

Calendar No. 1635

70TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 1604

RELIEF OF ETTA PEARCE FULPER

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

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

REPORT

[To accompany S. 5453]

The Committee on Finance, to whom was referred the bill (S. 5453) authorizing the payment of Government life insurance to Etta Pearce Fulper, having had the same under consideration, report it back to the Senate without amendment and recommend that the bill do pass.

Following is a letter from the Director of the United States Veterans' Bureau reporting favorably on the merit of the bill.

JANUARY 29, 1929.

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

MY DEAR SENATOR SMOOT: Reference is made to your telephonic request for comment and report on (S. 5453) a bill authorizing the payment of Government life insurance to Etta Pearce Fulper.

The bill proposes to authorize the Director of the United States Veterans' Bureau to pay to Etta Pearce Fulper, widow of William H. Fulper, XC-729930, late second lieutenant, supply officer, Second Battalion, New Jersey State Militia, the amount of his Government life insurance policy numbered K-446185, as if such William H. Fulper had been in Federal service when such policy was issued.

The records of the bureau show that William H. Fulper enlisted as a private, Company D, Second Battalion, New Jersey State Militia, on August 30, 1917; was promoted to second lieutenant (supply officer), Second Battalion, October 19, 1917, and was discharged January 5, 1920, because of disbandment of the company. The adjutant general of the State of New Jersey has reported that the Second Battalion, New Jersey State Militia, was organized merely to take place of the New Jersey National Guard when same was called into Federal service, and that no report is available of any activities of the New Jersey State Militia. The Adjutant General of the Army has reported that there is no record of William H. Fulper having been a member of the military forces of the United States and that the organization of which he was a member was not in the Federal service.

On February 12, 1918, Mr. Fulper made application for a \$10,000 war-risk (term) insurance policy designating as beneficiaries: "Wife, Etta Pearce Fulper, \$4,000; son, William Hill Fulper, jr., \$3,000; daughter, Willette Mary Fulper,

\$3,000." The application was accepted by the Bureau of War Risk Insurance and premiums were paid on the term insurance to include April, 1924. On April 22, 1924, Mr. Fulper applied for conversion of the term insurance to a \$10,000 ordinary life policy, designating as beneficiary thereof, his wife, Etta Pearce Fulper. This application was accepted by the bureau and a \$10,000 Government life-insurance policy (K-446185) was issued to him. Premiums on this policy were paid to include October, 1928.

The insured died October 15, 1928. After his death it was determined that he was never in the active military service of the United States and therefore could not have legally applied for Government insurance.

In a decision dated May 29, 1924 (3 Comp. Gen. 905), the Comptroller General of the United States held:

"* * * Where the defect is in the authority to contract, as in the class of persons who may be insured, that defect does not raise a question of contesting. The contract of insurance is simply no contract, because, resting on statute as to the class of persons to be insured, the Government can under no circumstances be concluded by a policy issued to one not within that class. What errors may have been in the administrative office in permitting a policy to issue or run after it is found not to be a policy authorized by law does not require a liability to be found against the United States."

Accordingly, the bureau is without authority to pay the face value of the policy of insurance to the designated beneficiary in this case.

Under the circumstances of the case and particularly realizing the hardship resulting from the Government having in effect prevented Mr. Fulper from taking out other life insurance during his lifetime by the continued acceptance of premiums by the bureau, I favor and recommend the measure which will authorize the payment of insurance in this case.

A copy of this letter is inclosed for your use.

Very truly yours,

FRANK T. HINES, *Director.*

