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REPORT
No. 2203

WORLD WAR I EMERGENCY OFFICER RETIREMENT

SEPTEMBER 29, 1962.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

R E P O R T

[To accompany H.R. 8517]

The Committee on Finance, to whom was referred the bill (H.R. 8517) to grant emergency officer's retirement benefits to certain persons who did not qualify therefor because their applications were not submitted before May 25, 1929, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

This bill would reopen the emergency officers' retirement program to permit a very limited group of former World War I emergency officers to apply for and receive the benefits of that program. Individuals who would be permitted to make application for retirement benefits would be those who were eligible under the original law but who would have received retired pay at a monthly rate lower than the monthly rate of disability compensation then payable to them from the Veterans' Bureau.

Generally, applications must have been made for these benefits by May 24, 1929.

While the deadline for applying for emergency officers' retirement benefits would be waived as to the proposed beneficiaries, the bill would continue the previous requirements that (1) the permanent war-service disability of 30 percent must have existed prior to May 25, 1929, and (2) the disability must be clearly shown to have been incurred in or aggravated by active service, without benefit of statutory or regulatory presumption of any kind.

DEPARTMENTAL REPORT

VETERANS' ADMINISTRATION,
September 12, 1962.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The following comments are furnished in response to your request for a report by the Veterans' Administration on H.R. 8517, 87th Congress.

This bill would reopen the emergency officers' retirement program to permit a very limited group of former World War I emergency officers to apply for and receive the benefits of that program. Individuals who would be permitted to make application for retirement benefits would be those who were eligible under the original law but who would have received retired pay at a monthly rate lower than the monthly rate of disability compensation then payable to them from the Veterans Bureau.

The Emergency Officers' Retirement Act of 1928 (Public Law 506, 70th Cong.) and later amendments generally required that a claim for retirement benefits must have been made within 1 year after May 24, 1928, the date of enactment of the original law. (This act and its amendments were repealed by the Veterans' Benefit Act of 1957. However, those receiving or entitled to receive retirement pay on the effective date of the act were protected by a savings clause in the repealing act and this protection has been continued by section 11 of Public Law 85-857, which enacted title 38, United States Code, as a positive code.)

While the deadline for applying for emergency officers' retirement benefits would be waived as to the proposed beneficiaries, the bill would continue the previous requirements that (1) the permanent war-service disability of 30 percent must have existed prior to May 25, 1929, and (2) the disability must be clearly shown to have been incurred in or aggravated by active service, without benefit of statutory or regulatory presumption of any kind.

The main contentions advanced by advocates of legislation such as H.R. 8517 appear to be—

(a) that failure to provide for waiver of retirement pay in the original act discriminated against those who combined the highest degree of disability with the lowest officer rank; and

(b) that this discrimination is compounded by the fact that the Career Compensation Act was construed to allow World War II Reservists to retire for disability, and then waive pay and receive disability compensation from the Veterans' Administration (see 38 U.S.C. 3105).

We recognize that there is an element of seeming unfairness in the fact that the most severely disabled of the emergency officer group were denied a status obtainable by their less disabled comrades. The traditional countering arguments have been (1) that the emergency officers' retirement program was itself discriminatory as to the much larger group of disabled enlisted men for whom disability compensation was the only benefit available, and (2) that the decision not to apply for emergency officers' retirement benefits was based upon the officer's own desire to receive greater financial benefits available to him from the Veterans Bureau by way of disability

compensation. Admittedly these arguments have less force than they did prior to the time that the laws were amended to permit waiver of retirement pay and acceptance of disability compensation without loss of retired officers' status. And, moreover, we believe that your committee would be justified in concluding that enactment of this limited bill would not properly be urged as a precedent for a general reopening of this program.

The situation to which this bill is directed is exemplified by an actual case—that of a blinded 1st lieutenant of World War I. This former emergency officer was receiving disability compensation from the Veterans' Bureau at the rate of \$200 per month during the 1928-29 period, as compared to \$125 monthly which he would have received by way of retirement pay. He now receives compensation at the monthly rate of \$382, which is comparable to \$175.28 monthly retirement pay now payable for like rank and service under the emergency officers' retirement program. Against the financial advantage which accrued as a result of the decision not to apply for emergency officers' retirement benefits is the fact that, if he had elected retirement pay, he would under present law be allowed to waive receipt of retirement pay and continue to draw the higher rate of disability compensation while still enjoying the status of a retired emergency officer. In addition to the intangible benefit of acquiring retired officer status, individuals now on the emergency officers' retired list are eligible to receive commissary and post exchange benefits and medical care in military facilities.

While we see no strong reason for reopening this program at this late date, under the circumstances we do not oppose favorable consideration of H.R. 8517.

We have no date upon which to estimate the number of former emergency officers who would apply for and receive retirement benefits under this bill. We believe that the number would be small. In a large percentage of such cases the monthly amount of disability compensation from the Veterans' Administration would exceed the amount which would be payable under the emergency officers' program, and no net increase would result. There could be some, however, whose current degree of disability is such that it would be advantageous for them to elect emergency officers' retirement pay even though the reverse was the case in the 1928-29 period. In any event the cost of this bill would not be large.

We were advised by the Bureau of the Budget that there was no objection from the standpoint of this administration's program to the presentation of a similar report on this bill to the Committee on Veterans' Affairs, House of Representatives.

Sincerely,

J. S. GLEASON, Jr., *Administrator.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SECTION 11 OF PUBLIC LAW 85-857

PERSONS ENTITLED TO EMERGENCY OFFICERS' RETIREMENT PAY

SEC. 11. (a) Any person who was receiving, or entitled to receive, emergency officers' retirement pay, or other privileges or benefits as a retired emergency officer of World War I, on December 31, 1958, under the laws in effect on that day, shall, except where there was fraud, clear and unmistakable error as to conclusion of fact or law, or misrepresentation of material facts, continue to receive, or be entitled to receive, emergency officers' retirement pay at the rate otherwise payable on December 31, 1958, and such other privileges and benefits, so long as the conditions warranting such pay, privileges, and benefits under those laws continue.

(b) *Any individual who, upon application therefor before May 25, 1929, would have been granted emergency officer's retirement pay based upon 80 per centum or more disability under the Act of May 24, 1928 (45 Stat. 735), and who would have been entitled to continue to receive such pay under section 10 of Public Numbered 2, Seventy-third Congress, or under section 1 of Public Numbered 743, Seventy-sixth Congress, and who upon being placed on the emergency officers retired list would have been paid retired pay at a monthly rate lower than the monthly rate of disability compensation then payable, shall, upon application made therefor after the date of enactment of this subparagraph to the Administrator of Veterans' Affairs, be placed upon the appropriate emergency officers retired list, and thereafter shall be entitled to all rights, privileges, and benefits of retired emergency officers of World War I.*

