

Calendar No. 721

83^D CONGRESS }
1st Session }

SENATE

{ REPORT
No. 727

MRS. MARGARET D. SURHAN

JULY 30 (legislative day, JULY 27), 1953.—Ordered to be printed

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

REPORT

[To accompany H. R. 3276]

The Committee on Finance, to whom was referred the bill (H. R. 3276) for the relief of Mrs. Margaret D. Surhan, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

GENERAL STATEMENT

An identical bill was favorably reported by the committee and passed the House in the 82d Congress, but no action was taken by the Senate.

The facts will be found fully set forth in House Report No. 2204, 82d Congress, 2d session, which is appended hereto and made a part of this report. Therefore, your committee concurs in the former recommendation.

[H. Rept. No. 2204 82d Cong., 2d sess.]

The purpose of the proposed legislation is that Mrs. Margaret D. Surhan, of Dunkirk, N. Y., shall be considered and conclusively presumed to be the lawful widow of the late Joseph D. Surhan for the purpose of receiving benefits under any law of the United States relating to widows of veterans of World War I, and that the Administrator of Veterans' Affairs is authorized and directed to pay to Mrs. Surhan any benefits to which she is entitled as the lawful widow of said Joseph D. Surhan, provided that benefits under the act shall not accrue prior to enactment of this act.

STATEMENT OF FACTS

It appears that in the District Court for the Western District of New York in 1929 it was established that Mrs. Surhan was the common-law wife of Joseph Surhan and, as such, was entitled to his war-risk insurance. Such decision was not binding upon the Veterans' Administration for all purposes. The Veterans'

Administration refused to grant a widow's pension to Mrs. Surhan because the Veterans' Administration decided that a common-law relationship had not been established. In other words, Mrs. Surhan would have been granted a pension at that time if the Veterans' Administration had decided that a common-law relationship had been established.

The Veterans' Administration claimed that Mrs. Surhan had been legally married in 1898 to another man. This man disappeared in 1907, and at the time of the trial in 1929 he had not been heard of in 22 years. In the State of New York a person is presumed to be legally dead after an absence of 7 years.

At the trial, Mrs. Surhan's attorney established her common-law marriage to Joseph D. Surhan by various papers signed by Mr. Surhan acknowledging the relationship of husband and wife and by the conduct of the parties in the community and the testimony of several outstanding citizens of Dunkirk, N. Y., that they lived together for many years prior to Mr. Surhan's death and were commonly known as husband and wife.

Mrs. Surhan is about 78 years of age and has been in ill health for several years. According to a sworn affidavit made by Mrs. Surhan on July 16, 1951, she lived with Mr. Surhan in Arkansas and in New York; they had a child who was born dead, and the physician in attendance asked Mr. Surhan to come and take care of "your wife who is having a baby." This physician, a Dr. Sullivan, testified to the relationship when the trial was being conducted in 1929.

The only point upon which the Veterans' Administration opposes enactment of this bill is their refusal to accept the absence of Mrs. Surhan's first husband as conclusive of death.

The committee, however, believing that the judgment of the court should be regarded as conclusive, is of the opinion that Mrs. Surhan should be declared as entitled to the benefits sought, and recommend favorable consideration of this bill.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., June 6, 1952.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This is in reply to your letter of May 26, 1952, requesting a report on H. R. 1711, 82d Congress, a bill for the relief of Mrs. Margaret D. Surhan, which provides as follows:

"That Mrs. Margaret D. Surhan, of Dunkirk, New York, shall be considered and conclusively presumed to be the lawful widow of the late Joseph D. Surhan for the purpose of receiving benefits under any law of the United States relating to widows of veterans of World War I, and the Administrator of Veterans' Affairs is authorized and directed to pay to Mrs. Margaret D. Surhan any benefits to which she is entitled as the lawful widow of the late Joseph D. Surhan, a deceased veteran."

According to a report from the Department of the Army, Joseph D. Surhan (XC-47625) entered active service on July 22, 1918, and died in service October 3, 1918, of pneumonia. On July 27, 1918, Mr. Surhan applied for and was granted \$10,000 war-risk insurance. He designated his estate as beneficiary and directed that his insurance certificate be sent to Moses Gray, Box 51, Douglas, Ariz. He gave as his emergency address the name of Miss Margaret Delanco, Dunkirk, N. Y., described as "friend." On the same day, in executing Form 1-B of the Bureau of War Risk Insurance (application for family allowance and information for allotment of pay), Mr. Surhan represented himself as unmarried.

On November 8, 1918, the Bureau of War Risk Insurance sent a form letter to the emergency addressee, Miss Margaret Delanco, requesting certain information concerning the veteran. A week later the form was returned by Mrs. Margaret Surhan Delanco with handwritten answers to the questions. She advised that Mr. Surhan left no widow and that she was his dependent mother. Thereafter formal application for compensation and insurance was filed with the Bureau of War Risk Insurance by Mrs. Margaret Delanco Surhan, alleging that the serviceman's relation to her was that of common-law husband. In applying for these benefits the claimant acknowledged a prior marriage, and stated that she was not divorced from her former husband. Investigations made by the Bureau of War Risk Insurance disclosed the claimant was married to Joseph F. Delanco at Buffalo, N. Y., on March 8, 1898, of which marriage three children were born.

It was alleged by the claimant that her husband, Joseph Delanco, deserted her in 1906 or 1907, and shortly thereafter this marriage was terminated by his death. However, no record of the alleged death has been furnished the Veterans' Administration or its predecessor agencies. The evidence of record also discloses that the claimant and Joseph D. Surhan commenced living together at Dunkirk, N. Y., on or about March 7, 1912, and continued to live together in that State until the fall of 1917, when they moved to Arkansas. They continued to live together in Arkansas until shortly before Mr. Surhan's entrance into service. Based upon the evidence of record, it was determined that a common-law marriage was not contracted between the claimant and Mr. Surhan. Accordingly, her claims for compensation and insurance as the widow of Joseph D. Surhan were denied.

Subsequently, Margaret D. Surhan, individually and as administratrix of the estate of Joseph D. Surhan, deceased, brought suit on the contract of insurance in the United States District Court for the Western District of New York. The court found the claimant was the common-law wife of Joseph D. Surhan, and as such, to be within the designated class of beneficiaries under the War Risk Insurance Act, and in 1930 rendered final judgment in her favor. In accordance with this judgment, payment of the insurance in question was made to the claimant. Following this decision, the claimant filed another application for compensation which was denied. Of course, the court's finding, although conclusive as to insurance matters, does not necessarily affect other benefits under laws administered by the Veterans' Administration.

This case has been the subject of extensive investigation and review by the Bureau of War Risk Insurance, the United States Veterans' Bureau, and the Veterans' Administration, and it has been consistently held that she is not the widow of the veteran for the purpose of benefits administered by those agencies. The most recent review was by the Solicitor of the Veterans' Administration after completion of a field investigation in 1951. He held that the evidence in the case is insufficient to warrant a finding that Mrs. Surhan may be recognized as the widow of the veteran for compensation purposes, and accordingly confirmed the prior holdings to that effect.

The denial of this claim has been predicated upon the failure of the claimant to establish the dissolution of her marriage to Mr. Delanco. Moreover, there has been no contention that the claimant and Mr. Surhan entered into a ceremonial marriage, and it has been decided that the evidence presented fails to establish a common-law relationship between the parties. During the time they lived in New York there was no present agreement to regard themselves as husband and wife—a prerequisite to a common-law marriage in that State—and their relationship while residing in Arkansas could not constitute a valid common-law marriage, since the doctrine of common-law marriage has never obtained in that State.

H. R. 1711, if enacted, would be a conclusive determination by legislative action that Mrs. Margaret D. Surhan, of Dunkirk, N. Y., shall be considered and conclusively presumed to be the lawful widow of the late Joseph D. Surhan for the purpose of receiving benefits under any law of the United States relating to widows of veterans of World War I. The Administrator of Veterans' Affairs is authorized and directed to pay to Mrs. Surhan any such benefits to which she is entitled as the widow of a veteran. It is not known what effect, if any, the enactment of this bill would have with respect to the claimant's eligibility for benefits under laws which are administered by Federal agencies other than the Veterans' Administration. Insofar as laws administered by the Veterans' Administration are concerned, it appears that the bill would render her potentially eligible upon application to payment of service-connected death compensation in the amount of \$75 per month. Before any payment could be authorized, of course, it would be necessary for the Veterans' Administration to determine whether the claimant meets all requirements of governing laws other than the requirement that she be the lawful widow of the veteran, which requirement would be satisfied by H. R. 1711 if enacted. It is assumed in this connection that, if such requirements are met, the bill is not designed to require payment for any period prior to date of filing of the mentioned application. However, clarification in this regard is indicated.

Attention is invited to section 131 of the Legislative Reorganization Act of 1946 (60 Stat. 831), which provides in pertinent part as follows:

"No private bill or resolution (including so-called omnibus claims or pension bills) and no amendment to any bill or resolution, authorizing or directing (1) the payment of money * * * for a pension * * * shall be received or considered in either the Senate or House of Representatives."

There appears to be for consideration the question as to whether H. R. 1711 is consistent with the congressional policy expressed in the quoted section.

The circumstances of the case have been carefully considered. No reason is apparent why it should be singled out for special legislative treatment. To grant legislative relief in this case would be discriminatory against others in the same, or similar, circumstances and might form a precedent for similar legislation in other cases.

Due to the urgent request of the committee for a report on this measure, there has not been sufficient time in which to ascertain from the Bureau of the Budget the relationship of the proposed legislation to the program of the President.

Sincerely yours,

O. W. CLARK,
Deputy Administrator

(For and in the absence of the Administrator).

LAW OFFICES OF ROGERSON, CLARY & HEWES,
Jamestown, N. Y., October 24, 1945.

Hon. DANIEL A. REED,
House of Representatives, Washington, D. C.

DEAR DAN: Mrs. Margaret D. Surhan, of Dunkirk, has handed your letter of July 25 to me so that I may make available to you any information necessary to establish her claim for death pension as the widow of Joseph D. Surhan.

I tried this case for Mrs. Surhan back in 1929, and I have made a thorough investigation of the file so as to refresh my collection. There was voluminous correspondence in connection with her claim, which was handled by Harry Laughlin at that time. It is my judgment that a gross injustice has been and is being done to Mrs. Surhan. We brought the action in the United States district court before Judge Adler and a jury, and the jury and the court both found that she was the common-law wife of Joseph D. Surhan at the time of his death, and as such was a proper person to receive the benefits of the Government insurance he carried in the last war. The Government contested the validity of the common-law marriage and also attempted to prove that a former husband was living and that, therefore, she could not have been the wife of Joseph Surhan. The court and the jury found in our favor on both propositions and, as a result, final judgment was entered on July 8, 1930, directing payment of the money due her under the insurance policy. Between the trial and the entry of final judgment the Government appealed, but subsequently the appeal was withdrawn and the final judgment entered on stipulation.

The evidence disclosed that Mrs. Surhan's first husband disappeared about 1907 and he had never been heard of since, so that at the time of the trial he had been gone 22 years, and now he has been gone 38 years. The probability, therefore, that he is alive is so remote as to be nil and, of course, you are familiar with the law in this State which creates a presumption of death after an absence of 7 years.

We established her common-law marriage to Joseph D. Surhan by various papers signed by Mr. Surhan acknowledging the relationship of husband and wife and by the conduct of the parties in the community and the testimony of several outstanding citizens of Dunkirk that they lived together for many years prior to his death and were commonly known as husband and wife.

I do not know what further proof the Veterans' Administration could ask for beyond that which was brought out at the trial and, of course, the Veterans' Administration was represented on the trial of the action by counsel. It would seem to me that the judgment should be conclusive; but if the Administration is still arbitrary about the matter I suggest that proper legislation should be presented to establish the validity of her claim, not only as to future payments but payments to which she has been entitled, retroactively.

I sincerely trust you will be able to do something for Mrs. Surhan and, if you desire, I will send on our correspondence and exhibits and other pertinent information in my bulging files.

I am enclosing a copy of the judgment which was finally entered, under which payment was made.

Very truly yours,

Russ.

No. 3314.—UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
NEW YORKMARGARET D. SURHAM, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF
JOSEPH D. SURHAM, DECEASED, PLAINTIFF V. THE UNITED STATES OF AMERICA,
DEFENDANT

The judgment in the above-entitled action having been entered on the 19th day of July 1929, and filed in the office of the clerk for the western district of New York on October 16, 1929, and an amended judgment thereon having been filed with the said clerk on July 3, 1930, and it appearing that such judgment and amended judgment are in error and providing for fixing the amount thereof in the sum of \$7,302.50, whereas the correct amount of such judgment should be \$7,360, said judgment as amended is hereby further amended to read as follows:

The issues in the above-entitled action having been brought on for trial before the Honorable Simon L. Adler and a jury, at a trial term of this court, held in and for the western district of New York, at the Federal Courthouse in the city of Jamestown, county of Chautauqua, State of New York, on the 19th day of July 1929, and the defendant having duly tried, and the jury having on the 19th day of July 1929 duly rendered its verdict in favor of the plaintiff, and it having been stipulated in open court that, upon the verdict of the jury, the court would fix and determine the amount of damages to be assessed against the defendant, under the pleadings in the action, and the law applicable thereto, and it appearing, by reason of such verdict, and the stipulation of the parties, that the said plaintiff was the common-law wife of Joseph D. Surham, the insured, under the policy of war-risk insurance issued by the United States Government, and, as such, is within the designated class of beneficiaries entitled to take, under the War Risk Insurance Act, and it appearing further that said policy of insurance is in the principal sum of \$10,000, payable in monthly installments of \$57.50, commencing on December 1, 1918, until the said sum of \$10,000 has been fully paid, and the said defendant having failed to pay the installments due, commencing with the one due December 1, 1918, and including all of the subsequent installments due, up until the time of the trial of said action, including the one due July 1, 1929, being a total of 128 months, and the total of such installments due being \$7,360: Now, on motion of Rogerson, Clary & Hewes, attorneys for the plaintiff, J. Russell Rogerson, of counsel, it is—

Adjudged, That the plaintiff recover of the defendant the sum of \$7,360, found by the jury and the court as aforesaid, without costs; and it is further

Adjudged, That the fees and compensation of Rogerson, Clary & Hewes, attorneys for the plaintiff, be and they hereby are fixed at the sum of \$736 and, in addition thereto, 10 percent of all payments to be paid by the defendant, by reason of said policy of insurance issued in the name of Joseph D. Surhan, deceased, when and if future installments become due and are paid, and the said defendant is hereby directed to make such payments directly to the said attorneys, and to deduct the amount so paid to said attorneys from the amount of this judgment paid to the plaintiff, and from any and all future payments made under said policy.

Amended judgment this 8th day of July 1930.

Clerk of Court.

To Whom It May Concern:

I, Mrs. Margaret D. Surhan, was the common-law wife of the late Joseph D. Surhan.

I lived with him as his wife in Arkansas and in the State of New York.

Mr. Surhan and I had a child which was born dead. Dr. William Sullivan was my physician. When Mr. Surhan called Dr. Sullivan he asked him to come and take care of "my wife who is having a baby."

In the District Court for the Western District of New York, in 1929, it was established that I was the common-law wife of Joseph D. Surhan and, as such, was entitled to his war-risk insurance. The Veterans' Administration decided that a common-law relationship had not been established and refused to grant me a widow's pension. At the trial, my attorney established my common-law marriage to Joseph D. Surhan by various papers signed by Mr. Surhan acknowledging our relationship of husband and wife and by the testimony of several outstanding citizens of Dunkirk, N. Y., that we had lived together for many years prior to

Mr. Surhan's death and were commonly known as husband and wife. Dr. Sullivan, who attended me when the baby was born, testified in my behalf.

MARGARET D. SURHAN,
Box 97, Dunkirk, N. Y.

STATE OF NEW YORK,
County of Chautauqua, ss:

Margaret D. Surhan, being duly sworn, says that she is the person named in the foregoing instrument, and that every statement or thing contained therein is true.

MARGARET D. SURHAN.

Subscribed and sworn to before me this 16th day of July 1951.

FLORENCE T. ROTH,
Notary Public in and for the State of New York, residing in Chautauqua County.

My commission expires March 30, 1952 (No. 1529).

