

Calendar No. 369

72D CONGRESS }
1st Session }

SENATE

} REPORT
No. 350

JOHN B. McLAMB

FEBRUARY 24 (calendar day, FEBRUARY 29), 1932.—Ordered to be printed

Mr. WALSH of Massachusetts, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 2568]

The Committee on Finance, to whom was referred the bill (S. 2568) for the relief of John B. McLamb, having considered the same, report it back to the Senate and recommend that the bill do not pass.

PURPOSE OF S. 2568

The purpose of this bill is to make eligible John B. McLamb to receive compensation and the benefits provided in the World War veterans' act, 1924, as amended July 3, 1930.

FACTS

The above veteran filed an application for compensation on June 28, 1922, claiming he was suffering from a disability caused by an operation for appendicitis which was performed at the request of a local draft board in Georgia. The application was denied because the claimant could not sustain his claim. The Administrator of Veterans' Affairs in his report states "a thorough search of the records of The Adjutant General's Office and the Veterans' Administration does not reveal any evidence which would sustain this contention."

Compensation can only be awarded the veteran if an aggravation of his alleged disability can be proven to have occurred from the date of his induction to the date of his rejection, as he was not accepted for military service, though he was physically examined and given military treatment. Under existing legislation, compensation can not be awarded to a veteran who has never formally been inducted into the military service.

The Veterans' Administration adjudicated his claim by a finding to the effect that no aggravation was proven by the evidence on file. The case does not appear to be of greater merit than many others that have been disallowed for the reason that a person discharged from the draft was unable to prove his disability was incurred in or aggravated by his service.

The report of the Administrator of Veterans' Affairs is as follows:

VETERANS' ADMINISTRATION,
Washington, January 20, 1932.

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

MY DEAR SENATOR SMOOT: This is in reply to your communication of January 11, 1932, with which you forwarded for report a copy of S. 2568, Seventy-second Congress, "A bill for the relief of John B. McLamb." It appears that this bill is identical in substance with H. R. 6758, Seventieth Congress, on which a report was made by this office to the Committee on World War Veterans' Legislation, House of Representatives, on February 15, 1928.

The bill proposes that in the administration of the World War adjusted compensation act, John B. McLamb, Liberty County, Ga. (C-1 120009), be considered eligible to receive the benefits and compensation provided thereby. It is believed that the reference to "World War adjusted compensation act" is intended to be "World War veterans' act, as amended."

The records of the Veterans' Administration disclose that John B. McLamb, registered with the local board for Liberty County, Ga., on June 5, 1917. He was physically examined by the local board on April 20, 1918, and found to be physically qualified for general military service with the following defect noted: Vision right eye 20/30. His case was referred to the medical advisory board and that board examined him on April 24, 1918, and found him to be physically qualified for general military service with defect noted: "Right eye 20/30. A notation under remarks shows: "Thirty days allowed for appendectomy" which was crossed off. A notation on examination shows "May 29, 1918, 30 days allowed to recover strength. September 4, 1918, O. K., fit for service." He was inducted into the service on October 18, 1918, as a private S. A. T. C., University of Gainesville, Gainesville, Fla., and was discharged from the draft on November 4, 1918, because of chronic thrombo phlebitis.

On June 28, 1922, Mr. McLamb executed an application for compensation alleging his disability to be thrombophlebitis. He alleged the disability was caused by an operation for appendicitis which was performed at the request of the local draft board. It is contended on behalf of the claimant that he was operated on by Dr. J. B. White, of Savannah, Ga., by order of the Government authorities and that the operation was paid for by the Government. A thorough search of the records of The Adjutant General's office and the Veterans' Administration does not reveal any evidence which would sustain this contention. The file contains a copy of letter from Doctor White which states that he was paid, but that his records do not show who paid for the operation. There is also in the record a statement that Doctor White is now deceased. The file also contains an affidavit from Dr. B. Harrison Gibson, who was a member of the local board, which states that he examined the claimant in 1918, and that he ordered him to camp for limited duty. This is not borne out by the records obtained from The Adjutant General. The records obtained from The Adjutant General show a statement by Doctor Gibson, dated November 26, 1918, to the effect that J. B. McLamb was physically unfit for military service on account of phlebitis in vein of left leg. It will be noted, however, that the date of this statement is subsequent to the date the veteran was discharged from the draft because of physical condition.

Under existing legislation compensation can be paid to him only in the event aggravation of the disability can be shown during the period from date of induction to date of rejection, in view of the fact that the claimant was not accepted for military service. No aggravation during that period is shown by the evidence on file in this case. Therefore, Mr. McLamb is not entitled to compensation under existing legislation.

Whether or not a special bill should be enacted excepting this claimant from the general provisions of the act in question is a matter for the Congress to decide. It is the policy of the Veterans' Administration to recommend special legislation only when a legal technicality or administrative error has worked detriment to the person in whose favor special legislation is sought. This claimant does not come within either of these exceptions.

I wish to suggest that the facts of record do not indicate that this claim is of greater merit than many others that have been disallowed for the reason that a person discharged from the draft was unable to show that his disability was incurred in or aggravated by service.

A copy of this letter is inclosed for your use.

Very truly yours,

FRANK T. HINES, Administrator.