be no justifiable basis for the enactment of H. R. 1099. The Department of the Army, accordingly, recommends that this bill be not favorably considered by the Congress.

Several private bills for the relief of Mr. Ogletree have been introduced in prior Congresses, namely, H. R. 12543, 71st Congress; H. R. 6361, 72d Congress; and H. R. 3609, 70th Congress (the text of which is identical with H. R. 1099, 83d Cong.). None of those bills were enacted. On August 24, 1945 the Administrator of Veterans' Affairs submitted an adverse report on H. R. 3609, 70th Congress, to the chairman, Committee on Military Affairs, House of Representatives.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

EARL D. JOHNSON,
Acting Secretary of the Army.

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