

TO CLARIFY THE DEFINITION OF DISAGREEMENT IN SECTION 19, WORLD WAR VETERANS' ACT, 1924

JANUARY 21 (calendar day, JANUARY 23), 1935.—Ordered to be printed

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

R E P O R T

[To accompany H. J. Res. 112]

The Committee on Finance, to whom was referred the resolution (H. J. Res. 112) to clarify the definition of disagreement in section 19, World War Veterans' Act, 1924, as amended, after consideration report the same favorably to the Senate with the recommendation that the resolution do pass.

The following is a report of the House Committee on World War Veterans' Legislation, which fully explains the resolution:

[H. Rept. No. 11, 74th Cong., 1st sess.]

The Committee on World War Veterans' Legislation, to whom was referred the resolution (H. J. Res. 112) to clarify the definition of disagreement in section 19, World War Veterans' Act, 1924, as amended, after consideration report the same favorably to the House with the recommendation that the resolution as amended do pass.

This resolution will accomplish two purposes. The first purpose is to remove any doubt as to the definition of disagreement contained in section 19, World War Veterans' Act, 1924, as amended:

“* * * and the term ‘disagreement’ means a denial of a claim by the Director or someone acting in his name on an appeal to the Director.”

In the case of *John H. Frederick v. United States*, now pending in the Supreme Court of the United States, the question of whether the denial of an insurance claim by an official of the Veterans' Administration delegated with authority to so act is sufficient to constitute a disagreement so as to vest jurisdiction in a Federal court to hear and determine a suit for war-risk insurance, was raised by attorneys representing the Government. The Government in its brief in the Supreme Court indicated that the above-quoted provision of section 19 was susceptible of either one of two constructions:

1. That a final denial sufficient to create a disagreement may be obtained from the Administrator or someone authorized to act for him (in this case the insurance claims council) without the necessity of an appeal therefrom to the Administrator, or

2. That a final denial sufficient to create a disagreement may only be obtained on an appeal to the Administrator.

The Veterans' Administration acting under authority of an opinion by the Acting Attorney General of the United States September 14, 1931 (36 Ops. Atty. Gen. 456), and a regulation conforming to that opinion, advised claimants (including Frederick) that a denial such as that made in the Frederick case was sufficient to permit the filing of suit in the Federal court. Such denial was in accord with the interpretation under (1) above quoted from the Government's brief. In many cases the district courts have taken jurisdiction in cases where the denial was the same as that made in the Frederick case and judgments against the Government in such cases have been entered and paid.

In the Frederick case the interpretation under (2) was followed in the District Court of the United States. Frederick appealed to the United States Circuit Court of Appeals for the Eighth Circuit and that court certified the question to the Supreme Court of the United States. Upon motion of the Government over the signature of the Solicitor General, the following statement appears:

"Since the argument of this case this Department has reached the conclusion that an effort should be made to secure from Congress at its next session in January legislation having for its object the removal of any question as to the jurisdiction of the district courts in this and other cases instituted under similar circumstances, and ratifying the action of the Administrator. I am authorized to say that the Veterans' Administration will seek the necessary legislation."

The resolution will establish as law the interpretation given this provision of the statute by the Acting Attorney General in the opinion of September 14, 1931, which was the basis of advice to these claimants that they might file suits in the Federal courts. As of January 19, 1935, there were 8,005 pending insurance suits, a large percentage of which have denials the same as that made in the Frederick case.

The second purpose of the resolution is to permit reinstatement of any suit which has been dismissed solely on the ground that denial as described in the resolution did not constitute a disagreement under the provisions of section 19, World War Veterans' Act, 1924, as amended, such reinstatement being permitted with 3 months from the date of the enactment of the resolution. The purpose of permitting reinstatement rather than refile is to avoid the necessity for the payment of filing fees a second time in the same action.

No record has been kept of cases which have been dismissed for want of disagreement under circumstances similar to those existing in the Frederick case. It is estimated, however, that probably not less than 50 or more than 100 cases were dismissed on that basis, which are the ones covered by reinstatement provisions of the resolution.

The need of this legislation is set out in the following letter to this committee from the Administrator of Veterans' Affairs under date of January 16, 1935, forwarding a draft of a proposed House joint resolution meeting the approval of the Solicitor General of the United States and the Administrator of Veterans' Affairs:

VETERANS' ADMINISTRATION,
Washington, January 16, 1935.

Hon. JOHN E. RANKIN,
Chairman Committee on World War Veterans' Legislation,
House of Representatives, Washington, D. C.

MY DEAR MR. RANKIN: I am enclosing herewith copies of a proposed House joint resolution "To clarify the definition of disagreement in section 19, World War Veterans' Act, 1924, as amended", with the request that special attention be directed to early introduction and action toward its passage, such request being based upon the circumstances set forth in this letter.

Section 19, World War Veterans' Act, 1924, as amended, in the last paragraph thereof, defines disagreement as follows:

"* * * and the term 'disagreement' means a denial of claim by the director or someone acting in his name on an appeal to the director."

In an opinion by the Acting Attorney General of the United States September 14, 1931 (36 Ops. Atty. Gen. 456), he held that the denial of an insurance claim by the insurance claims council from which denial no appeal was taken (the action of such insurance claims council being pursuant to authority vested in them by regulation of the Administrator), was sufficient to meet one of the jurisdictional requirements laid down in section 19, World War Veterans' Act, 1924, as amended. Acting under the regulation of the Administrator, the insurance claims council denied the claim of John H. Frederick and advised him by letter November 4, 1932. Mr. Frederick thereafter filed suit and the sufficiency of

the denial of the claim by the insurance claims council was raised by the United States on special plea and motion to dismiss. The trial court sustained the special plea. Mr. Frederick appealed to the United States Circuit Court of Appeals for the Eighth Circuit and that court certified the question to the Supreme Court of the United States.

The conclusion of the Government's brief in the Supreme Court over the signature of the Solicitor General and others states in part: "* * * there is, we believe, grave doubt as to the correctness of the opinion of the Acting Attorney General, * * *" and elsewhere in the brief it is stated that "* * * it appears that the amendment of July 3, 1930, to section 19, defining a disagreement may be construed in one of two ways:

"1. That a final denial sufficient to create a disagreement may be obtained from the Administrator or someone authorized to act for him (in this case the Insurance Claims Council) without the necessity of an appeal therefrom to the Administrator, or

"2. That a final denial sufficient to create a disagreement may only be obtained on an appeal to the Administrator. * * *"

The case was argued in the Supreme Court on October 18, 1934, and motion to defer was filed with the United States Supreme Court by the Solicitor General about November 5, 1934, and the following statement appears in that motion over the signature of the Solicitor General:

"Since the argument of this case, this Department has reached the conclusion that an effort should be made to secure from Congress at its next session in January legislation having for its object the removal of any question as to the jurisdiction of the district courts in this and other cases instituted under similar circumstances, and ratifying the action of the Administrator. I am authorized to say that the Veterans' Administration will seek the necessary legislation."

The order granting the motion was entered by the United States Supreme Court November 5, 1934, stating that the motion was granted and decision of the case would be withheld for a reasonable time to permit the enactment of legislation.

Since the filing of the above motion the Solicitor of this Administration has conferred with the Solicitor General of the United States with reference to proposed legislative language to effectuate the purpose sought in the motion to defer. After reference of a proposed draft of a House joint resolution by the Solicitor of this Administration January 10, 1935, a letter was received from the Solicitor General dated January 11, 1935, which approved the draft of the proposed House joint resolution recommending certain changes indicated in the copy of that letter enclosed for your use. The enclosed draft of the House joint resolution is, therefore, in accord with the opinion of the Solicitor General and the changes recommended by the Solicitor General have been made in preparing the draft submitted herewith.

In order that the changes recommended by the Solicitor General may be made more readily ascertainable, there is enclosed a committee print of the draft prepared by this Administration revealing the changes effected in the preparation of the draft as submitted.

No estimate of cost is furnished as the clarification sought is in accord with the provisions of section 19, World War Veterans' Act, 1924, as amended, as interpreted by the Acting Attorney General, accepted and acted upon by the Veterans' Administration. The present need is to establish such interpretations as provided in the draft.

Early action in connection with the foregoing proposal will be greatly appreciated.

Very truly yours,

FRANK T. HINES, *Administrator.*

The committee has made the following minor changes in the draft submitted by the Administrator of Veterans' Affairs:

Where section 19, World War Veterans' Act, 1924, as amended, is cited, to "U. S. C., title 38, sec. 445", "Supp. VII" is added, and in place of the word "ratification" in the last sentence of the resolution the words "date of enactment" have been substituted, so that the resolution as recommended for passage by this committee reads as follows:

"JOINT RESOLUTION To clarify the definition of disagreement in section 19, World War Veterans' Act, 1924, as amended

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a denial of a claim for insurance by the Administrator of Veterans' Affairs or any employee or agency of the Veterans'

Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act, 1924, as amended (U. S. C., Supp. VII, title 38, sec. 445). This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19 of the World War Veterans' Act, 1924, as amended, and any suit which has been dismissed solely on the ground that a denial as described in this resolution did not constitute a disagreement as defined by section 19 may be reinstated within three months from the date of enactment of this resolution."

