

## RETIREMENT PAY OF OFFICERS, OTHER THAN REGULAR OFFICERS, INCURRING PHYSICAL DISABILITY IN WORLD WAR

MAY 10, 1937.—Ordered to be printed

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

### REPORT

[To accompany S. 423]

The Committee on Finance, to whom was referred the bill (S. 423) providing for continuing retirement pay, under certain conditions, of officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability while in the service of the United States during the World War, having considered the same, report favorably thereon with the recommendation that the bill do pass amended as follows:

On page 2, line 8, after the word "service" insert "in line of duty".  
Insert two new sections as follows:

SEC. 2. Payment of emergency officers' retirement pay shall be effective from the date of enactment of this Act in all cases where entitlement thereto is authorized solely by the provisions of this Act.

SEC. 3. That subsection (b) of section 212 of Public Law Numbered 212, Seventy-second Congress, shall be amended to read as follows:

"(b) This section shall not apply to any person whose retired pay plus civilian pay amounts to less than \$3,000: *Provided*, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war in line of duty during an enlistment or employment as provided in Veterans' Regulation No. 1 (a), part I, paragraph I."

The title is amended by changing the period at the end thereof to a comma and adding "and for other purposes."

The first amendment is made to overcome an objection advanced by the Veterans' Administration in a previous Congress in reporting on a similar bill that it was not required that the disabilities were incurred in line of duty. While it is not believed necessary, inasmuch as such a finding was required before an emergency officer could be placed on the retired list under the act of May 24, 1928, it is added to make the language certain.

Section 2 is added to make benefits provided in this legislation payable only from date of enactment, except in the few remaining cases where appeals are pending and the claimant, if successful under

the present law, will be permitted to receive retirement pay from date of removal from the retired list under Public, No. 2.

Section 3 is added to make subsection (b) of section 212, Public 212, Seventy-second Congress, which restricts the retired pay of regular and emergency officers employed by the Government, conform with a similar restriction contained in Veterans' Regulation 10 (c) which is now part of the statutory law. This amendment exempts those who were retired for disabilities resulting from an explosion of an instrumentality of war and who were not provided for in Public, No. 212, Seventy-second Congress.

This legislation permits return to the retired list those who were commissioned after November 11, 1918, provided they served between April 6, 1917, and November 11, 1918, and other requirements are met. The number to be restored under this provision is not large, and most of them were given commissions in recognition of their demonstrated fitness to serve as officers and as a reward for gallantry in action with the enemy. Some of those who did not accept commissions until after November 11, 1918, were in hospitals being treated for wounds and did not have an opportunity to accept until after that date.

The purpose of this legislation is to return those emergency officers to the retired list with pay to whom your committee believes Congress intended to extend retirement benefits when enacting Public, No. 506, Seventieth Congress, and to whom it is believed Congress intended retirement benefits should be continued when enacting Public, No. 2, Seventy-third Congress.

This bill provides that those emergency officers who served in the World War between April 6, 1917, and November 11, 1918, and who during such service incurred permanent disabilities of 30 percent or more in line of duty, shall be returned to the Emergency Officers' Retired List with pay, provided the disabilities are found by the Veterans' Administration to be directly service connected without benefit of statutory presumption of service connection or statutory presumption of soundness upon entry into service. The Government reserves the right to rebut such direct service connection by official record or clear and unmistakable evidence.

The Administrator of Veterans' Affairs in his report to this committee stated that the Administration was unable to estimate any possible reduction in the number that would benefit from this bill by reason of these restrictions. It is the opinion of your committee, however, that the estimates submitted would be materially reduced. These restrictions, your committee believes, would deny a return to the retired list of those cases which Congress intended to remove under the Economy Act and would cure any irregularities existing under the original act subsequent to the Attorney General's decision of January 18, 1929.

On March 19, 1933, there were approximately 6,300 emergency officers retired with pay. After the original review under Public, No. 2, Seventy-third Congress, 1,518 remained. Some 4,700 had been removed by reason of the fact that they could not meet the so-called "causative factor" requirement as contained in Veterans' Regulation No. 5, issued March 31, 1933. The Veterans' Administration reports that 97 of those retained on the retired list, and 401 of those removed from the retired list under the provisions of Public, No. 2, have died since March 19, 1933. Under the "causative factor" requirement the emergency officer was asked to prove that he was

performing some specific military duty under competent orders at the time of the incurrance of the disability. In the case of those whose disabilities were incurred in combat, or resulted directly from injuries, there was no trouble in establishing the "causative factor." But for those who suffered permanent disabilities from disease incurred during World War service this requirement was practically impossible to meet, as no one could say definitely the exact moment of the incurrance of the disease, or prove that they were performing some military duty under orders from a superior officer. This strict application of the "causative factor" requirement and the ambiguity of the term brought so much criticism that new instructions were issued by the Veterans' Administration on April 10, 1935.

Under the new instructions the use of the "causative factor" was dropped. The new instructions state:

The use of the term "causative factor" is not to be construed as restrictive but merely as explanatory of what Congress meant in requiring that the disability must have "directly resulted from the performance of military or naval duty." The regulation does not deprive any officer of retirement pay who would be entitled thereto under the law.

Since the issuance of these new instructions the Veterans' Administration has used the requirement contained in section 10 of Public, No. 2, "that the disease or injury or aggravation of disease or injury directly resulted from the performance of military or naval duty." The interpretation and application of the language of the act under the new instructions was practically as strict as under the "causative factor" requirement. The emergency officer under these instructions is required by the Veterans' Administration to prove by a preponderance of evidence that but for the performance of duty his disability would not reasonably have been expected to have arisen. He may show by official Army or Navy Department records that his disability did in fact arise during his service in line of duty; he may prove by official record and acceptable affidavit evidence that he was subjected to exposure and required to perform strenuous military duty, and still his case is denied. It is practically impossible for those disabled by disease to prove that their disability would not have occurred in civil life. Of the approximately 3,300 appeal cases on which decisions have been rendered 431 have been allowed. The disabilities of many, if not most of these, were found to have been incurred in combat with an enemy of the United States or as the direct result of an injury.

Estimates submitted by the Veterans' Administration indicate that the disabilities due to disease of practically all of those returned to the Emergency Officers' Retired List were found to have been incurred in combat. In the opinion of the committee it is an injustice to require combat incurrance or combat service of an emergency officer in order to be returned to the retirement list. Many of the worst disabilities, such as tuberculosis, neuropsychiatric, and heart conditions directly resulting from war service were incurred by men who were not privileged to serve overseas or in combat.

There is no new principle involved in this legislation. The principle of retirement for disabled emergency officers was established by the passage of the act of May 24, 1928, and continued under section 10, Public, No. 2.

Your committee believes that this bill should not be classed as new legislation, but as an interpretative amendment to the present law to carry out the intent of Congress when enacting section 10, Public, No. 2.

The report of the Veterans' Administration on the bill (S. 423) is hereto attached.

(The report referred to is as follows:)

FEBRUARY 24, 1937.

HON. PAT HARRISON,  
*Chairman, Committee on Finance,  
 United States Senate, Washington, D. C.*

MY DEAR SENATOR HARRISON: This is in further response to your request of January 9, 1937, for a report on S. 423, Seventy-fifth Congress, "A bill providing for continuing retirement pay, under certain conditions, of officers and former officers of the Army, Navy, and Marine Corps of the United States, who incurred physical disability while in the service of the United States during the World War."

This bill provides:

"That, notwithstanding the provisions of any law of the United States, any person who served as an officer of the Army, Navy, or Marine Corps of the United States during the World War, other than as an officer of the Regular Army, Navy, or Marine Corps during the World War who made valid application for retirement under the provisions of Public Law Numbered 506, Seventieth Congress, enacted May 24, 1928 (U. S. C., Supp. VII, title 38, secs. 581 and 582), and who prior to the passage of this act has been granted retirement with pay, shall be entitled to continue to receive retirement pay at the monthly rate paid him on March 19, 1933, if the disability for which he has been retired resulted from disease or injury or aggravation of a preexisting disease or injury incurred in such service and directly resulting from the performance of duty: *Provided*, That such person entered active service between April 6, 1917, and November 11, 1918, and served as an officer prior to July 2, 1921: *Provided further*, That where the disability is now or hereafter determined to be directly service-connected, without benefit of statutory presumption of soundness or service-connection, it will be considered to have directly resulted from performance of duty unless otherwise shown by official record, or clear and unmistakable evidence."

The last proviso materially changes the present definition of the terms "directly resulting from the performance of duty." It makes direct service-connection synonymous with "directly resulting from the performance of duty" when such direct service-connection is granted without benefit of statutory presumption, except when a different conclusion is warranted upon the basis of official record or upon a showing of clear and unmistakable evidence.

Another material change occurs in line 12 of page 2. This change eliminates the requirement of the present law that the emergency officer must have been commissioned prior to November 11, 1918, and extends this date to July 2, 1921. It would also permit of the payment of claims wherein the disability was incurred in an enlistment or commission which did not commence until after November 11, 1918.

It is estimated that approximately 3,194 emergency officers who are not now on the rolls would be entitled to retirement pay at an additional annual cost of approximately \$3,696,000. If these payments were made effective as of June 30, 1933, the retroactive cost would approximate \$12,937,000, or a total cost for the first year of approximately \$16,633,000.

In making the estimate of cost of this bill, the presumptive cases which were found at the time of the review are not included in those which would be entitled. This Administration is unable to estimate any possible reduction in the above statement as a result of adding the phrase "clear and unmistakable evidence" on line 17, page 2, of the bill.

It is believed that the provisions of the present law are sufficiently liberal with reference to the retirement of emergency officers and adequately provides for a group on account of whom Congress originally intended to extend this benefit. There were, as of January 30, 1937, 1,852 officers entitled to receive retirement pay under the provisions of existing law. No reason is apparent for the enlargement of the class or liberalization of the criteria now in effect.

Information has been received from the Acting Director, Bureau of the Budget, that the proposed legislation would not be in accord with the program of the President.

It is, therefore, the recommendation of this Administration, that the proposed measure be not favorably considered by your committee.

Very truly yours,

FRANK T. HINES, *Administrator.*