WORLD WAR VETERANS' LEGISLATION

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

FIRST SESSION

ON

S. 423, H. R. 5331, and H. R. 5478

BILLS TO AMEND CERTAIN LAWS AND VETERANS' REGULATIONS AFFECTING WORLD WAR VETERANS AND THEIR DEPENDENTS

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CONTENTS

Statement of— Page

Bettleheim, Maj. E. S., adjutant general, the Military Order of the World War 12

Brady, James T., Solicitor, Veterans' Administration 15, 42

Breining, Harold W., Assistant Administrator, Veterans' Administration 31

Kirby, Capt. Thomas, national legislative chairman, Disabled American Veterans of the World War 10, 39

Nock, Mrs. Nicholas Norman, representing American War Mothers 13

Rice, Millard W., legislative representative, Veterans of Foreign Wars 11, 36

Stevenson, Lt. M. S., national commander, Disabled Emergency Officers of the World War 3

Taylor, Col. John Thomas, director, national legislative committee, The American Legion 2, 39

Ten Eyck, Andrew, general counsel, American Veterans Association 13, 46

Testimony on S. 423 1

Testimony on H. R. 5478 24

Testimony on H. R. 5331 40

WORLD WAR VETERANS' LEGISLATION

FRIDAY, APRIL 16, 1937

UNITED STATES SENATE,
SUBCOMMITTEE ON VETERANS' LEGISLATION OF THE
COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Walter F. George (chairman) presiding.

Present: Senators George (chairman), Walsh, Barkley, and Connally.

TESTIMONY ON S. 423

Senator GEORGE. We have before us this morning, gentlemen, two or three bills that I hope we may dispose of, if possible, so that they may be reported to the full committee. The first is S. 423, a bill introduced by the chairman of this committee.

(S. 423 is as follows:)

[S. 423, 75th Cong., 1st sess.]

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, 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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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.

Senator GEORGE. If there is no objection, we will proceed with the hearing on S. 423 and make up the record so we may be able to submit the bill to the full committee.

Senator CONNALLY. Is this directed to the causative factor requirement?

Senator GEORGE. I think that is correct. Colonel Taylor, the subcommittee will hear you first on S. 423, if it is agreeable to the subcommittee.

STATEMENT OF COL. JOHN THOMAS TAYLOR, DIRECTOR, NATIONAL LEGISLATIVE COMMITTEE, THE AMERICAN LEGION

Colonel TAYLOR. Mr. Chairman and members of the committee, it is the contention of the American Legion that if the proper interpretation was placed on section 10, Public, No. 2, of the Seventy-third Congress, the so-called Economy Act, the enactment of this bill would not be necessary. There is sufficient authority under the present law to carry out the provisions of this bill; but under the interpretation placed on the act by the Veterans' Administration, we believe requirements have been set up which were never intended by Congress when Public, No. 2, was enacted, and we believe that this bill should be considered not as new legislation but as an interpretive amendment to section 10, Public, No. 2, which, if enacted, would carry out what this committee believed would be done when Public, No. 2, was reported out and passed by the Senate.

I do not know, Mr. Chairman and gentlemen of the committee, that it is necessary to go back and review any of the history of this legislation. As one of the members of the committee has just pointed out, it all revolves around the question of the causative effect which finds its inception in regulation no. 5, which was issued after the passage of the Economy Act. You gentlemen will recall that the Economy Act specifically provided that after the expiration of two years the regulations would, in effect, be the law.

The original law back in 1928 provided that—

> All persons who have served as officers of the Army, Navy, or Marine Corps of the United States during the World War other than as officers of the regular Army, Navy or Marine Corps, who during such service have incurred physical disabilities in line of duty and who have been or may hereafter within one year be rated in accordance with law at not less than 30 percent permanent disability by the United States Veterans' Bureau for disability resulting directly from such war service—

That is the language used—

> directly from such war service shall receive, from date of filing the application, retirement pay.

Now, when the Economy Act came along, together with regulation no. 5, that language, "directly from such war service," is changed to read "provided that the disease or injury, or aggravation of the disease or injury, directly resulted from the performance of military or naval duty." It is the interpretation that is placed upon that latter language that seems to have caused all the difficulty.

We know the purpose and intent of the Economy Act, so far as this particular legislation was concerned. After the original act was passed it was contemplated that about 3,100 officers would be retired for injuries directly service connected. Then the Attorney General—in fact, two Attorneys General, Mr. Sargent and Mr. Mitchell—submitted opinions which resulted in placing upon the retired list the so-called presumptives—presumptive service connected—and that brought this retired list up to over 6,000. We were never in accord with that, neither the Disabled Emergency Officers nor any other veterans' organization.

Along came the Economy Act with the intent of removing those presumptives; but instead of doing that, as the result of the interpretation thereof—because the law seems specific enough—the Veterans' Administration passed upon those eligible and the list was reduced to about 1,500. Since March 20, 1933, as the result of the

review by the board of appeals, some 400 have been added, making something over 1,900. Although I will say this, that 500 of these disabled emergency Army officers have died since the passage of the Economy Act.

Senator CONNALLY. How many?

Colonel TAYLOR. Four hundred and ninety-eight, since March 20, 1933.

Senator CONNALLY. Out of about 1,900 that were on the roll?

Colonel TAYLOR. Out of 6,000 altogether.

Senator CONNALLY. I mean those that were on the roll.

Colonel TAYLOR. Ninety-seven died who were on the rolls, and 401 died who had not been placed upon the rolls and should have been placed upon the rolls. So that it revolves around the interpretation which the Veterans' Administration has placed on the language that was written in, using those words "causative factor."

Senator CONNALLY. Is this bill any broader than the old bill? Does this put anybody back on except those that were knocked off by the causative factor?

Colonel TAYLOR. That is right. This bill makes certain now that those presumptively service connected will not be put back on, that those directly service connected, following the intention of the original act, will be put back on.

Senator CONNALLY. That is all right.

Colonel TAYLOR. So it will bring it, in our judgment, from 1,900 back to the 3,100 that was originally intended.

I will say again, although it is not necessary as a matter of fact, but we have just got to do something so far as the Veterans' Administration is concerned, to make certain that the law as it is written shall be properly interpreted.

Senator WALSH. How many did you say it would put back?

Colonel TAYLOR. It would bring it from 1,900 up to about 3,100.

Senator WALSH. Does that include those that have died? What is the provision in regard to that?

Colonel TAYLOR. There is no provision as far as they are concerned. The widow of a man who died gets $30 a month, whether it is an officer or a man.

Now, Mr. Chairman and gentlemen of the committee, I desire to present Mr. Stevenson, who will go into the matter in a little more detail. This is the first hearing since the Economy Act was passed that we have had upon that legislation before your committee, and I want you to know that we appreciate it very, very much.

Senator GEORGE. Mr. Stevenson, will you step up please?

STATEMENT OF LT. M. S. STEVENSON, NATIONAL COMMANDER, DISABLED EMERGENCY OFFICERS OF THE WORLD WAR

Lieutenant STEVENSON. Mr. Chairman, and gentlemen of the committee, I just want to emphasize what Colonel Taylor has said.

Senator CONNALLY. Where do you live?

Lieutenant STEVENSON. Boston, Mass. I just want to emphasize what Colonel Taylor has said for the American Legion, and I know the other veterans' organizations have the same thought upon this particular question. As our organization is composed entirely of people who are affected by this legislation we, perhaps, are closer to

it, and for that reason I would like to go a little further into detail as to what this proposed legislation will do and will not do.

The question has been asked as to approximately how many men are affected. We cannot answer that accurately, because we do not know. It has been estimated, however, I understand by the Veterans' Administration, that approximately 3,000 officers who are not now on the rolls would be affected by this legislation. We believe that this estimate is far in excess of the number that would actually be found entitled to retirement with pay if the bill is enacted into law, because of the restrictions in the bill.

In this respect General Hines has stated that they were unable to estimate any possible reduction in the number they believe would benefit from this bill by reason of the phrase, "clear and unmistakable evidence." This restriction is in the bill. No mention was made of the further restriction which eliminates the statutory presumption of soundness on entry into service.

Now, from the manner in which the emergency officers' laws have been administered in the past we can safely assume that the phrase referred to would be given a more restrictive interpretation than in the regulation relating to compensation when emergency officers' cases are being considered. Service connection has been broken under the "clear and unmistakable" clause contained in Public 141, Veterans' Administration law, in a number of compensation cases and undoubtedly would likewise be much more stringently applied in the emergency officers' cases.

These restrictions would deny retirement pay, would deny a return to the list, to those cases which Congress intended to remove under the Economy Act. These restrictions would also cure any irregularities existing under the original act subsequent to the Attorney General's decision of January 18, 1929. If any fault could be found with those who would be returned to the emergency officers' retired list under the provisions of this bill, if enacted, or any question raised as to their disabilities, it could be definitely charged to the administration of the act rather than the act itself.

The statement was made that if the present stringent requirements emergency officers are asked to meet should be modified to any degree, it would result in throwing the gates wide open. It has been our observation, however, that the Veterans' Administration, in applying emergency officers' regulations has held the line fairly well during the past 4 years.

Certain statistics have been received, which have already been given; 401 out of the approximate 4,300 officers denied retirement pay have died since 1933; 97 who were returned to the rolls have died, making a total of 498; 431 officers have been restored to the retired list by the Board of Veterans' Appeals. I will repeat that: 431 men have been restored upon appeal. The Administrator reports that a study of the 431 cases restored under Public No. 2 indicates that approximately 83 percent have disabilities resulting from combat and 17 percent have disabilities not resulting from combat. He further reports that of the 17 percent who have disabilities not resulting from combat, 89 percent are injury cases and 11 percent are disease cases. Applying these percentages to the 431 cases restored by the Board of Veterans' Appeals, we have 83 percent, or 358 officers, restored with disabilities incurred in combat. The remaining 17 percent, or 73 officers, were restored because of disabilities not resulting from combat

service. Of this 73 who were restored with disabilities not resulting from combat, 89 percent, or 65 officers, were injury cases, leaving 11 percent, or 8 in number, who were retired because of disease not incurred in combat. Some of this small number are known to have had combat service.

Now, I emphasize those percentages, which are Veterans' Administration percentages, to point out that it is the disease case, the man with tuberculosis, mental disease, heart trouble, that are having difficulty under this causative factor requirement. The battle casualty, there is no question about; the accident case, a definite case, there is no question about, but it is the man with a hard-to-see, hard-to-analyze disability that has the difficulty under the causative factor.

If the Veterans' Administration figures are correct, eight men with disease not incurred in combat have been returned to the rolls under the present law; only eight men, according to their figures.

Senator CONNALLY. The difficulty you say is the innocent and invisible cause, where the trouble has been in tracing this causative factor back to the origin under the rulings of the Veterans' Bureau?

Lieutenant STEVENSON. Just so, Senator.

Senator CONNALLY. I have had a number of cases over there and I will admit I am in a fog or a haze as to just what this causative factor means. I have attended several hearings on these cases, and after all the testimony was in, and all that, I did not know much more about the causative factor.

Lieutenant STEVENSON. I think that same comment can be made by those who have tried to find out just what a man must do in order to prove his right to retirement, especially a man who cannot point to a specific happening or a specific instance of service. In the case of tuberculosis, mental ailment, or heart trouble, the man simply cannot find out, nor can he show any evidence at all as to just where, just when, and just what he was doing at the time that disability originated. It just cannot be done.

Senator CONNALLY. Pardon the interruption.

Lieutenant STEVENSON. Yes, sir. I repeat again that the interests of the veterans' organizations in this legislation is directed largely at the disease cases. The fact that combat service cases have such a high percentage indicates that the Veterans' Administration is giving, of course, due attention to those who have had combat service, but in the estimation of our own organization and the others they are not giving what Congress intended they give in the way of consideration to those men who did not have combat service.

Many of us happened to have served in France. We were fortunate in that respect. We were privileged to serve in the front line, but there are literally thousands of men who did not have the privilege of going to France. They were ready and willing to do so. They served in this country and they are entitled to the same benefits as we are.

As Colonel Taylor pointed out, the original instructions approved by General Hines in 1933 would not permit continuation of emergency officers' retirement pay unless the disability was shown to have been caused by a factor arising out of the actual performance of duty.

Now, as illustration of the effect of these instructions, we have a record of a case of an Engineer officer who accidentally shot himself in the foot while cleaning his pistol. The records of the War Department show the officer incurred an injury of the left foot through acci-

dental discharge of a pistol which was being cleaned, but there is nothing whatever in the records indicating the injury was sustained through carelessness or negligence and was held by Army authorities to have been incurred in line of duty. His claim, however, was denied on February 21, 1934, and in the decision it is stated as follows:

> Accidental discharge of firearms is common in civil life. It appears from the record that this claimant was a commissioned officer at the time of the injury, and there is nothing to show that he was cleaning an automatic pistol under specific orders or that the accident was the result of any conditions incident to the actual performance of military duty.

Now, I served throughout the war, or at least until the time I was wounded, with the Sixteenth Infantry of the First Regular Army Division, and never in all my experience in the Army have I ever heard of a soldier, either officer or enlisted man, to have a specific order to keep his firearms or equipment clean. This is only one example of the unreasonableness of the instructions governing review of emergency officers' retirement claims, and the application of those instructions by the Board of Veterans' Appeals.

There was much criticism of the Veterans' Administration instructions under the Economy Act, both by the service orgranization and Members of Congress. In this connection attention is called to a letter addressed to the President under date of June 16, 1934, signed by 39 Members of the Senate, 10 of whom were members of the Finance Committee, when the bill was reported. Now, in this letter issue was taken with the Veterans' Administration's interpretation of the act, and it was pointed out that the restrictions set up under this interpretation had gone far beyond the intent of Congress when Public, No. 2 was enacted. With reference to the term "casuative factor" it was stated that these words were undoubtedly supplied by officials of the Veterans' Administration and that no explanation was ever made to the committee as to how this term would be interpreted. In the summer of 1934 action on emergency officers' appeals was discontinued pending study of the law and regulations, with the view of considering possible changes in the instructions.

We had every reason to believe, from discussions with officials of the Veterans' Administration, that the instructions would be liberalized along the lines suggested in this letter to the President.

Mr. Chairman, I believe it might be of value to have that letter inserted and made a part of the record of the hearing at this point.

Senator GEORGE. The letter may be inserted.

(The letter referred to is as follows:)

UNITED STATES SENATE,
June 16, 1934.

To the PRESIDENT,
The White House, Washington, D. C.

DEAR MR. PRESIDENT: We respectfully direct your attention to section 10, Public, No. 2, Seventy-third Congress, Veterans' Regulation No. 5, and Veterans' Administration instructions to review boards charged with adjudication of emergency officers' retirement claims.

Under the original Emergency Officers' Retirement Act of May 24, 1928, emergency officers who served during the World War and who had a permanent disability of more than 30 percent incurred in line of duty and found to have resulted directly from such World War service were retired at three-fourths of their base pay. Section 10 of Public, No. 2, provided that those emergency officers who had a 30-percent disability, incurred in line of duty, would be entitled to continue to receive retirement pay if the disability resulted from disease or injury directly resulting from the performance of military or naval duty. While

it is admitted that the language of the act of March 20, 1933, was intended to be more restrictive than the original act, as interpreted, it is our opinion that the Veterans' Administration in the interpretation of the language of section 10, Public, No. 2, has gone far beyond the intent of the Congress. This is evidenced by the estimate of those in charge of the bill that section 10 would result in the saving of approximately $3,000,000 while, as a matter of fact, the saving effected was more than twice this amount.

Section 10 of the act of March 20, 1933, does not contain the words "causative factor" but these words were used in Veterans' Regulation No. 5 and Veterans' Administration instructions. Even had they been used in the act it is our belief that the interpretation placed on them by the Veterans' Administration is unwarranted.

Veterans' Administration instructions to review boards charged with adjudication of emergency officers' retirement claims and appeals for continuation of retirement benefits read in part as follows:

"In addition to the determination that the injury or disease which resulted in the disability for which retirement has heretofore been granted was incurred in line of duty, it must also be determined that the disease or injury or aggravation of the disease or injury directly resulted from the performance of military or naval duty. In making this determination it is required that the officer show a causative factor arising out of the actual performance of duty.

"A disease of mind or body which arises merely in point of time with service—that is, while employed in the active military or naval service—is not sufficient to bring the officer within this requirement. It must be shown that but for the performance of actual duty the injury or disease could not reasonably have been expected to have arisen. The breaking down or degeneration of tissues which might be expected irrespective of the unusual stress or strain incident to the performance of actual military or naval duty, will not be considered a causative factor.

"* * * The disease or injury must be traceable directly to, and the causative factor must directly arise out of, a duty being performed under competent orders. Officers injured while not carrying out duties incident to orders will not be considered as performing military or naval duty during such period."

Acting under the above instructions the boards in the original review of emergency officers' cases eliminated practically all disease cases, notwithstanding the fact that they were found to have been incurred in line of duty and directly connected with their war service and are now being paid compensation for their war-incurred disabilities. Injury cases were denied continuation of retirement benefits where they were unable to show that they were acting under some specific order at the time the injury was incurred, notwithstanding the fact that it was found to have been incurred in line of duty by Army or Navy officials.

The Veterans' Administration claims that this drastic requirement was the intent of Congress, and point to the fact that the words "causative factor", although not in the act, appear in the report of the Finance Committee of the Senate. These words were undoubtedly supplied by officials of the Veterans' Administration, but no explanation was ever made to the Committee as to how the words would be interpreted. No member of the Senate Committee on Finance, nor of the Congress, could have had any conception at the time of the passage of the act that such an interpretation would be made. It is this arbitrary interpretation by the Veterans' Administration which has caused most of the existing hardships.

We are not asking to restore to the emergency officers' list the name of any officer who did not receive his disability in line of duty. We respectfully submit, however, that the regulation requiring the showing of a "causative factor", plus the definition of "causative factor", as one arising from the performance of a specific military duty, is far more restrictive than any Congress had in mind when passing this legislation. It is a requirement impossible to meet in many worthy cases, including practically all cases of functional disease.

Surely, where it is a well-established fact that an officer was seriously disabled by injury or disease while in the service during the war, and that the disability existed to such a severe degree that upon discharge, or soon thereafter, he was rated 30 percent permanently disabled by the Veterans' Administration, these conditions should meet any restrictions which the Government would be justified in requiring to fulfill the intent of the act.

We most earnestly request that regulation no. 5, and Veterans' Administration instructions issued pursuant thereto, be changed so that retirement privileges may be continued for those whose disabilities are clearly shown to have been incurred in line of duty while in the active military or naval service during the

World War, the Government reserving the right to rebut evidence submitted for the substantiation of such claims.

Sincerely yours,

Robt. R. Reynolds, Tom Connally, Pat McCarran, Morris Sheppard, Elmer Thomas, Robert M. La Follette, Jr., Chas. L. McNary, A. H. Vandenberg, W. Warren Barbour, Henry F. Ashurst, B. K. Wheeler, Elbert D. Thomas, Lynn J. Frazier, Arthur Capper, Gerald P. Nye, Henrik Shipstead, James Couzens, James J. Davis, E. W. Gibson, David I. Waslh, M. M. Logan, Hiram W. Johnson, Bronson Cutting, Pat Harrison, William E. Borah, Carl A. Hatch, Hugo L. Black, Duncan U. Fletcher, Frederick Steiwer, Walter F. George, Edward F. Costigan, Bennett Champ Clark, Alben W. Barkley, Richard B. Russell, Jr., Carl Hayden, H. D. Stephens, Geo. McGill, Augustine Lonergan, Jos. T. Robinson.

Lieutenant STEVENSON. Now, in April 1935, the chairman of the Board of Veterans' Appeals submitted to the Administrator for approval, so-called interpretations explanatory of the provisions of section 10, Public, No. 2, Seventy-third Congress—that is, the Economy Act—and instruction no. 1 thereunder. These instructions consist of three pages and might appear to the casual observer to be somewhat more liberal than the original instructions of April 4, 1933. It is believed that a fair interpretation and application of the instructions would permit restoring to the rolls all officers whose disabilities were in fact incurred in the line of duty, but it is apparent that the instructions are not being liberally applied to a vast majority of the cases considered by the Board of Appeals.

From our observation and discussions with members of the Appeal Board it is evident that one sentence of paragraph 1 (d) of the instructions prohibits restoration of retirement pay unless the officer is able to show circumstances incident to the performance of military or naval duty of such character as to be the cause of the disability, exclusive of all other possible causes. This sentence reads:

> It must be shown that but for the performance of duty the disability would not reasonably be expected to have arisen.

Under that requirement unless an officer can show by a preponderance of evidence that he would not and could not be stricken with tuberculosis, heart disease, mental disorder, or whatever the disability might be, except for the performance of some specific military activity, his claim is denied. The Board members are not permitted to find an officer entitled to continue receiving retirement pay unless they are satisfied that the disease could not have developed except for the actual performance of duty.

Colonel Taylor has referred to the original retirement act. He told you of the opinion of the Attorney General under which the presumptives were granted retirement. Under this law, if enacted, there would be no qualification which would permit the return of any presumptives to the retirement roll. Officers whose disabilities were shown by official medical records to have been incurred in line of duty were excluded under the original interpretation, but had been returned to the lists, or made eligible to return to the lists under the Attorney General's decision. The service organizations and many members of Congress strenuously protested the Veterans' Bureau strict interpretation, and as a result the Attorney General's opinion was rendered. Several hundred officers whose disabilities were found to have resulted directly from war service by the retirement board and by General Hines in 1928 have now been denied retirement benefits by the Board of Vet-

erans' Appeals. I want to enlarge upon that. Several hundred men who were originally retired, prior to the Attorney General's decision have been denied restoration to the rolls upon their appeal.

Senator CONNALLY. You mean after the Economy Act was passed?

Lieutenant STEVENSON. After the Economy Act was passed.

Senator CONNALLY. They were restored and taken off again after the Economy Act was passed?

Lieutenant STEVENSON. No; men who were placed on the retirement rolls under the original act, who would benefit by the Attorney General's liberalization, have not been returned to the retirement rolls following their appeal after the Economy Act. In other words, the interpretation now has restricted the list even to a finer degree than the first interpretation prior to the Attorney General's opinion.

It was the impression, certainly, that the Economy Act was intended to eliminate the additional benefits granted by the Attorney General's opinion. Even though that was the thought, several hundred men who were originally on the list have not been returned under the present regulations.

In his report General Hines said:

> 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.

Now, what can this mean? In 1928 the Veterans' Bureau ruled that in order to be entitled to retirement benefit, the officer must not only show that his disability was incurred in line of duty but further that it resulted directly from war service. The phrase "directly from war service" appeared in the original act. Several hundred cases of men whose disabilities were found to have resulted directly from war service in 1928 have now been denied retirement benefits because the disabilities are not considered to have resulted directly from military activities.

If the law is sufficiently liberal to provide for those that Congress originally intended to extend this benefit to, then why has the Veterans' Administration discontinued retirement benefits to several hundred to whom the administrator himself admits Congress intended to extend retirement?

There is one other point, now, Mr. Chairman and member of the committee. All of the emergency officer group volunteered for World War service; a large percentage well past the draft age, many with families dependent upon them.

Many had spent years in the National Guard and Officers' Reserve Corps. They served to the best of their ability and had no choice as to where they would be sent. They would go to France when ordered to do so, or remain in the United States when so ordered. They had no choice as to where they would be sent. We do not believe that Congress ever intended to discriminate against a group who, through no fault of their own, were not privileged to serve in combat, or to be disabled in combat, but were unfortuante enough to have their disability occur not as a result of combat service, and who are now suffering permanent disabilities averaging 60 percent. The minimum requirement is 30 percent. The average is admitted to be about 60 percent. These men will not be asking for Federal aid or retirement benefits much longer. The average age of emergency officers was some 8 or 10 years older than that of the average enlisted

men. In our rank and file the average is pretty close to 52 years. The average age of the enlisted men now must be pretty close to 42 or 43 years. So the emergency officer is well over 50 years of age on the average.

Senator CONNALLY. The average age of the enlisted men was more than that, was it not?

Mr. RAY. 44 years and 4 months.

Lieutenant STEVENSON. We were 8 or 9 years older, on the average, so our age would be 53 years. A great many individuals affected by this legislation are men who are well over 70 years old; men who were 45, 50, and 55 when they were in the Army as doctors, as professional specialists, men who gave all that they could give at that advanced age and who now, because they cannot prove the causative factor, cannot be returned to the rolls.

I want to emphasize again what Colonel Taylor said that we believe the enactment of this bill is manifestly to carry out the intent of Congress when Public, No. 2, was enacted and that this bill really should not be considered as new legislation but merely as an interpretative amendment to the present law. Speaking again for those men who are directly concerned, we ask you gentlemen for your favorable consideration of this measure.

Senator GEORGE. Thank you, Lieutenant Stevenson. Captain Kirby, do you desire to be heard on this matter?

STATEMENT OF CAPT. THOMAS KIRBY, NATIONAL LEGISLATIVE CHAIRMAN, DISABLED AMERICAN VETERANS

Captain KIRBY. Mr. Chairman, and members of the committee, in order to make the presentation of the case as brief as possible, the service organizations held a long series of conferences, and out of these conferences came this bill which we think will settle the conditions that we are fighting against.

In order to save the time of the committee, it was decided that Mr. Stevenson would make the general presentation. However, I have two points that I would like to stress that have not been brought out here strongly.

The first is that this is practically the only group of direct service-connected men who have not recovered at least most of what they lost by the Economy Act. Various amendments that have passed the Congress sinch March 20, 1933, have cleared up most of the difficulties for the service-connected group.

The second thing I wanted to point out is that there is no principle at all involved in this legislation. In other words, Congress went on record and it became a law that the principle of retirement of the disabled emergency officers should be part of the statutes. The only complaint here is that the stringent interpretation has made it utterly impossible to get on the rolls many men who appeared to be worse disabled, on the average, than the men who were returned on the list.

In other words, to prove the origin, the incident, the time, and the place of a chronic disability is literally impossible, and so conceded by medical authorities.

We do not think that this bill will bring about any such conditions of alleged scandals that drew criticism before, it is limiting the relief to those whose service connection is direct rather than presumptive.

So on behalf of the Disabled American Veterans, in excess of 90 percent former enlisted men, we want to record our strong endorsement of this bill.

Thank you, Senator.

Senator GEORGE. Thank you, Captain Kirby. Mr. Rice, do you want to be heard?

STATEMENT OF MILLARD W. RICE, LEGISLATIVE REPRESENTATIVE, VETERANS OF FOREIGN WARS

Mr. RICE. Mr. Chairman, and members of the committee: I, too, wish to be very brief and conserve the time of the committee, a very excellent presentation having been made by Lieutenant Stevenson on the emergency officers' legislation.

Relative to this proposed legislation, the Veterans of Foreign Wars at its last national encampment, adopted a resolution calling for modification of the very stringent causative factor as to the disabled emergency officers' retirement benefits.

We believe that this bill will bring about such a liberalization as will be reasonable, which will reinstate what was the original intention of Congress and what was apparently its intention even when the Economy Act was enacted into law.

May I call to the attention of the committee that the retirement benefit for officers in the regular service is not predicated upon a causative factor, that there is no necessity for proving that a disability was incurred by reason of the performance of duty, so far as the regular officers are concerned, so long as it was incurred during that military service. The benefits for the disabled emergency officers were to be granted very much on the same standard as had previously been granted to the officers of the regular forces, except as to the 30-percent requirement. Therefore, it would seem that the factor as to service connection should be the same for the disabled emergency officers as it has always been for the regular officers.

May I state that regardless of the estimates that were made as to the number who will be restored to the rolls, whether it should be an additional 1,500 or an additional 2,000, or an additional 3,000, after all, that constitutes but a very, very small percentage of the total number of officers during the World War, there having been about 200,000 altogether.

The V. F. W. is also in favor of opening up the statutory limitations now in the bill, feeling that a man should not be penalized by reason of his past good faith or his past prosperity, or by reason of his failure to know enough about the law when it was originally enacted. We are not, however, insisting that that be adopted as an amendment to this proposed bill, but we do wish to go on record as stating that we believe that those men who failed originally to file their applications for benefits under the Disabled Emergency Officers' Retirement Act before May 29, 1929, should if they otherwise meet the provisions of the bill, be enabled to prove themselves entitled to such benefits.

I, therefore, only wish to make the statement at this time to indicate that we believe that such legislation is desirable and necessary for the future. Thank you, Mr. Chairman, for this opportunity to be heard.

Senator GEORGE. Thank you very much, Mr. Rice. Mr. Ray, did you desire to make any additional statement?

Mr. RAY, of the Disabled Emergency Officers of the World War. Not at this time, Senator; no, sir.

Senator GEORGE. Major Bettelheim, did you desire to make a statement?

STATEMENT OF MAJ. EDWIN S. BETTELHEIM, JR., ADJUTANT GENERAL, MILITARY ORDER OF THE WORLD WAR

Major BETTELHEIM. Mr. Chairman and members of the committee: The Military Order of the World War has been in conference with the representatives of the other veterans' organizations, and in order not to reiterate what Lieutenant Stevenson has said, but to add our endorsement, we wish to present for inclusion in the record the resolution adopted at our last national convention. Similar resolutions were adopted at previous conventions, endorsing and urging the passage of this legislation.

Senator GEORGE. Without objection it will be entered in the record.

(The resolution referred to is as follows:)

RESOLUTION NO. 23—CAUSATIVE FACTOR

Whereas many permanently disabled emergency officers of the World War who were properly retired under the law for direct service connected disabilities incurred in line of duty have been removed from the emergency officers' retired list and are deprived of retirement pay and privileges by later legislation and,

Whereas no such provision, with causative factor requirement, applies to any other class of disabled war veterans; be it

Resolved, by the Military Order of the World War in National Convention assembled at West Point, N. Y., October 1-4, 1936, that this order favors reasonable modification of the now existing law toward the end that this situation may be corrected.

Approved by the committee.

Major BETTELHEIM. I might add that the Military Order of the World War is made up not only of emergency officers but also, in a large measure, of officers of the regular service.

Senator CONNALLY. It is confined to officers?

Major BETTELHEIM. Yes, sir. This resolution was unanimously adopted by those who were present at the convention.

By the way, the convention was held at West Point, so it would have a large majority of Regular officers there, who endorsed this resolution in behalf of the disabled emergency officers.

The Military Order of the World War heartily endorses this legislation. I thank you.

Senator WALSH. Perhaps it is already in the record, but, Colonel Taylor, I would like to ask as to what is the total number of disabled officers receiving retirement pay at the time of the passage of the emergency law?

Colonel TAYLOR. Six thousand seven hundred.

Senator WALSH. How many were dropped as the result of the passage of the Economy Act?

Colonel TAYLOR. After the passage of the Economy Act just a little over 1,500 were restored.

Senator WALSH. Wait a minute. There had been 1,500 restored already?

Colonel TAYLOR. Since the Economy Act, as the result of the action taken by the board of appeals, about 400 more, so, altogether there were about 1,900.

Senator WALSH. And this bill will restore how many?

Colonel TAYLOR. This will bring it back to its original intent and restore probably 1,200 more who should be on the lists, bringing it back to the 3,100.

Senator WALSH. In other words, it will restore all except those who have died?

Colonel TAYLOR. No, it will not restore at all those who were put on as the result of the Attorney General's opinion, the presumptive cases. This will simply restore the direct service connected.

Senator WALSH. How many in that group?

Colonel TAYLOR. About 3,000.

Senator WALSH. Thank you.

Senator GEORGE. Is Mrs. Nock here?

STATEMENT OF MRS. NICHOLAS NORMAN NOCK, REPRESENTING AMERICAN WAR MOTHERS

Mrs. NOCK. Mr. Chairman, I do not wish to speak in detail on this bill except just to say that the American War Mothers are interested in everything that can be done for the aid of those men who suffered in the World War. We do advocate this legislation.

Senator GEORGE. Thank you very much, Mrs. Nock. Are there any others here who wish to appear in behalf of the measure?

STATEMENT OF ANDREW TEN EYCK, GENERAL COUNSEL, AMERICAN VETERANS' ASSOCIATION

Mr. TEN EYCK. Mr. Chairman, and gentlemen: I wish merely to read the draft of a section of our proposed omnibus bill which bears on this question.

I am not prepared to discuss the interpretations which the Veterans' Administration has put upon the present law. Our omnibus bill has not been introduced, but it has been printed in the hearings before the World War Veterans' Committee. The American Veterans' Association is in accord with the principles of S. 423 only insofar as they conform to principles contained in the following paragraph which I quote from our omnibus bill:

> 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 officer of the Regular Army, Navy, or Marine Corps during the World War, who made valid application for retirement under the provisions of Public, No. 506, Seventieth Congress, enacted May 24, 1928, sections 581 and 582, title 38, United States Code, 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 now being paid him if the disability for which he has been retired resulted from disease or injury, or aggravation of a preexisting disease or injury, incurred in fact in line of duty during such service, exclusive of statutory presumptions of service connections, except as contained in section 1, title I of this Act: *Provided*, That the said person entered active service between April 6, 1917, and November 11, 1918: *Provided*, That the disease or aggravation of the disease or injury directly resulted from the performance of military or naval duty and that such person otherwise meets the requirement of the regulations which may be issued under the provisions of this Act.

Senator CONNALLY. You do not mean now receiving, you mean received back as of the date of March 19, 1933, do you not?

Mr. TEN EYCK. Yes; if proven that the veterans' disability was incurred, in fact, in line of duty, he should be entitled to receive the amount paid him prior to the passage of the Economy Act.

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Senator CONNALLY. Is not what you read practically what this bill is?

Mr. TEN EYCK. I merely want to go on record that the organization is in favor of the principle involved, only in cases where service connection has been proven by clear and unmistakable evidence.

Senator CONNALLY. I followed your language. It is practically the same as this bill, with the exception that you say "now receiving." Of course, that is not applicable. What you want is "received as of March 19, 1933, the date of the passage of the economy bill, excluding presumptive cases."

Mr. TEN EYCK. Yes; with the absolute service-connection restriction.

Senator WALSH. What service group does your bill include, this bill that you just read?

Mr. TEN EYCK. The section of our proposed omnibus bill which I just read refers only to emergency officers.

Senator WALSH. Does that include enlisted men?

Mr. TEN EYCK. No, sir. Not the section which I read. We do make provisions for enlisted men in other sections of the proposed bill, however.

(Subsequently the following letter from Mr. Daniel A. Hobart, National Commander, American Veterans Association, was received.)

THE AMERICAN VETERANS ASSOCIATION, INC.,
Washington, D. C., April 20, 1937.

Hon. WALTER F. GEORGE,
Chairman, Subcommittee on Veterans' Affairs,
Senate Finance Committee, Washington, D. C.

MY DEAR SENATOR GEORGE: As national commander of the American Veterans Association and a former member of the Board of Veterans Appeals, I am very much interested in S. 423, a bill pertaining to emergency officers. The immediate cause for the introduction of this bill is, as I understand it, to eliminate that part of the second proviso of Veterans Regulation No. 5, issued under section 10, title I of Public, No. 2, Seventy-third Congress, which provides: "That the causative factor, therefore, is shown to have arisen out of the performance of duty during such service."

The phrase "causative factor" has been under attack by all of the service organizations who have pressed their argument that the language of the second proviso is more restrictive than the statute itself. A number of us, when serving on the Board of Veterans Appeals, believed that the statute itself was as restrictive as the regulation, and that the second proviso was merely an attempt to define, and certainly not an attempt to impose an additional restriction not contained in the statute.

Section 300, title III, of the legislation which we propose was called to the attention of the subcommittee of the Senate Finance Committee which deals with veterans' affairs by the general counsel of this association at the hearings held by that committee, Friday, April 16, 1937. This legislation eliminates the phrase "causative factor" and clarifies the language of the statute by the inclusion of the term "in fact" which is further reinforced by the prohibition against qualifications by statutory presumption. This simple little phrase "causative factor" is much more important than it would appear at first blush, because if it is eliminated and the statute is amended by the language of S. 423, a door is thrown open which should remain closed.

I believe the language as expressed in our omnibus bill is sufficiently restrictive to accomplish the purposes of the statute without injecting the confusing phrase "causative factor" which is without benefit of settled rules of law, and established legal precedents.

I wish to urge the committee to consider the advisability and desirability of adopting the legislation we propose as a substitute or an amendment to S. 423.

I would appreciate it if this letter could be made a part of the printed proceedings.

Respectfully yours,

DONALD A. HOBART,
National Commander, American Veterans' Association.

Senator GEORGE. Thank you very much, Mr. Ten Eyck. Mr. Breining?

Mr. BREINING. I think Mr. Brady will speak in behalf of this measure.

Senator GEORGE. Mr. Brady will present the matter from the standpoint of the Veterans' Administration.

STATEMENT OF JAMES T. BRADY, SOLICITOR, VETERANS' ADMINISTRATION

Mr. BRADY. We have presented to the committee, Senator, our report showing what we believe to be the effect of the bill.

Senator GEORGE. That report will go in the record here, Mr. Brady.

(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.*

Senator GEORGE. Before you proceed, Mr. Brady, I believe in response to a series of questions which were transmitted to the Bureau through the chairman of the subcommittee, a response was made. I happen not to have with me the answers made by the Bureau.

Mr. BRADY. We have the answers here. I would like to have them inserted in the record, too.

Senator GEORGE. I think the committee would like to have those also inserted in the record.

(The matter referred to is as follows:)

APRIL 5, 1937.

Hon. WALTER F. GEORGE,
Committee on Privileges and Elections,
United States Senate, Washington, D. C.

MY DEAR SENATOR GEORGE: In compliance with your request of March 27 the following statistical information concerning emergency officers is submitted in connection with S. 423:

1. The number of emergency officers who have died since enactment of Public, No. 2, Seventy-third Congress:

(*a*) While in receipt of retirement pay, 97.

(*b*) After the discontinuance of retirement pay, 401.

2. The number continued on the retired list on original review under Public, No. 2, 1,525.

Concerning item 2 relating to combat incurrence in the cases of those emergency officers who were found entitled to continue to receive retirement benefits on original review under Public, No. 2, please be advised that there has been no effective determination of that question, in view of the fact that section 212 (b) of Public, No. 212 is the governing statute on this point. So far as the requirements of Public, No. 2 are concerned, insofar as they relate to retired emergency officers, it is only necessary to determine whether the disability directly resulted from the performance of military or naval duty. Findings as to combat incurrence under Public, No. 212 in this group of cases were made only when the former officer was in the Government employ or requested such a review because of contemplated Government employment.

3. The number restored to the retired list by the Board of Veterans' Appeals, 431.

Concerning item 3, which relates the number of retired emergency officers continued on the rolls through appellate action by the Board of Veterans' Appeals, the same comment as that contained with reference to item 2 is for application.

Following is a classification of 34 cases on which combat status has been determined under section 212 of Public, No. 212:

(*a*) Held to have been incurred in combat, 8.

(*b*) Held not to have been incurred in combat, 26.

A study of the cases restored under Public, No. 2 indicates that approximately 83 percent have disabilities resulting from combat and 17 percent have disabilities not resulting from combat. Of the latter group, approximately 89 percent are are injury cases and 11 percent are disease cases.

4. Of the number restored to the retired list because of disabilities due to disease how many served overseas; how many had combat service?

It is impossible to furnish this information as it is not carried on the statistical records. However, a study indicates that approximately 75 percent of the men on the compensation rolls had overseas service and it is safe to assume that a much greater proportion of the emergency officers who have been restored to the rolls had overseas service.

5. The number of emergency officers removed from the emergency officers' retired list under section 10, Public, No. 2, who are not now receiving compensation for disabilities directly connected with service.

Following is an analysis of the present compensation or pension status of the living emergency officers who are not entitled to retirement pay who were removed from the rolls under Public, No. 2:

Receiving compensation for wartime service:	
Direct service connection	3, 356
Presumptive service connection	242
Receiving pension for non-service-connected disabilities	57
Receiving pension for peacetime service	21
Receiving pension for Spanish War service	47
Not on compensation or pension rolls	224
Total	3, 947

6. The number of emergency officers whose disabilities have been found to have resulted directly from performance of duty who were denied restoration of retirement pay because of insufficient degree of disability.

With reference to item 6 of your letter, which relates to the number of emergency officers whose disabilities have been found to have resulted directly from performance of duty, who were denied restoration of retirement pay because of insufficient degree of disability, you are advised that there are approximately 50 living officers in this category. However, it may be stated that in most of these cases the officers were originally retired for a combination of disabilities and on the review under Public, No. 2, it was found that not all of the disabilities for which they were previously retired under Public, No. 506, met the requirements as to performance of duty under Public, No. 2. In this group there were also a few whose disabilities, while meeting the performance of duty requirement of Public, No. 2, could not be rated legally under the schedule of disability ratings applicable in a sufficient degree to meet the 30-percent requirement. In that connection, Executive order, Veterans' Regulation No. 5, requires a review to determine whether the disability was heretofore properly rated. In applying this provision, no emergency officer was denied entitlement because of a difference in opinion as to the extent of disability present. If the prior evaluation under the schedule was legal, that is, if the provisions of the schedule were properly applied, the former officer was continued on the rolls if otherwise entitled.

Very truly yours,

Frank T. Hines, *Administrator.*

Mr. Brady. Other than those reports which we have made, unless there are questions, Mr. Chairman, we have nothing further to present on the bill.

Senator Connally. Cannot you tell us briefly, at least, what those reports are, whether you agree with these other views? How many men are affected?

Mr. Brady. Our figures with respect to the number that we believe to be affected by the bill are contained in this report submitted to the chairman just introduced in the record. Following is an analysis of the present compensation, or pension status of the living emergency officers who are not entitled to retirement pay under the present law, who were removed from the rolls under Public, No. 2.

Receiving compensation for wartime service, directly service-connected 3,356; presumptively service-connected, 242; receiving pension for non-service-connected disabilities 57; receiving pension for peacetime service, 21.

I might digress there for a moment, if I may, Mr. Chairman and say that this bill contains one factor which I have not heard any of the speakers thus far mention, and that is under Public, No. 2, section

10, unless the officer was commissioned before November 11, 1918, he is not included under the present law. This bill would propose to restore those who became commissioned officers after November 11, 1918.

Senator WALSH. If he would be commissioned at any time before July 2, 1921, he would get the benefit of this act.

Mr. BRADY. That is right; as it stands.

Senator GEORGE. I think you are right.

Mr. BRADY. Receiving compensation for Spanish War service, 47.

Senator CONNALLY. How is that?

Mr. BRADY. Those who had Spanish War service as well as World War service, who went off the rolls under the Emergency Officers Retirement Act, Public, No. 2, nevertheless became entitled to pension for Spanish War service.

Senator CONNALLY. Do they have to be officers in the Spanish War?

Mr. BRADY. No, sir.

Senator WALSH. How many are being embraced in the proviso on page 2 of the bill, from line 9 on to the part to which you just referred? [Reading:]

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.

Mr. BRADY. I do not believe I have that figure broken down here, Senator, but we will be glad to furnish it to the committee.

Senator WALSH. That is one of the two objections of the Department, is it not?

Mr. BRADY. That is one of the provi ions that is not included in the present law, Senator.

Senator GEORGE. Is anyone from the Bureau able to make a statement as to just how many additional officers that would include?

Mr. BRADY. On the point that the Senator just inquired about?

Senator GEORGE. Yes.

Mr. BRADY. We will be able to break that down, I believe, Senator, and furnish the figures to the committee.

Senator GEORGE. We will thank you very much, if you do so, Mr. Brady.

(The information requested is as follows:)

It is estimated that 100 emergency officers would become eligible for retirement pay with the extension of the date of commissioned service from November 11, 1918, to July 2, 1921, where entry into service was prior to November 11, 1918.

Mr. BRADY. Now, that takes care of the figures as we have analyzed them, Mr. Chairman and members of the committee.

Going to the question of the merit of the bill, when the original act was passed, the Veterans' Administration, in interpreting the phrase, "directly resulted from war service", took the position that unless there was a causal connection between the disability suffered and the service, the original act did not provide entitlement.

That question was submitted to the Attorney General, who held as to that particular language—which was inserted by Senator Hale, as I recall, Senator Hale having stated it was for the purpose of including several naval officers which he believed could not be included in the bill then presented—the Attorney General held that language was redundant, therefore those officers who had been excluded under the Veterans' Administration ruling were thereafter placed on the rolls.

Senator GEORGE. That ruling resulted in placing how many additional officers on the rolls, Senator?

Senator CONNALLY. About 3,000 or 3,500.

Mr. BRADY. Substantially that, we believe, Senator, the group that will be affected by this proposed bill of restoration.

When Public No. 2, was passed, section 10 of Public No. 2, imposed an additional requirement over and above the requirement placed upon the nonofficer. In other words, both the nonofficer and the officer were required, in order to show entitlement under Public, No. 2, to have an in-line-of-duty status, but as to the officers, section 10 of Public, No. 2, added this additional requirement, and that is that they must show that the disability arose out of the performance of duty. The Veterans' Administration has interpreted that to mean that there must be an added showing by the officer in order to entitled him to continuation on the retirement rolls.

I have stated before other committees, Senator, and I do not believe I can enlarge upon it now, that to attempt to define in language what the "performance of duty" means is well nigh impossible, and that the only way we can reach a determination as to its effect or purpose is by a case adjudication. We can start off on one line and say, "Certainly, that is a type of line-of-duty, or performance-of-duty requirement", and if we would start on the other end of the line and say, "Certainly it is not", and somewhere in between we reach the controversial state. That is the difference between the service organizations as they present their case, and the rulings of the Veterans' Administration.

Senator GEORGE. What is the Veterans' Administration's estimate of the number that under this bill, as it stands, would be restored to the roll?

Mr. BRADY. About 3,200.

Senator BARKLEY. 3,194.

Senator GEORGE. You mean those certainly would be restored or might be restored?

Mr. BRADY. We believe the bill would probably restore that number.

Senator GEORGE. Probably restore that total number?

Mr. BRADY. Yes, sir.

Senator CONNALLY. You have 1,900 now on the rolls?

Mr. BRADY. There were 6,300 in March 1933. Now, there will be some that will not come on by virtue of the exclusion with respect to presumptive cases. There will be some that will be to some extent excluded, that we are not able to ascertain without case adjudication, that will be excluded by virtue of the phrase "clear and unmistakable evidence" used in the bill. We have not found it possible to break that down in actual figures before an examination of the cases.

Senator WALSH. Officers to be retired in the Army and Navy service are required to show disability in line of service?

Mr. BRADY. It must be in line of service. It must be during his service, Senator, but it is not required that the Regular officer show the performance of duty, as is required for emergency officers, nor does it require any degree of disability. The requirement for the retirement of a Regular officer is simply that he is not able to perform his duties as a Regular officer.

Senator GEORGE. What is the number of the officers on the roll now?

Mr. BRADY. 1,859 officers as of March 31, 1937.

Mr. JARNIGAN. That does not include those who have died after having been restored.

Senator GEORGE. That represents the actual number on the roll as of March 31, 1937?

Mr. JARNIGAN. The living; yes, sir.

Senator GEORGE. As of March 31, 1937?

Mr. JARNIGAN. Yes.

Senator GEORGE. 1,859 officers.

Mr. JARNIGAN. Yes, sir.

Senator GEORGE. Are there any questions of Mr. Brady?

Senator CONNALLY. Mr. Brady, you brought out the dates as April 6, 1917, and November 11, 1918. Do you think that is exclusive under this bill?

Mr. BRADY. The only way I can answer that, Senator, is to say there has been some consideration with respect to other benefits whereby the thought is gaining some momentum that the World War ending date should be restored as of July 2, 1921. Whether this is the proper limiting date I do not know, sir.

Senator CONNALLY. I realize that as a matter of policy probably I should not have asked this question.

Mr. BRADY. We will be glad to administer whatever you pass.

Lieutenant STEVENSON. I have the figures, Senator, if you want them on that point.

Senator GEORGE. We will be glad to have them.

Lieutenant STEVENSON. This is from the statistics report of the Veterans' Administration as of December 1, 1933. A total of 145 officers were removed because the evidence showed that the above-named officers were not entitled to continue to receive retirement pay, not having served as emergency officers of the Army, Navy, or Marine Corps between April 6, 1917, and November 11, 1918.

I would like to say that the reason why a great many of those people did not serve as officers is because they did not accept their commissions, but they were commissioned prior to that time. They were lying in hospitals some place, having been wounded in action probably during that last hard-fought period of the war.

Senator CONNALLY. In other words, many of them were actually in the service but were not commissioned?

Lieutenant STEVENSON. Did not accept their commission.

Senator GEORGE. Some of those officers present peculiarly meritorous cases, as it seems to me. We had some occasion to look into some of those cases where the commission was not actually issued until after November 11, 1918, but they served prior to the actual termination of the war.

Senator CONNALLY. Those cases ought to be included, of course, in this bill.

Mr. R. L. JARNIGAN of the Veterans' Administration. They are, sir.

Senator CONNALLY. That is, where they were in the service. Of course, men who did not actually get in the service should not be included.

Lieutenant STEVENSON. They are excluded according to this bill. They had to serve in the Army before the armistice. Some of these same men, Senator, were commissioned as a reward for meritorious service on the field of battle.

Senator CONNALLY. That is all right. They served before November 11, 1918.

Senator GEORGE. Mr. Brady, is there something else?

Mr. BRADY. That is all we have, unless there are further questions.

Senator GEORGE. The report from the Bureau and the letter responsive to the inquiry made by the chairman of the subcommittee will be entered in the record.

Senator GEORGE. Is there any other representative of the Administration that desires to be heard?

Mr. JARNIGAN. Not unless there is some question, Senator.

Senator GEORGE. I believe there is nothing else that the veterans organizations would like to submit at this time. If that is true then the hearings will be closed on this bill.

Senator CONNALLY. Senator, are you talking about other bills now?

Senator GEORGE. No; on this particular bill. Without objection, then, we will close the hearing on this bill.

(Upon request of the Veterans' Administration the following material is inserted:)

[Copy of a letter from the Veterans' Administration dated Aug. 18, 1934, addressed to those Senators who signed jointly the letter of June 16, 1934, with reference to the requirements of sec. 10, Public, No. 2, 73d Cong., relating to emergency officers' retirement benefits]

AUGUST 18, 1934.

Hon. HIRAM W. JOHNSON,
United States Senate, Washington, D. C.

MY DEAR SENATOR JOHNSON: This has reference to the letter of June 16, 1934, addressed to the President of the United States, bearing your signature and the signature of other Senators.

The letter pertains to retirement of World War emergency officers, with particular reference to the provisions of section 10 of Public, No. 2, Seventy-third Congress, Veterans' Regulation No. 5, and Veterans' Administration instructions relating thereto.

The President, after careful consideration of the letter, legislative history, and the practice of the Veterans' Administration under the laws and regulations, has requested that you be advised as follows:

The original Emergency Officers' Retirement Act (Public, No. 506, 70th Cong.) was enacted into law May 24, 1928, over the veto of the President of the United States. The original act among other stated requirements provided that the disability should be one "resulting directly from such war service." Section 10 of Public, No. 2, includes the requirement that the disease or injury must have "directly resulted from the performance of military or naval duty." The Veterans' Bureau, construing the original act held that emergency officers were not entitled where their disabilities were service-connected by presumption. This interpretation was submitted to the then Attorney General, who on January 18, 1929, reversed the interpretation of the Veterans' Bureau and held that presumptive service connection was sufficient. The Veterans' Administration thereafter granted retirement pay in accordance with the pronouncement of law by the Attorney General.

Public, No. 2, Seventy-third Congress (sec. 17) repealed the Emergency Officers' Retirement Act, and section 10 of the same act set up the conditions under which retirement pay could be continued. Section 10 definitely provided that the "disease or injury or aggravation of the disease or injury" must have "directly resulted from the performance of military or naval duty."

Senate Report No. 1, Seventy-third Congress, first session, being a report of the Senate Committee on Finance accompanying Public, No. 2, stated with respect to the provisions of section 10: "It will be necessary for an emergency officer, in order to continue to receive retirement pay, to show a causative factor arising out of the performance of duty and in the line of duty."

Veterans' Regulation No. 5 (Executive Order No. 6093) of March 31, 1933, followed the language of the Senate report. The Veterans' Administration determined that the requirement that the disability must have directly resulted from the performance of military or naval duty as is set out in the law, and the explanation of the Senate Finance Committee requiring a showing of causative

factor necessitated the instructions complained of in the letter addressed to the President, which instructions are therein partially quoted.

An important omission is found in the letter insofar as quotation of instructions is concerned. That part of the instructions omitted reads:

"In disease cases it should be borne in mind that causative factor is not necessarily restricted to a single incident. The disease or injury may be the result of exposure or long and strenuous duties imposed by orders. In order to be entitled the officer must show circumstances incident to the military or naval duty being performed and of such character as to cause the disability, exclusive of other probable factors not related to the duty being performed."

The matter of emergency officers' retirement pay was last considered by the House and Senate in connection with H. R. 6663 which was finally enacted into law as Public, No. 141, Seventy-third Congress, March 28, 1934. That bill was amended by the Senate to include a provision amending section 10 of Public Law No. 2, which principally provided that as to emergency officers who had been retired under Public, No. 506, Seventieth Congress, and who met certain other requirements, not here important, while still providing that the disability must have "directly resulted from the performance of military or naval duty", carried this single exception, i. e., that if the disease or injury "was at any time during his (the emergency officer's) service made a matter of record by competent military or naval authorities" retirement pay could be continued. This provision was rejected by the House and the bill passed without its inclusion.

Concerning this proposed amendment there was much debate in the House, and on March 14, 1934, prior to its rejection (p. 4632, Congressional Record, Mar. 14, 1934) it is directly pointed out in debate with respect to the emergency officers' proposed amendment (sec. 31, H. R. 6663) that the proposal was identical with the "present law and the present regulation" with respect to the requirement that disability must have "directly resulted from the performance of military or naval duty" with the exceptions above mentioned. Discussion was full and complete and the Congress was fully advised as to the application of Public, No. 2 and the regulation and instructions which required as a condition to entitlement that the "causative factor" must be met. For instance, it was pointed out that prior to Public, No. 2 there were about 6,000 officers on the rolls, whereas those remaining on the rolls in receipt of retirement pay following the application of the causative factor requirement were approximately 1,500.

All of the cases of emergency officers on the rolls were subjected to one review following the enactment of Public, No. 2, and the issuance of the regulation thereunder. Those cases denied the right to continuance were extended the right to appeal. The action on appeal has not been completed in all cases. The chairman of the Board of Veterans' Appeals is now making and will continue to make a study as to the proper application of the causative-factor requirement. The representatives of service organizations have been particularly invited to submit cases in which they feel the causative-factor requirement has worked any injustice, to the end that all possible consideration be extended and the most favorable action possible be taken.

The above explanation is furnished in order that the existing requirements concerning entitlement to continue to receive retirement benefits with pay might be more fully understood. It should be borne in mind that the discontinuance of retirement benefits is not controlling as to pension or compensation benefits which such veteran may receive, and in connection with such latter benefits there is no requirement that a "causative factor" be established, the compensation or pension laws being for application, and the rating for pension of compensation purposes is automatically made in any case in which continuance of retirement benefits is denied.

In order that we may have the benefit of your views in the study concerning the advisability of any possible changes in the existing instructions, you are invited to call to my attention any specific case in which you think an injustice has been done.

Very truly yours,

FRANK T. HINES, *Administrator.*

[Copy of the interpretative instructions of Apr. 10, 1935, for the guidance of the adjudicating agency in the disposition of emergency-officers' retirement claims under/the provisions of sec. 10, Public, No. 2, 73d Cong.]

APRIL 10, 1935.

INTERPRETATIONS EXPLANATORY OF THE PROVISIONS OF SECTION 10, PUBLIC, NO. 2, SEVENTY-THIRD CONGRESS, VETERANS REGULATION NO. 5, AND INSTRUCTION NO. 1, THEREUNDER

PERFORMANCE OF DUTY

1 (a) *Cause of disability.*—In emergency officers retirement cases, section 10, Public, No. 2, Seventy-third Congress, requires that the veteran's disability must not only be incurred "in line of duty" but also must have "directly resulted from the performance of military or naval duty."

An emergency officer has the same right to compensation, pension, hospitalization, and other benefits, as any other veteran who was not a commissioned officer for disabilities "incurred in line of duty" but if he desires to be retired with pay as an emergency officer in lieu of the compensation granted disabled enlisted men generally, Congress has imposed an additional requirement. The former officer must then show that the disability was the direct result of the performance of duty.

The President's regulation requires that the "causative factor" for the disability must be "shown to have arisen out of the performance of duty during such service." 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. Respect, however, must be paid to the evident intent of Congress to require of emergency officers, who claim that they are entitled to a greater benefit than disabled enlisted men, the burden of proving their entitlement thereto by requiring them to show what is not required of other veterans, to wit, that the disability "directly resulted from the performance of military or naval duty."

1 (b) *Degree of proof.*—The provisions of section 28, Public, No. 141, Seventy-third Congress, requiring reasonable doubts to be resolved in favor of the veteran, the burden of proof being on the Government, do not apply to emergency officers' pay, which is dealt with in another act (sec. 10, Public, No. 2, 73d Cong.), where no such rule appears. (Acting Solicitor's opinion dated Sept. 17, 1934; approved by the Administrator, Sept. 19, 1934.) Congress, therefore, has seen fit to make a distinction in the degree of proof between the two classes of benefits. However, it should be borne in mind that the denial of retirement pay does not deprive the emergency officer of the compensation to which he may be entitled along with other veterans. In other words, an emergency officer applying for retirement pay is asking of his Government something over and above that which is accorded to disabled enlisted men and if he is to receive this increased benefit, the burden of proof is on him to show, by the preponderance of evidence, his entitlement, to wit, that his disability "directly resulted from the performance of military or naval duty."

1 (c) *Meaning of preponderance.*—Preponderance of evidence as here used means that which best accords with reason and probability. Preponderance means more than weight; it means superiority of weight, outweighing the evidence to the contrary. It is not determined by the number of witnesses but rather by character of the evidence, the credibility and general standing of the witnesses, the definiteness of the testimony and the witnesses' first-hand knowledge of the facts.

1 (d) *Disease.*—A disease of mind or body which arises merely in point of time with service, that is, while employed in the military or naval service, is not alone sufficient to bring the officer within this requirement. It must be shown that but for the performance of duty the disability would not reasonably be expected to have arisen. The breaking down or degeneration of tissues which occurred, irrespective of any unusual stress and strain incident to the performing of duty, is not to be considered sufficient for entitlement.

1 (e) *Cause not restricted to a single incident.*—In disease cases it should be borne in mind that the causative factor is not necessarily restricted to a single incident. The disease or injury or the aggravation thereof may be the result of exposure or long and strenuous performance of duty imposed by orders.

1 (f) *Military cause not exclusive of all other possible factors.*—In order to be entitled the officer must show by preponderance of evidence circumstances incident to the performance of duty of such character as to be one of the causes of the disability, without which the disability would not have been incurred. It is not necessary that it be the only cause of the disability for which he seeks retirement pay, nor is it necessary for the officer to show that the disability could not have resulted from other causes. It is improper to deny retirement pay merely because the disease also occurs in civil life.

1 (g) *Performance of duty under orders.*—The requirement of the instructions that performance of duty must be under competent orders does not mean that there must be a specific order to perform the act from which the disability arose, but it is sufficient if the disability was incurred pursuant to the requirements of military or naval duty.

1 (h) *Officer not required to prove case to moral certainty.*—It is realized that in disease cases the establishment of a causative factor will be difficult, but it must be borne in mind that the officer is not required to prove this case to a "mathematical" or "moral" certainty, but by such preponderance of evidence when considered in connection with all the other evidence to the contrary which would create in a fair and impartial mind the belief that but for the performance of military or naval duty he would not have suffered the disability for which he seeks retirement pay.

1(i) *Claimants' testimony.*—The testimony of the claimant himself should not be rejected simply because he is an interested party. His testimony should be given due weight along with medical opinion and other evidence and should be accepted or rejected according to whether it is consonant with reason and consistent with all the facts and circumstances of the case.

1(j) *Development of evidence.*—The established policy of the Veterans' Administration with reference to the assistance to be rendered veterans in the development of evidence prior to final determination on appeal is for application in the emergency-officers' retirement cases. Necessary assistance in the development of evidence will be afforded guardians of mentally incompetent former officers in the development of all pertinent facts.

1(k) *To what officers applicable.*—Section 10 of the act covers all persons otherwise entitled who held commissions as emergency officers in the military or naval service between April 6, 1917, and November 11, 1918, except as to persons serving in Russia, and as to those persons the ending date is April 1, 1920. Those officers otherwise entitled are included whose diseases or injuries were incurred prior to July 2, 1921. (See hearings on Walsh amendment, p. 349, Congressional Record of Mar. 14, 1933.) Those emergency officers are also included whose disabilities for which retired were incurred while serving as enlisted men during the period of the World War and who were subsequently commissioned as emergency officers on or before November 11, 1918. (See Administrator's Decision No. 117-A.)

Respectfully submitted.

JNO. GARLAND POLLARD,
Chairman, Board of Veterans' Appeals.

Approved:

FRANK T. HINES,
Administrator of Veterans' Affair.

TESTIMONY ON H. R. 5478

Senator GEORGE. I will place in the record at this point H. R. 5478, together with the House report thereon, and S. 894.

[H. R. 5478, 75th Cong., 1st sess.]

AN ACT To amend existing law to provide privilege of renewing expiring five-year level-premium term policies for another five-year period

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last proviso of the first paragraph of section 301, World War Veterans' Act, 1924, as amended (47 Stat. 334; U. S. C., title 38, sec. 512) is hereby amended to read as follows: "*Provided further,* That at the expiration of any five-year period a five-year level-premium term policy may be renewed for a second or third five-year period at the premium rate for the attained age without medical examination; and in case the five-year period of any such

policy has expired prior to and within five months of the date of the enactment of this amendatory proviso and the policy has not been continued in another form of Government insurance, such policy may be renewed as of the date of its expiration on the same conditions upon payment of the back premiums within five months after such date of enactment; and the Administrator of Veterans' Affairs shall cause notice to be mailed to the holder of any such policy of the provisions of this amendatory proviso."

Passed the House of Representatives March 24, 1937.

Attest: SOUTH TRIMBLE,
Clerk.

[H. Rept. No. 384, 75th Cong., 1st sess.]

PROVIDE PRIVILEGE OF RENEWING EXPIRING 5-YEAR LEVEL-PREMIUM TERM POLICIES FOR ANOTHER 5-YEAR PERIOD

The Committee on World War Veterans' Legislation, to whom was referred H. R. 5478, to amend existing law to provide privilege of renewing expiring 5-year level-premium term policies for another 5-year period, after consideration, report the same favorably to the House with the recommendation that the bill be passed.

This bill will amend the last proviso of the first paragraph of section 301 of the World War Veterans' Act, 1924, as amended, to read as follows (proposed changes in the present law being indicated):

"*Provided further*, That at the expiration of ~~the~~ *any* five-year period a five-year level-premium term policy may be renewed for a second *or third* five-year period at the premium rate for the attained age without medical examination; and in case the five-year period of any such policy has expired prior to and within five months of the date of the enactment of this amendatory priviso and the policy has not been continued in another form of Government insurance, such policy may be renewed as of the date of its expiration on the same conditions upon payment of the back premiums within five months after such date of enactment; and the Administrator of Veterans' Affairs shall cause notice to be mailed to the holder of any such policy of the provisions of this amendatory proviso."

Following the establishment of the 5-year level premium term policy by the act of June 2, 1926, Public, No. 325, Sixty-ninth Congress, upon the expiration of the 5-year period, after careful consideration the act of June 24, 1932, Public, No. 194, Seventy-second Congress, was enacted providing that at the expiration of the 5-year period a 5-year level premium term policy may be renewed for a second 5-year period at the premium rate for the attained age without medical examination, and also covered those cases where the 5-year period of any such policy had expired prior to and within 5 months of the date of the enactment of the act and where the policy had not been continued in another form of Government insurance. During this year, as to the majority of these policies, the second 5-year period will expire and the purpose of the bill is to grant a third 5-year period with the protective provisions incorporated in the act of June 24, 1932. It has been found that the payment of markedly increased premiums under one of the usual forms of Government life insurance or the increased premium required by the continuation of the 5-year level premium term policy after the expiration of the 5-year period works a hardship on many veterans as they are unable to meet the expense required to continue the insurance coverage originally contracted for. Many of these veterans will be unable to carry their insurance unless this extension of 5 years is granted to them and thus will be forced to drop their insurance and so deprive their families of protection, or will be compelled to materially reduce the amount of insurance they are able to purchase at a higher premium rate, which will in turn greatly diminish the protection to their families.

It is understood that no renewal of a 5-year term policy which has expired will be granted where permanent total disability has intervened between date of expiration and renewal. The reasons which prompted the amendment of June 24, 1932, obtain to a greater extent in connection with this bill by virtue of unemployment conditions.

[S. 894, 75th Cong., 1st sess.]

A BILL To provide for the renewal of five-year level premium term policies of veterans' insurance for an additional period of five years

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any five-year level premium term policy of insurance issued under the World War Veterans' Act, 1924, as amended, and

renewed for a second five-year period under the provisions of the Act entitled "An Act to provide for the renewal of five-year level premium term Government insurance policies for an additional five-year period without medical examination", approved June 24, 1932, may be renewed, at the premium rate for the attained age and without medical examination, for a third period of five years from the date of the expiration of the five-year period of such policy. Any such policy the five-year period of which has expired or may expire prior to five months after the date of enactment of this Act, and which shall not have been converted into another form of Government insurance, may be so renewed as of the date of the expiration of such five-year period upon payment of the back premiums and interest within five months after such date of enactment: *Provided*, That nothing herein shall be construed to authorize the payment of any benefits in the event that total permanent disability or death has occurred between the date of the expiration of such five-year period and the date of such renewal. The Administrator of Veterans' Affairs shall cause notice of the provisions of this Act to be mailed to the holder of each such policy.

Senator GEORGE. We will take up H. R. 5478.

Senator CONNALLY. Mr. Chairman, we have two bills, House bill 5478 and a companion Senate bill introduced by yourself on the same subject matter, S. 894. I am willing to take up your bill or the House bill, whichever you desire.

Senator GEORGE. Without objection, I think the committee might consider House bill 5478. I understand they are similar.

Senator CONNALLY. They are.

Senator GEORGE. In effect, they are the same, at least; perhaps not quite the same in language.

Senator CONNALLY. This is a bill to provide for the extension of the 5-year level-premium term insurance.

Mr. RICE. Mr. Chairman, I would like to say something on the bill, if I may.

Senator GEORGE. We might hear first from the Veterans' Administration on that bill.

Mr. Brady.

Mr. BRADY. Mr. Breining will represent the Administration on this bill.

Senator GEORGE. I believe the Administration has submitted an adverse report on this bill. That report may be entered in the record, and the report on S. 894 will also be entered.

(The report on H. R. 5478 is as follows:)

VETERANS' ADMINISTRATION,
Washington, April 2, 1937.

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

MY DEAR SENATOR HARRISON: This is in response to your informal request of March 26, 1937, for a report on H. R. 5478, Seventy-fifth Congress, an act to amend existing law to provide privilege of renewing expiring 5-year level-premium term policies for another 5-year period, which provides:

"That the last proviso of the first paragraph of section 301, World War Veterans' Act, 1924, as amended (47 Stat. 334; U. S. C., title 38, sec. 512) is hereby amended to read as follows: '*Provided further*, That at the expiration of any five-year period a five-year level-premium term policy may be renewed for a second or third five-year period at the premium rate for the attained age without medical examination; and in case the five-year period of any such policy has expired prior to and within five months of the date of the enactment of this amendatory proviso, and the policy has not been continued in another form of Government insurance, such policy may be renewed as of the date of its expiration on the same conditions upon payment of the back premiums within five months after such date of enactment; and the Administrator of Veterans' Affairs shall cause notice to be mailed to the holder of any such policy of the provisions of this amendatory proviso.'

The World War Veterans' Act, 1924, approved June 7, 1924, provided that not later than July 2, 1926, all term insurance held by persons who were in the military service should be converted into the forms of insurance prescribed by regulations. It was also provided that all term insurance should cease on July 2, 1926, with certain exceptions made for contracts matured by reason of total permanent disability. This period for the continuance of yearly renewable term insurance was further extended to July 2, 1927, by an amendment to the World War Veterans' Act approved June 2, 1926. In this amendment there was added to the regular forms of converted policies the 5-year level-premium term, and it expressly provided for the reconversion of any such policies to a higher premium rate in accordance with regulations to be issued by the Director. This section of the law was further amended May 29, 1928 (Public, No. 570, 70th Cong.), to provide for reconversion of any such policies to a higher premium rate, or upon proof of good health satisfactory to the Director, to a lower premium rate in accordance with regulations to be issued by the Director, with the express proviso "that no reconversion shall be made to the 5-year level-premium term policy." The law was further amended by Public, No. 194, Seventy-second Congress, approved June 24, 1932, providing for the renewal of the 5-year level-premium term policy for a second 5-year period at the premium rate for the attained age.

Yearly renewable term insurance was issued to approximately 4,500,000 individuals in an amount of nearly $40,000,000,000. Under this form of insurance there has already been paid as of December 31, 1936, benefits on account of total permanent disability and death a total amount of $1,961,926,008.23, and it is estimated that it will require approximately $300,000,000 to complete payments under existing awards. The net amount collected as premiums (gross amount less refunds) on this form of insurance is $453,887,604.99. Thus the net loss to the Government on yearly renewable term insurance is indicated as being approximately $1,800,000,000.

Whereas under yearly renewable term insurance the receipts were covered into and the losses appropriated by the Congress from the Treasury the 5-year term-insurance policyholders constitute a subdivision of the United States Government life-insurance-fund group. United States Government life insurance represents an arrangement whereby the United States acts in a role similar to that of a trustee in administering what is in essence a mutual insurance orangization, and in discharging these duties it is believed that the Government is bound to observe the obligations devolving upon a fiduciary. Moneys received on account of United States Government life insurance are not commingled with other funds of the Treasury but are kept separate in a trust fund, the beneficial interest in which rests solely with the policyholders; likewise losses incurred are not paid from the general funds of the Treasury, but must come from this same trust fund. It will, therefore, be readily perceived that any undue favors granted to one subdivision of the whole group in substance resolves itself into a diversion from the others who have deposited their money in good faith into this trust.

As of December 31, 1936, there were 48,910 5-year term-insurance policies in force in the amount of $276,819,097, of which number 23,718 had been renewed for a second 5-year period in the amount of $157,332,675.

The records show that under the 5-year-term plans the ratio of actual losses, including both total permanent disability and death, to the expected mortality in accordance with the American Experience Table of Mortality during the last 6-year period for which tabulations have been completed, has never been lower than 113.77 percent and has been as high as 132.44 percent; while over the same period the ratio under all plans of insurance, excluding the 5-year term, has been as low as 54.90 percent and never higher than 84.59 percent. These facts show conclusively that the premiums received on all forms of term insurance are insufficient to meet the losses incurred, and the excess must be borne by other than the term-insurance policyholders.

Yearly renewable term insurance for successive terms of 1 year each or term insurance on a level-premium basis for short terms of 5 or 10 years are not generally advantageous to the insured as against level-premium life or endowment insurance when protection is desired over a long period. In fact, the small advantage in such short-period protection may only be secured at the very young ages when the rates for the level premium forms of life and endowment policies do not increase quite so rapidly, and then only to meet some temporary situation.

Experience indicates that except as a temporary expedient, term insurance is neither satisfactory to the insured nor the insurer; because as the ages of the policyholders increase, adverse selection operates against the insurer, and the continually greater premium charges get so burdensome to the insurers as to in most

cases become prohibitive on account of limited earning capacity, thus forcing the relinquishment of insurance protection at a time when it is most needed.

The ordinary life rate is the lowest rate at which continuous insurance protection can be afforded under the law, and the postponement of the selection of a level-premium life or endowment policy only tends to increase the ultimate cost of the insurance to the policyholder and apparently for this reason the law limited the yearly renewable term insurance to a specified period and the level-premium term policy to two periods of 5 years each.

It may seem attractive for a man of 45 years to secure a 5-year term policy in the amount of $1,000 at a premium of $11.69 if paid annually, as against a premium of $28.71 required for ordinary life insurance at the same age; but the man who secures an ordinary life policy will be paying a premium of only $28.71 at age 70, while the man who continued, if such were possible, to secure successive 5-year term policies would then be paying $72.77 per annum, and if continued to age 80 would be required to pay $176.96, and at age 90 the premimum would be $652.78; whereas the holder of the ordinary life policy would only be required to pay $28.71, the premium at age 45.

In addition to this advantage, the nonforfeiture values of all level-premium life or endowment policies must be taken into consideration. After a policy has been continued on a premium-paying basis for 1 year or more, the cash value of such policy is always greater in amount than the difference between the term premium required and the premium required on a level-premium life or endowment policy over the same period.

There is below set forth concrete example of the plight which a man of 45 at age of issue would find himself in at the end of a period covering 25 years of term insurance. He would have paid out $6,243, and his insurance would have no cash value. If, on the other hand, he had taken out ordinary life level-premium insurance he would have paid $7,177.50, or only $934.50 more than term insurance would have cost him; but for this difference of $934.50 he would have secured a policy which would have a cash value of $5,348.90; or if he were then no longer able to continue the payment of premiums, he would be eligible for fully paid up insurance in the amount of $7,160.70.

$10,000 5-YEAR TERM INSURANCE

Age	Annual premium	Years paid	Total
45 years	$116.90	5	$584.50
50 years	150.00	5	750.00
55 years	207.90	5	1,039.50
60 years	306.00	5	1,530.00
65 years	467.80	5	2,339.00
			6,243.00
70 years	727.70		
75 years	1,111.60		

$10,000 ORDINARY LIFE INSURANCE

45 years	$287.10	25	$7,177.50
Total premiums on term insurance		25	6,243.00
Difference in premiums			934.50

VALUES

Under term insurance	None
Under ordinary life (cash value)	$5,348.90
Under ordinary life (paid-up insurance)	7,160.70

It is not practicable to estimate with any degree of accuracy the additional cost of further extension of the 5-year term periods for 5-year term policies; however, as it is known that the losses under this form of insurance have been excessive and such additional cost must be borne either by the Government or the Government Life Insurance Fund, the same principle is involved whether the amount of such excess loss is large or small.

For the foregoing reasons, this Administration cannot recommend the proposed bill to the favorable consideration of your committee.

Very truly yours,

FRANK T. HINES,
Administrator.

(The Veterans' Administration report on S. 894 is as follows:)

MARCH 13, 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 21, 1937, for a report on S. 894, Seventy-fifth Congress, a bill to provide for the renewal of 5-year level premium term policies of veterans' insurance for an additional period of 5 years, which provides as follows:

"That any 5-year level premium term policy of insurance issued under the World War Veterans' Act, 1924, as amended, and renewed for a second 5-year period under the provisions of the Act entitled 'An Act to provide for the renewal of 5-year level premium term Government insurance policies for an additional 5-year period without medical examination', approved June 24, 1932, may be renewed, at the premium rate for the attained age and without medical examination, for a third period of 5 years from the date of the expiration of the 5-year period of such policy. Any such policy the 5-year period of which has expired or may expire prior to 5 months after the date of enactment of this Act, and which shall not have been converted into another form of Government insurance, may be so renewed as of the date of the expiration of such 5-year period upon payment of the back premiums and interest within 5 months after such date of enactment: *Provided,* That nothing herein shall be construed to authorize the payment of any benefits in the event that total permanent disability or death has occurred between the date of the expiration of such 5-year period and the date of such renewal. The Administrator of Veterans' Affairs shall cause notice of the provisions of this Act to be mailed to the holder of each such policy."

The World War Veterans' Act, 1924, approved June 7, 1924, provided that not later than July 2, 1926, all term insurance held by persons who were in the military service should be converted into the forms of insurance prescribed by regulations. It was also provided that all term insurance should cease on July 2, 1926, with certain exceptions made for contracts matured by reason of total permanent disability. This period for the continuance of yearly renewable term insurance was further extended to July 2, 1927, by an amendment to the World War Veterans' Act approved June 2, 1926. In this amendment there was added to the regular forms of converted policies the 5-year level-premium term and it expressly provided for the reconversion of any such policies to a higher premium rate in accordance with regulations to be issued by the Director. This section of the law was further amended May 29, 1928 (Public, No. 570, 70th Cong.) to provide for reconversion of any such policies to a higher premium rate, or upon proof of good health satisfactory to the Director, to a lower premium rate in accordance with regulations to be issued by the Director, with the express proviso "that no reconversion shall be made to the 5-year level-premium term policy." The law was further amended by Public, No. 194, Seventy-second Congress, approved June 24, 1932, providing for the renewal of the 5-year level-premium term policy for a second 5-year period at the premum rate for the attained age.

Yearly renewable term insurance was issued to approximately 4,500,000 individuals in an amount of nearly $40,000,000,000. Under this form of insurance there has already been paid as of December 31, 1936, benefits on account of total permanent disability and death a total amount of $1,961,926,008.23 and it is estimated that it will require approximately $300,000,000 to complete payments under existing awards. The net amount collected as premiums (gross amount less refunds) on this form of insurance is $453,887,604.99. Thus the net loss to the Government on yearly renewable term insurance is indicated as being approximately $1,800,000,000.

Whereas under yearly renewable term insurance the receipts were covered into and the losses appropriated by the Congress from the Treasury the 5-year term insurance policyholders constitute a subdivision of the United States Government life insurance fund group. United States Government life insurance represents an arrangement whereby the United States acts in a role similar to that of a trustee in administering what is in essence a mutual insurance organization and in discharging these duties it is believed that the Government is bound to observe the obligations devolving upon a fiduciary. Moneys received on account of United States Government life insurance are not commingled with other funds of the Treasury but are kept separate in a trust fund the beneficial

interest in which rests solely with the policyholders, likewise losses incurred are not paid from the general funds of the Treasury but must come from this same trust fund. It will therefore be readily perceived that any undue favors granted to one subdivision of the whole group in substance resolves itself into a diversion from the others who have deposited their money in good faith into this trust.

As of December 31, 1936, there were 48,910 5-year term insurance policies in force in the amount of $276,819,097, of which number 23,718 had been renewed for a second 5-year period in the amount of $157,332,675.

The records show that under the 5-year term plans the ratio of actual losses, including both total permanent disability and death, to the expected mortality in accordance with the American Experience Table of Mortality during the last 6-year period for which tabulations have been completed, has never been lower than 113.77 percent and has been as high as 132.44 percent; while over the same period the ratio under all plans of insurance, excluding the 5-year term, has been as low as 54.90 percent and never higher than 85.49 percent. These facts show conclusively that the premiums received on all forms of term insurance are insufficient to meet the losses incurred and the excess must be borne by other than the term-insurance policyholders.

Yearly renewable term insurance for successive terms of 1 year each or term insurance on a level-premium basis for short terms of 5 or 10 years are not generally advantageous to the insured as against level-premium life or endowment insurance when protection is desired over a long period. In fact, the small advantage in such short-period protection may only be secured at the very young ages when the rates for the level-premium forms of life and endowment policies do not increase quite so rapidly, and then only to meet some temporary situation.

Experience indicates that, except as a temporary expedient, term insurance is neither satisfactory to the insured nor the insurer because, as the ages of the policyholders increase, adverse selection operates against the insurer and the continually greater premium charges get so burdensome to the insureds as to in most cases become prohibitive on account of limited earning capacity, thus forcing the relinquishment of insurance protection at a time when it is most needed.

The ordinary life rate is the lowest rate at which continuous insurance protection can be afforded under the law and the postponement of the selection of a level-premium life or endowment policy only tends to increase the ultimate cost of the insurance to the policyholder, and apparently for this reason the law limited the yearly renewable term insurance to a specified period and the level-premium term policy to two periods of 5 years each.

It may seem attractive for a man of 45 years to secure a 5-year term policy in the amount of $1,000 at a premium of $11.69 if paid annually, as against a premium of $28.71 required for ordinary life insurance at the same age, but the man who secures an ordinary life policy will be paying a premium of only $28.71 at age 70 while the man who continued, if such were possible, to secure successive 5-year term policies would then be paying $72.77 per annum and if continued to age 80 would be required to pay $176.96 and at age 90 the premium would be $652.78; whereas the holder of the ordinary life policy would only be required to pay $28.71, the premium at age 45.

In addition to this advantage, the nonforfeiture values of all level-premium life or endowment policies must be taken into consideration. After a policy has been continued on a premium-paying basis for 1 year or more, the cash value of such policy is always greater in amount than the difference between the term premium required and the premium required on a level-premium life or endowment policy over the same period.

There is below set forth a concrete example of the plight which a man of 45 at age of issue would find himself in at the end of a period covering 25 years of term insurance. He would have paid out $6,243 and his insurance would have no cash value. If, on the other hand, he had taken out ordinary life level-premium insurance he would have paid $7,177.50 or only $934.50 more than term insurance would have cost him, but for this difference of $934.50 he would have secured a policy which would have a cash value of $5,348.90, or if he were then no longer able to continue the payment of premiums he would be eligible for fully paid-up insurance in the amount of $7,160.70.

$10,000 5-YEAR TERM INSURANCE

	Annual premium	Years paid	Total
Age 45	$116.90	5	$584.50
Age 50	150.00	5	750.00
Age 55	207.90	5	1,039.50
Age 60	306.00	5	1,530.00
Age 65	467.80	5	2,339.00
Total			6,243.00
Age 70	727.70		
Age 75	1,111.60		

$10,000 ORDINARY LIFE INSURANCE

Age 45	$287.10	25	$7,177.50
Total premiums on term insurance		25	6,243.00
Difference in premium			934.50

VALUES

Under term insurance	None
Under ordinary life:	
Cash value	$5,348.90
Paid-up insurance	7,160.70

It is not practicable to estimate with any degree of accuracy the additional cost of further extension of the 5-year term periods for 5-year term policies; however, as it is known that the losses under this form of insurance have been excessive and such additional cost must be borne either by the Government or the Government life-insurance fund, the same principle is involved whether the amount of such excess loss is large or small.

For the foregoing reasons, this Administration cannot recommend the proposed bill to the favorable consideration of your committee.

Very truly yours,

FRANK T. HINES, *Administrator.*

STATEMENT OF HAROLD W. BREINING, ASSISTANT ADMINISTRATOR, VETERANS' ADMINISTRATION

Mr. BREINING. When term insurance was authorized by the act of October 6, 1917, it was recognized at that time that term insurance is only good insurance, both from the standpoint of the insurer and the insured, for short periods where a particular emergent condition is desired to be covered. In the original bill provision was made that term insurance be converted within 5 years after the termination of the war. That 5 years was extended by another period, of 1 year, with certain exceptions, not here material, such as men who were incompetent or who had disappeared.

Term insurance ceased on July 2, 1927, as yearly renewable term insurance, and as of the type that was written during the war.

The war-risk insurance or the term insurance written during the war is dissimilar from the insurance now written and known as Government life insurance, which includes the 5-year term insurance group in this respect. Under the original war-risk insurance the premiums were deposited in the Treasury of the United States and losses were

paid from those premiums and by appropriations made by Congress out of the general funds of the Treasury.

Under the old war-risk insurance approximately $450,000,000 was collected by way of premiums. The liabilities which have been paid and are to be paid on account of awards already made and determined upon aggregate approximately $2,250,000,000. We have paid somewhat over $1,975,000,000, and we have approximately $275,000,000 more to be paid on awarded claims.

Senator CONNALLY. You paid out how much?

Mr. BREINING. We have actually paid out $1,975,000,000, of which amount $450,000,000 is represented by the premiums collected and the remainder, or approximately $1,525,000,000, has come from the Treasury of the United States by appropriations made by the Congress.

Now, the present insurance is, in its essence, simply mutual insurance, the Government acting in a fiduciary capacity. The premiums are not deposited in the general fund of the Treasury but are segregated in a trust fund. They are invested for the benefit of the veterans. The beneficial interests in that fund rest not with the Government but with the veteran policyholders, so that any liberalization of policies for one group would correspondingly have to reduce the benefits, both direct and indirect, for the group which does not enjoy those extraordinary privileges.

Senator CONNALLY. The Treasury is back of that, is it not?

Mr. BREINING. Yes; but all the losses are paid, with the exception of those occasioned by losses on account of the performance of military and naval duty; from this fund and not from the Treasury. The fund is a self-sustaining fund and is the same as any mutual insurance company, so that the losses which are paid to one group diminish the benefits which the other group receive.

Senator WALSH. And you increase the premiums on the so-called mutual group?

Mr. BREINING. No, sir; there is no provision for increasing the premiums; the premiums being computed according to the American Experience Table of Mortality with interest at the rate of 3½ percent compounded annually. Also there is no provision in the law for charging any premiums on account of the disability features of the insurance, that being given gratis, as far as the initial premium charge is concerned. But actually all premiums are used to defray any of the losses, and the losses are not paid by the Government except those occasioned by the military and naval hazard. The Government does pay all of the administrative expenses.

Now, the losses on this particular group, the 5-year term group, has exceeded our average of losses for the general group anywhere from 40 percent upward. If the committee so desires, I can give those actual percentages over a portion of years.

At no time have the losses on the general group, other than the 5-year term group, come up to the 100 percent on the American Experience Table, and at no time have the losses in the 5-year term group descended to the 100 percent level. At one time they were as high as 132 percent of the expected losses.

We believe that the Government life-insurance fund bears a solemn trust which must be administered fairly and equitably to all the

policyholders, so that each individual's interest is protected, and that no favor is shown to one group to the detriment of another group.

Are there any questions?

Senator GEORGE. Are there any questions from the members of the committee?

Mr. BREINING. I might say, Mr. Chairman, if I might further explain, it is not believed that insurance of this character is good for the veteran, for this reason, that while the premiums in the younger years seem to be favorable, in the later years of life they become so great that the cost of the insurance becomes prohibitive. So that when a man's earning power, speaking of the average man, is likely to be descending, his premiums are so ascending that at a time of life when he might need the insurance more than at any other time he is forced, because of ever increasing premium charges in contrast with level premium charges, to abandon his insurance probably entirely.

The natural premium rate on term insurance and on level-premium insurance is exactly the same. In other words, for the amount of insurance which is given, the basic premium rate, that is the natural premium rate, is the same for all classes of insurance.

On level-premium insurance it is simply a system of voluntary enforced savings whereby persons, in their younger years, make an investiment, so that in the later years of life they can use this investment to pay for the high premiums which would otherwise prevail.

As an example of that, I would like to cite these cases, using a $10,000 5-year term policy. The amount which would be paid out over a period of 20 years if the age of insured at first issue were 55 would be $8,547, for which, at the end of the period, the insurance would have no surrender value; and would have no paid-up insurance value. Whereas the same man who paid out $9,026, over the same period of 20 years, on an ordinary life-insurance policy at a level premium, or an excess of only $479 over the term policy, would have a cash surrender value on that policy of $5,401.10; or, if he were then unable to pay any more premiums, he would have paid-up insurance of $6,747.30 for the remainder of his life.

The premium at the age of 55 for the 5-year term insurance is $207.90; whereas, for the ordinary life insurance, it is $451.30. But on the 5-year term policy it ascends at 5-year intervals, so that at the age of 70 that man will have to pay $727.70 a year, whereas the man who took out the ordinary life policy would only still be paying the $451.30, or, if he were to live 10 years longer, to the ripe old age of 80, a man who had the 5-year term policy, assuming that it was renewed in 5-year intervals, would have to pay $1,769.60 annually as against $451.30 for the level premium policy.

Senator WALSH. In view of the disadvantages that you point out under the 5-year term policy, why is this legislation sought?

Mr. BREINING. Well, the proponents of it probably could state the reason advanced for it better than I could, but the argument seems to be that at the present ages this 5-year term policy permits of a greater amount of insurance for a lower present premium than the level premium policy does.

Senator WALSH. Temporarily it may be a benefit from that standpoint?

Mr. BREINING. Yes.

Senator WALSH. At what age will the change come through the disadvantages of that thing?

Mr. BREINING. At any age except the very younger years, and then only for temporary emergencies, such as a man going into business, or a man getting married or having unusual immediate expenses. It is considered by insurance authorities that term insurance for extended periods is not good insurance.

Senator WALSH. This subject was dealt with last in 1932?

Mr. BREINING. Last in 1932.

Senator WALSH. What was the experience of the Veterans' Administration after we passed the legislation in 1932 along the same line? How many veterans took advantage of the legislation?

Mr. BREINING. I believe about 23,000.

Senator WALSH. As the result of that legislation?

Mr. BREINING. Yes, sir. Veterans can, now, under the law, take a second 5-year policy, giving them a 10-year term insurance of the 5-year type in all, or, counting from the start of the war, approximately 20-year term insurance, which is considered, of course, very excessive from the standpoint of the insurer.

Senator WALSH. How many have transferred to the regular insurance?

Mr. BREINING. About 45,000.

Senator BARKLEY. When does the second term expire?

Mr. BREINING. The second term will expire 5 years from the date of the time that it was renewed.

Senator BARKLEY. I know that. What is the date?

Mr. BREINING. That will run anywhere from February to July of 1937 for the larger group. For others, it extends on for several years.

Senator CONNALLY. In other words, it is dated from the date of the policy?

Mr. BREINING. Yes, sir; and the policy now can be issued, and a person, who can now meet the good health requirements, can take out a 5-year term policy.

Senator GEORGE. Up to what date?

Mr. BREINING. Any 5-year term policy now would have a potential life of 10 years, at the option of the insured.

Senator CONNALLY. It is restricted to those, though, that have already good health?

Mr. BREINING. For those who served during the World War and can meet the good health requirements and to those now entering the military or naval services who make application within the 120-day period from date of entrance into the service.

Senator CONNALLY. Any man who can get into that class?

Mr. BREINING. Yes, sir. If he served during the World War, providing he can meet the good health requirements:

Senator CONNALLY. Exactly.

Mr. BREINING. This privilege of extension now sought is intended to permit a man to take out another policy without meeting any health requirements.

Senator CONNALLY. If he meets all the health requirements, he cuts off his chance for compensation?

Mr. BREINING. If he is in good health, it would not seem he would be entitled to compensation anyway.

From the standpoint of the insurance fund, and considering the risk that term insurance involves, the reason that term insurance is not good insurance is that you have to have a large continuous group to secure a fair average on insurance. Insurance is not an individual proposition; it is a matter of averages among a big group.

Now what happens in practice is that you get what is known as adverse selection. As the premiums increase, the man in good health says, "Well, I am not going to pay the high premiums. I am not going to carry my insurance"; whereas the man in poor health says, "Well, I have got a good chance to beat the game on this and I will carry my insurance." So the insurer loses all his good risks which would be necessary to make up the average and retains only the poor risks.

If you could take the group and give them term insurance, and make them carry that over the whole period of their lives, from the insurer's standpoint it would come out all right.

Senator WALSH. You were going to give me a figure, the number of transfers.

Mr. BREINING. Yes, sir. May I insert that in the record? Do you want the number who had insurance and who have taken advantage of this bill?

Senator WALSH. Exactly.

(Subsequently the following information was furnished by Mr. Breining:)

Estimated changes from 5-year convertible-term and 5-year level premium-term policies to other plans, years 1932–36, inclusive

	Number of policies	Amount of insurance
To ordinary life	3,484	$24,311,326
20-payment life	5,138	26,508,427
30-payment life	1,488	9,631,305
20-year endowment	2,485	11,620,215
30-year endowment	1,163	7,496,306
Endowment at 62	1,621	10,154,918
Continued at increased (whole-life) premium rate	29,688	175,761,566

Mr. BREINING. This bill will not cost the Government any money. It is just a question of taxing one group of policyholders for another group. I might say that the group who are to be taxed in favor of the other group have already been taxed rather heavily to carry this other group.

Senator GEORGE. Did you appear before the House committee?

Mr. BREINING. Yes, sir; I did, sir.

Senator GEORGE. On this bill?

Mr. BREINING. Yes, sir.

Senator GEORGE. They had hearings on it?

Mr. BREINING. Yes, sir.

Senator WALSH. The Administration does not recommend the bill?

Mr. BREINING. No, sir; the Administration does not.

Senator GEORGE. Is there any other representative from the Administration who desires to be heard on this matter? Mr. Rice, you say you want to be heard on this bill?

STATEMENT OF MILLARD W. RICE, LEGISLATIVE REPRESENTATIVE, VETERANS OF FOREIGN WARS

Mr. RICE. Mr. Chairman and gentlemen of the committee, Mr. Breining has made a very excellent analysis of the basis for insurance and how it is done. We agree with that entirely.

We also agree that it is desirable for the average man to take out converted insurance, if he can afford to do so.

At our last national encampment, the V. F. W. went on record in favor of the extension of the 5-year level premium term policies for an additional 5-year term. The reason for doing so was because we were convinced that these men who are carrying such policies are not, for the most part, able to afford to carry a converted insurance policy for the same amount of protection as they can now carry through the 5-year level premium term policy at a lower rate of premium. Naturally, those men who cannot afford to carry a greater amount of protection by converted insurance policies desire to carry this greater amount of protection through the 5-year level premium term policy, because of one or two things primarily.

First, because they may have children who are still growing and their expense is now heavy, while those children are growing, and they are attempting to give them an education.

Second, because they may have an indebtedness that they may want to protect through insurance until it is paid up, the same as any other prudent man might desire to do.

Mr. Breining very well pointed out that the mortality cost on the 5-year level premium term policies has at times gone up as high as 132 percent, as compared with rates under the American Experience Table. That may be true.

It is true also that those veterans who figured in their own minds that by reason of service-connected disabilities they might die within the next 5-year period, decided deliberately to take out such policies because they wanted to carry the greatest amount of protection possible with the least amount of money possible, and in most instances were receiving compensation in such amounts that they could not afford to carry converted insurance for the greater amount. Now, then, if you cut out the privilege to these men of renewing this 5-year level premium term policy for an additional term, you are going to compel most of them to reduce their insurance protection by more than half of the protection they are now having, to the detriment, not of themselves particularly, but to the detriment of their dependents, and of those to whom they may owe an indebtedness.

We agree that an educational campaign is desirable at all times to convince these men to take out the converted insurance policies, but again, I say, if they can afford to do so.

The fact that the mortality cost may have gone up to 132 percent would appear to indicate that the Veterans' Administration has not transferred to the special insurance fund the extra hazard of war, as it is supposed to do in those instances. Granted that that may be a very difficult thing to do, but the fact that that mortality cost did go up to 132 percent is proof that those veterans did, in effect, select themselves as poor risks, and since many of them were disabled men, it might also be assumed that that was due to an extra hazard of war. But even if that were not the case, they all are veterans.

I happen to be one of the veterans who is carrying a $10,000 converted insurance policy, and I suppose that my dividends are somewhat reduced by reason of this extra cost. I am willing that that should be continued in the future, and I feel that other veterans are willing that these men be afforded the opportunity of carrying these policies in the future for the reasons that I have already stated.

Recently I have been receiving a good many letters from men in the field that they have recently received notification from the Veterans' Administration that their 5-year level premium term policies would expire as of May 1 or June 1 and wanting to know whether legislation would be enacted which would enable them to carry it on, advising me at the same time that if such legislation is not enacted they would have to cut down their insurance protection to less than half of the protection that they are now carrying.

We believe that these men should be accorded the opportunity to carry the same amount of protection in the future as they have in the past, with as little added cost as possible. It is true that the time is finally going to come when they just positively cannot afford to do so, but the statistics will show that a greater number of these men in each passing year have taken out converted insurance policies as their children arrive toward majority, as their living costs become less by reason of that fact.

The emergency period for many of these men who are now trying to give their children an education will pass perhaps within the next 5-year period, and enable them to take out the converted insurance policy, or they will pass the period during which they need insurance protection particularly. They do not want it primarily for themselves, but for the benefit of their dependents.

Thank you for this opportunity, Mr. Senator.

Senator WALSH. Have you any figures for the Veterans' Administration showing the reduced dividends that are received by those who hold converted insurance policies as the result of these term policies?

Mr. BREINING. No, sir, I have not; and I do not think that you can figure on the reduced dividends in that way.

We could figure the amount of excess losses, if you so desire. That is taking the average experience of the other group versus the experience of this group. I can give you some data on that.

Senator WALSH. One group is benefiting at the disadvantage of another group?

Mr. BREINING. At the expense of the other group.

For instance, in 1928 the expected loss under the American Experience Table was exceeded by this group by 18 percent, and the other group has never at any time even nearly approached such a loss ratio.

Senator CONNALLY. What year?

Mr. BREINING. 1928. I can give you the figures. The expected loss would have been $6,691,000, whereas the actual loss was $7,908,000 or an excess loss for this group of $1,217,000.

The excess loss in 1929 was $1,224,000.

In 1930, it was $1,578,000; and so on down.

Mr. RICE. Mr. Chairman, may I ask what the loss was last year?

Mr. BREINING. Yes. The loss last year—and I might say that we had a very, very favorable year, both as to this group, by comparison, and also as to the other group—it was $175,000. But you

might take into consideration that the other group had a very favorable experience at that time, so that the ratio between them did not change. The loss ratio of the level premium group being only 61 percent.

Mr. Rice. May I ask what it was the year before last?

Mr. Breining. The year before that it was $281,000; the year before that, $1,103,000; the year before that, $2,100,000; the year before that, $918,000; the year before that, I stated, $1,578,000.

For some reason which I do not know, nor does anyone else seem to be able to explain, the experience of the insurance companies the last 2 years, 1934 and 1935, has been very very favorable, but the ratio in the other group was down around 61 percent as against 103 percent, I believe, for this group, so there was still a difference of over 40 percent—between 40 and 50 percent.

Senator Barkley. Does this measure undertake to increase the public expenditure, and, if so, to what extent?

Mr. Breining. No, sir; it does not. It will not cost the Government money; it will just cost the other group, the policyholders.

Senator Barkley. It shifts it from one to the other?

Mr. Breining. Yes; it gives an extraordinary privilege to one group to the detriment of the other group.

Senator Connally. That is only on the amount of dividends that they would receive on their policies. Of course, the principal amount of the policy does not vary.

Mr. Breining. That is true.

Senator Connally. That is the dividends to the policy holders.

Mr. Breining. Dividends in life insurance are not similar to dividends on bonds.

Senator Connally. I understand. It either lowers or raises the amount of the premium.

Mr. Breining. Yes, sir; but the premium for the other policyholders on a normal basis would have been adjusted to a greater extent than it was adjusted.

Senator Connally. I get it.

Mr. Rice. Mr. Chairman?

Senator George. Yes, Mr. Rice.

Mr. Rice. May I be permitted to make a couple of more comments on this matter?

Senator George. Yes, sir; but we would like to close the hearing on this as quickly as we can.

Mr. Rice. I want to call to the attention of the committee the fact that extra cost of the 5-year level premium term policies has been undergoing a decrease and it is now not much more than the expected expense. I suppose that might be due to two factors: First, that many of the poor risks have already died, and, second, that there are a lesser number of veterans still retaining those policies.

Another factor which might probably reduce the risk is the fact that veterans still in good health are privileged to take out such policies, and men who are now in military service are privileged to take them out, and therefore that would tend somewhat to reduce that risk.

This is a purely theoretical thing, but if all of the men who are now holding these 5-year level premium term policies, considered as generally poor risks, if they were able to afford to take out the regular con-

verted insurance policies for the same amount of protection that they now have—I grant, of course, that that could not be done—then the mortality cost and the risk would still be the same as to the entire insurance fund.

Therefore, if you do not give them this opportunity, you penalize them, because of the fact that they do not have sufficient money to pay for the converted type of insurance policy.

Senator CONNALLY. Of course, every time that these 5-year term policies expire and they are reissued, the men have to stand a good health test; is not that true?

Mr. RICE. No. They may have them continuously without examination, if you pass this bill.

Senator CONNALLY. Any new ones that come in, of course, they would have to stand the health test?

Mr. RICE. Yes; indeed.

Senator CONNALLY. That would raise the average of the liability.

Mr. RICE. That is right. That may have been one of the factors; I do not know.

If the committee does contemplate to take favorable action on this bill, and I sincerely hope it will, we hope it may do so in the very near future, because there are some where the dates have already expired, and there will be others in the very near future, and they would naturally like to know what they would have to do under the circumstances.

Colonel TAYLOR. May I make this suggestion, Mr. Chairman?

Senator GEORGE. Yes, sir; Colonel Taylor.

STATEMENT OF COL. JOHN THOMAS TAYLOR, DIRECTOR, NATIONAL LEGISLATIVE COMMITTEE, THE AMERICAN LEGION

Colonel TAYLOR. This term insurance that these men have been carrying is the original term insurance. Mr. Breining has pointed out that there are only 22,000 of them still carrying it. Of course, the dangerous thing is the increased age and the possibility of death. This bill could be amended so that it would revert to the type of term insurance that it was originally when the men first took it out during the war period, when the cost of it was taken care of by the Government, and for these few remaining the bill could be so amended that the costs now could be taken care of by the Government as term insurance, so it would not be charged to the converted life-insurance fund.

Senator GEORGE. Is there anyone else who desires to be heard on this bill?

STATEMENT OF CAPT. THOMAS KIRBY, NATIONAL LEGISLATIVE CHAIRMAN, DISABLED AMERICAN VETERANS

Captain KIRBY. Mr. Chairman, may I make one observation? There has been so much discussion on this small group of disabled men that the committee might properly amend this bill so as to make it renewable for those men on the compensation roll; in other words, the service-connected group. Any man who is not disabled, it would not make him eligible for renewal.

Mr. RICE. I might point out that there are many men who are disabled who are not receiving compensation.

Senator GEORGE. If there is no one else to be heard, we will close the hearing on this particular bill.

TESTIMONY ON H. R. 5331

Senator GEORGE. There is another House bill here. I do not think it has been referred to a subcommittee. Mr. Johnston, if you will furnish the Senators with a copy of that bill, and if the administration can furnish us some information on it, we would like to have the record made up today, because I would like to submit to the full committee next week, or as early as practical, the reports on these three bills at least. I now refer to H. R. 5331, "To restore certain benefits to World War veterans suffering with paralysis, paresis, or blindness, or who are helpless or bedridden, and for other purposes."

(H. R. 5331 and the House report thereon are as follows:)

[H. R. 5331, 75th Cong., 1st sess.]

AN ACT To restore certain benefits to World War veterans suffering with paralysis, paresis, or blindness, or who are helpless or bedridden, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the date of enactment of this Act any World War veteran suffering from paralysis, paresis, or blindness, or who is helpless or bedridden, as the result of any disability, or who is otherwise totally disabled may be awarded compensation under the laws and interpretations governing this class of cases prior to the enactment of Public Law Numbered 2, Seventy-third Congress, March 20, 1933, subject, however, to the limitations, except as to misconduct or willful misconduct, contained in sections 27 and 28 of Public Law Numbered 141, Seventy-third Congress, March 28, 1934: *Provided,* That the language herein contained shall not be construed to reduce or discontinue compensation authorized under the provisions of section 26 of Public Law Numbered 141, Seventy-third Congress: *Provided further,* That where a World War veteran dies or has died from disease or injury, and service connection for such disease or injury is established under the provisions of this Act, the surviving widow, child, or children, and/or dependent parents shall be entitled to receive compensation at the rates prescribed in Veterans' Regulation Numbered 1 (a), part I, paragraph IV, and amendments thereto: *Provided further,* That for the purposes of awarding compensation under this Act, service connection of disability may be determined or redetermined in any cases where claim has been or is filed by the veteran, widow, child, or children, and/or dependent parent or parents.

SEC. 2. In the administration of the laws granting benefits for service-connected disabilities or deaths, any increase of disibility during World War service shall be deemed aggravation in the application of the rules, regulations, and interpretations of the Veterans' Administration.

SEC. 3. Payments under the provisions of this Act shall be effective the date of enactment of this Act or the date of filing claim therefor, whichever is the later.

Passed the House of Representatives March 24, 1937.

Attest:

SOUTH TRIMBLE, *Clerk.*

[H. Rept. 375, 75th Cong. 1st Sess.]

RESTORE BENEFITS TO CERTAIN WORLD WAR VETERANS

The Committee on World War Veterans' Legislature, to whom was referred the bill (H. R. 5331) to amend certain laws affecting World War veterans and their dependents, after consideration, report the same favorably to the House with the recommendation that the bill be passed.

This bill will restore the provisions of the first sentence of the first proviso of section 200, World War Veterans' Act, 1924, as amended, which provided that "no person suffering from paralysis, paresis, or blindness shall be denied compensation by reason of willful misconduct, nor shall any person who is helpless or bed-

ridden as a result of any disability be denied compensation by reason of willful misconduct." This provision was restored in part by section 26 of Public, No. 141, Seventy-third Congress, March 28, 1934, which provides as follows:

"Notwithstanding any provision of law to the contrary, in no event sha'l the compensation being paid on March 19, 1933, under subsections (3) and (5) of section 202 of the World War Veterans' Act, 1924, as amended, to veterans for the loss of the use of both eyes, where such veterans were, except by fraud, mistake, or misrepresentation, in receipt of compensation on March 19, 1933, be reduced or discontinued, except in accordance with the regulations issued under the act entitled "An act to maintain the credit of the United States Government", approved March 20, 1933, pertaining to hospitalized cases."

The above provision limited the restoration of service-connected blind cases to those on the rolls March 19, 1933. The act will permit the service connection of and payment of compensation to service-connected blind cases not on the rolls March 19, 1933, and cases of paralysis, paresis, helplessness, and bedriddenness, where such service connection will be authorized under the limitations of the act.

It will be noted that the act provides "subject, however, to the limitations except as to misconduct or willful misconduct contained in sections 27 and 28 of Public, No. 141, Seventy-third Congress, March 28, 1934." It will, therefore, be noted that in restoring the aforementioned provision of section 200, World War Veterans' Act, 1924, as amended, certain restrictions are for application. Except as to those service-connected blind veterans on the rolls March 19, 1933, the limitations contained in sections 27 and 28, Public, No. 141, are for application which will exclude any cases where the veteran entered the service after November 11, 1918. It will also exclude those cases where clear and unmistakable evidence discloses that the disease, injury, or disability had inception before or after the period of active military or naval service, unless such disease, injury, or disability is shown to have been aggravated during service. It will exclude those cases where service connection was established by fraud, clear or unmistakable error as to conclusions of fact or law, or misrepresentation of material facts. All reasonable doubts would be resolved in favor of the veteran, the burden of proof being on the Government. As to those cases service connected by statutory presumption the compensation to veterans will be reduced by 25 percent, and the amount of compensation will be determined in the same manner as other World War service-connected cases under the existing laws. In other words, instead of restoring these veterans' cases to the same status they occupied on March 19, 1933, they are placed in no better position than other World War cases of service-connected disabilities under the existing laws which include application of the limitations of Public, No. 141, Seventy-third Congress.

Provision is made for the payment of compensation to the dependents of the veterans entitled to or receiving compensation under the provisions of this act and who die or have died as a result of service-connected disabilities.

At the present time, in this limited number of helpless cases, the World War veterans and their dependents are barred with the exception of the service-connected blind veterans on the rolls March 19, 1933, and the dependents are barred even in those cases regardless of the fact that all other requirements of the statutes as to service connection are complied with.

Beginning with the act of June 7, 1924, Congress recognized that misconduct which had progressed to a severe degree of disability in certain types of cases should not constitute a bar to payment of compensation if the veteran was otherwise entitled to the benefit. This principle continued in effect until the enactment of Public, No. 2, Seventy-third Congress (the so-called Economy Act, Mar. 20, 1933). The service-connected blind cases on the rolls March 19, 1933, were restored as heretofore stated under section 26, Public, No. 141, Seventy-third Congress. Congress recognized the desirability of elimination of misconduct bar in the enactment of Public, No. 844, Seventy-fourth Congress, which amended Public, No. 484, Seventy-third Congress, "An act to compensate widows and children of persons who died while receiving monetary benefits for disabilities directly incurred in or aggravated by active military or naval service in the World War." The act as heretofore stated is solely a restoration of prior rights subject to subsequent limitations applied to World War service-connected cases and the inclusion of dependents of those who have died or hereafter die from such service-connected disabilities.

When the act of June 7, 1924, herein referred to, was under consideration an abundance of evidence was received to support the proposition that certain types of diseases follow in the wake of war. Among them are inevitably those which produce the disablements referred to in this bill. The American Army, during the World War, was infinitely freer from these diseases than any other Army at

any other time in history. The effect of instruction and the natural standards of our American boys wrote a new history as to hygiene. The cases to be benefited by this act are few in number but they are in serious condition. Considerations of compassion and the brilliant sacrificial part these soldiers played in the conduct of a victorious war fully justify this small liberality to a group of afflicted men. Likewise, the committee felt that even if a soldier erred, if error it was, during the cataclysm of war, his dependents should not have that error laid on them as a permanent punishment. Statistics collected by the United States Public Health Service and by other organizations leave no doubt that much of the so-called misconduct disease is acquired through other than the ordinarily accepted channels.

Latent congenital disease is lighted up by the rigor of war according to the best evidence obtainable by the committee. Indeed, in the light of what has been before it—the committee is in some doubt as to whether it has gone far enough in its recommendation to the Congress.

Section 2 of the act will permit a determination of aggravation in the cases included for benefits therein where there was increase of disability during World War service. This is the existing practice as to other cases and the section is for the purpose of applying the same rule to the cases covered by the act.

Payments under the provisions of this act will be effective the date of enactment of the act or the date of filing claim therefor, whichever is the later.

Senator GEORGE. I presume this bill is directed toward willful misconduct.

Mr. BRADY. That is correct, Senator.

Senator GEORGE. Did the Administration appear on this bill before the House Committee?

Mr. BRADY. Yes; the Administration appeared before the House committee on this bill. May I explain briefly, Senator, the purpose of this bill?

Senator GEORGE. Yes; we would be glad to have your explanation.

STATEMENT OF JAMES T. BRADY, SOLICITOR, VETERANS' ADMINISTRATION

Mr. BRADY. Under the World War Veterans' Act, when disability was caused by misconduct, compensation payments were denied, except for a group covered by a proviso to section 200 of the World War Veterans' Act.

Senator CONNALLY. You mean it was discontinued except as to those?

Mr. BRADY. The act did not include a provision for payment for disabilities on account of misconduct, except this group.

Senator GEORGE. This particular group.

Mr. BRADY. Where they had service-connected disabilities resulting from misconduct and the disability had progressed to paresis, paralysis, blindness, or being helpless or bedridden, they were paid notwithstanding that the basis was misconduct.

That was repealed by the Economy Act (Public No. 2). They went off the rolls because of the misconduct feature. One section of the group, the blind cases were restored by subsequent legislation in Public No. 141. The remaining group has not been restored.

Senator CONNALLY. Does it apply only to those who are totally disabled?

Mr. BRADY. It applies to those permanent cases, those that might be called permanent cases, where the misconduct has progressed to the point where the man is practically helpless or totally disabled.

Senator BARKLEY. What is the meaning of this phrase, "as the result of any disability"?

Mr. BRADY. Where is that, Senator?

Senator BARKLEY. That is in the bill.
Senator CONNALLY. Page 1, the fifth and sixth lines.
Senator BARKLEY. Lines 5 and 6, "or who is helpless or bedridden, as the result of any disability."
Mr. BRADY. Well, as the result of any disease. Of course, it would almost have to be disease, but any disability which has progressed to the point of complete disablement, notwithstanding it results from misconduct, whatever the disability may be.
Without the misconduct, they would be paid anyway. With the misconduct, they are not now paid, under the present law.
Senator GEORGE. Except the blind.
Mr. BRADY. Except the blind on the rolls March 19, 1933, and they were restored by Public No. 141, after having been removed by Public No. 2.
Senator GEORGE. You were about to say something as to the purpose of this bill.
Mr. BRADY. The purpose of this bill is to restore the remaining group that was protected under the World War Veterans' Act, with certain limitations, those limitations being that he would have to show that the disability was service-connected, and certain limitations as to payment if they were presumptive service-connected cases.
Also, this bill will take care of the dependents of this same group after they die, which was not included within the World War Veterans' Act.
Senator GEORGE. They merely had the benefit during the life of the veteran?
Mr. BRADY. That is correct.
Now, we are preparing a report on this bill.
Senator CONNALLY. Is there a clause in the bill as to dependents where the widow remarries—does she lose her benefit when she remarries?
Mr. BRADY. Under the World War Veterans' Act no widow who remarries is entitled to further payment. She goes off the rolls.
Under certain service pension acts a widow who remarries and her second husband dies, she then reverts to the State of widowhood from that marriage and she may go back on the rolls. That has never been extended to any World War widows.
Under our requirements for reporting on bills, it is necessary for us to submit our reports to the Bureau of the Budget, and our report on this bill is in course of preparation at this time.
We believe it is the intention on the part of the committee that has handled the bill up to this point in the House to recognize that the same benefits should be extended to this unfortunate group as under the World War Veterans' Act.
We have not yet conferred with the Bureau of the Budget, or the President, so as to determine what our ultimate report will be. We hope to have that in shape to present to you within the course of the next week or 10 days. I am not prepared at this time to say whether the Veterans' Administration would be able to report favorably or unfavorably on this bill.
Senator GEORGE. Would you be able to say to us now what the approximate cost will be?
Mr. BRADY. Yes, Senator.
Senator GEORGE. Based on your prior experience?

Mr. BRADY. Yes, sir, Senator.

The approximate cost will be $1,251,000, affecting, we estimate, 1,150 veterans. There would also be a new group of cases entitled under this bill for which no estimate of cost can be made. We have included no cost for the dependents, because the records upon which to base such an estimate are not readily available.

Senator CONNALLY. Is this same law applicable to Spanish War veterans?

Mr. BRADY. This is applicable to World War veterans. The Spanish-American War veterans are paid what we call service pensions, irrespective of misconduct.

Senator GEORGE. That does not have any misconduct clause?

Mr. BRADY. No.

Senator CONNALLY. Did not the economy bill knock that out?

Mr. BRADY. Yes, but the Congress reenacted the Spanish War laws under Public No. 269. So the Spanish War veterans, irrespective of misconduct, are now entitled to payment.

Senator GEORGE. This estimate does not cover the blind; it covers only the additional ones?

Mr. BRADY. The additional ones; the blind are already included.

Senator GEORGE. The blind are already restored to the benefits?

Mr. BRADY. Yes, sir.

Senator GEORGE. Except the dependents of the blind?

Mr. BRADY. Except the dependents of the blind and new blind cases.

Senator GEORGE. You will furnish your report to us when you get it ready?

Mr. BRADY. Yes, Senator.

Senator GEORGE. So that it may go in this record?

(The report referred to is as follows:)

VETERANS' ADMINISTRATION,
Washington, May 3, 1937.

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

MY DEAR SENATOR HARRISON: This is with reference to your informal request of March 26, 1937, for a report on H. R. 5331, Seventy-fifth Congress, an act to restore certain benefits to World War veterans suffering with paralysis, paresis, or blindness, or who are helpless or bedridden, and for other purposes, which provides:

"That on and after the date of enactment of this Act any World War veteran suffering from paralysis, paresis, or blindness, or who is helpless or bedridden, as the result of any disability, or who is otherwise totally disabled may be awarded compensation under the laws and interpretations governing this class of cases prior to the enactment of Public Law Numbered 2 Seventy-third Congress, March 20, 1933, subject, however, to the limitations, except as to misconduct or willful misconduct, contained in sections 27 and 28 of Public Law Numbered 141, Seventy-third Congress, March 28, 1934: *Provided,* That the language herein contained shall not be construed to reduce or discontinue compensation authorized under the provisions of section 26 of Public Law Numbered 141, Seventy-third Congress: *Provided further,* That where a World War veteran dies or has died from disease or injury, and service connection for such disease or injury is established under the provisions of this Act, the surviving widow, child, or children, and/or dependent parents shall be entitled to receive compensation at the rates prescribed in Veterans' Regulation Numbered 1 (a), part I, paragraph IV, and amendments thereto: *Provided further,* That for the purposes of awarding compensation under this Act, service connection of disability may be determined or redetermined in any cases where claim has been or is filed by the veteran, widow, child, or children, and/or dependent parent or parents.

"SEC. 2. In the administration of the laws granting benefits for service-connected disabilities or deaths, any increase of disability during World War

service shall be deemed aggravation in the application of the rules, regulations, and interpretations of the Veterans' Administration.

"SEC. 3. Payments under the provisions of this Act shall be effective the date of enactment of this Act or the date of filing claim therefor, whichever is the later."

Section 1 will restore the provisions of the first sentence of the first proviso of section 200, World War Veterans' Act, 1924, as amended, which provided that "no person suffering from paralysis, paresis, or blindness shall be denied compensation by reason of willful misconduct, nor shall any person who is helpless or bedridden as a result of any disability be denied compensation by reason of willful misconduct." This provision was restored in part by section 26 of Public, No. 141, Seventy-third Congress, March 28, 1934, which provides as follows:

"Notwithstanding any provision of law to the contrary, in no event shall the compensation being paid on March 19, 1933, under subsections (3) and (5) of section 202 of the World War Veterans' Act, 1924, as amended, to veterans for the loss of the use of both eyes, where such veterans were, except by fraud, mistake, or misrepresentation, in receipt of compensation on March 19, 1933, be reduced or discontinued, except in accordance with the regulations issued under the act entitled 'An act to maintain the credit of the United States Government', approved March 20, 1933, pertaining to hospitalized cases."

The above provision limited the restoration of service-connected blind cases to those on the rolls March 19, 1933. The act will permit the service connection of and payment of compensation to service-connected blind cases not on the rolls March 19, 1933, and cases of paralysis, paresis, helplessness, and bedriddenness, where such service connection will be authorized under the limitations of the act. The act will also include a new group described as "otherwise totally disabled."

It will be noted that the act provides "subject, however, to the limitations except as to misconduct or willful misconduct contained in sections 27 and 28 of Public, No. 141, Seventy-third Congress, March 28, 1934." It will, therefore be noted that in restoring the aforementioned provision of section 200, World War Veterans' Act, 1924, as amended, certain restrictions are for application. Except as to those service-connected blind veterans on the rolls March 19, 1933, the limitations contained in sections 27 and 28, Public, No. 141, are for application. It will exclude those cases where clear and unmistakable evidence discloses that the disease, injury, or disability had inception before or after the period of active military or naval service, unless such disease, injury, or disability is shown to have been aggravated during service. It will exclude those cases where service connection was established by fraud, clear or unmistakable error as to conclusions of fact or law, or misrepresentation of material facts. All reasonable doubts would be resolved in favor of the veteran, the burden of proof being on the Government. As to those cases service connected by statutory presumption the compensation to veterans will be reduced by 25 percent, and the amount of compensation will be determined in the same manner as other World War service-connected cases under the existing laws. In other words, instead of restoring these veterans' cases to the same status they occupied on March 19, 1933, they are placed in the same position as other World War cases of service-connected disabilities under the existing laws which include application of the limitations of Public, No. 141, Seventy-third Congress.

Provision is made for the payment of compensation to the dependents of the veterans entitled to or receiving compensation under the provisions of this act and who die or have died as a result of service-connected disabilities.

Under section 200, World War Veterans' Act, 1924, as amended, the dependents of these particular veterans who died, were not entitled to service-connected death benefits. Neither are the dependents of the blind veterans on the rolls March 19, 1933, and who subsequently die or have died, entitled to service-connected death benefits. The dependents of those veterans who died while on the rolls prior to July 1, 1933, under section 200, World War Veterans' Act, 1924, as amended, and the dependents of those blind cases on the rolls March 19, 1933, who die or have died since June 30, 1933, are entitled to the rates of compensation provided by Public, No. 484, Seventy-third Congress, June 28, 1934, as amended by Public, No. 844, 74th Congress, June 29, 1936.

Section 2 of the act will permit a determination of aggravation in the cases included for benefits therein where there was increase of disability during World War service. This would establish a new principle with reference to these cases as under the World War Veterans' Act, 1924, as amended, natural progress of misconduct disease was not considered aggravation.

It is estimated that the cost of restoring service connection to the misconduct cases on the rolls prior to the enactment of Public, No. 2, would approximate $1,251,000 affecting approximately 1,150 cases. It is also estimated that a new group of cases would be brought on the service-connected rolls by inserting the clause "or who is otherwise totally disabled". It is believed that there would be a potential group of several thousand case of veterans who are suffering from residuals of misconduct diseases who have not reached the stage of paralysis, paresis or blindness or helplessness or bedriddenness but it is impossible to estimate the number of these who would be totally disabled. It is also impossible to estimate the number of cases of dependents who might be brought on the rolls where veterans die or have died from misconduct diseases. The payment of aggravation cases would also bring on an additional group of misconduct cases but there are no figures available upon which to base an estimate.

The Veterans' Administration has been advised by the Acting Director, Bureau of the Budget, that in view of the unfavorable financial situation respecting this and the next fiscal year, the proposed legislation would not be in accord with the program of the President.

For the foregoing reasons the Veterans' Administration is unable to recommend the proposed legislation to the favorable consideration of your committee.

Very truly yours,

FRANK T. HINES, *Administrator.*

Captain KIRBY. Mr. Chairman, may I have the record show that the Disabled American Veterans strongly support the bill?

Senator GEORGE. You mean H. R. 5331?

Captain KIRBY. Yes, sir.

STATEMENT OF ANDREW TEN EYCK, GENERAL COUNSEL, AMERICAN VETERANS' ASSOCIATION

Mr. TEN EYCK. We desire to renew and to reiterate the position we took with reference to these bills, in our letter of March 30, 1937, to the chairman of the Senate Finance Committee.

H. R. 5478, providing for a renewal of the privilege of 5-year term policies which are about to expire, carries the endorsement of the American Veterans' Association.

H. R. 5331, providing for benefits to veterans now suffering from diseases incurred through their own willful misconduct, in our opinion, is wrong in principle, and an exceedingly dangerous type of special legislation.

It cannot be successfully denied that the bald fact is that this legislation would make social diseases compensible, and there is no sure way of establishing, we believe, a limitation which will not include even those who acquired these diseases after their military service. We venture to prophesy that if this law is passed there will be many more claimants than is now estimated and there will probably be other demands for border-line legislation. Shorn of all its refinement of language, this bill is a step toward a general service pension.

In taking the position we do, we do not wish to be misunderstood. We are not willing, even with reference to these cases, to take any other position than that of the "Good Samaritan." Nor do we seek to cast dissent upon the precept of Christ as told by St. John when the fallen woman was brought to him, "He that is without sin among you, let him first cast a stone at her."

Much has been made in the debate in the House on this measure, and, in the hearings before the House committee, about this group including some of our best fighting men. That probably is perfectly

true. We would recognize it in the only way it is safe for the Government to do, if it wishes to adhere to the principle that compensation should be given for injuries received in the line of military or naval duty. That is: We would treat these cases individually, going along as we are now, placing the bedridden and helpless in hospitals, and the other cases would be taken care of by a special board endowed with the authority to grant a compassionate pension to a man who is barred by the strict letter of the law but who has had a meritorious record of service. This suggestion is based on the Canadian precedent. This organization has suggested legislation to that effect.

Much, also, has been said about the stigma which this misconduct bar has visited upon the veterans in small communities, and particularly upon their relatives. Do you think that the tongues of the gossip mongers will stop wagging if Congress passes a law to take care of these cases? In my opinion, it will give wide publicity to these cases and this type of special legislation will be publicity sufficient in itself to start talk anew.

We believe that these cases should be taken care of, probably by the Federal Government, but not in the manner suggested in this legislation, and, accordingly, we do not recommend that this measure be reported favorably out of this committee.

I would like to submit a letter that I addressed to Senator Harrison.

(The letter referred to is as follows:)

MARCH 30, 1937.

MY DEAR SENATOR HARRISON: H. R. 5331, an act to restore certain benefits to World War veterans suffering with paralysis, paresis, or blindness, or who are helpless or bedridden, and for other purposes, and H. R. 5478, an act to amend existing law to provide the privilege of renewing expiring 5-year level-premium term policies for another 5-year period, have been passed by the House of Representatives and referred to the Senate Finance Committee, we note. We desire to acquaint the committee with the stand which we took when these measures were before the Committee on World War Veterans' Legislation.

First, as to H. R. 5331. When the bill was in its original stage and carried the number H. R. 1538, it was stated that this association was not in accord with the measure. Later on, in the course of the hearings held by the Committee on World War Veterans' Legislation, an identical provision was under discussion in connection with H. R. 1959 (sec. 4), providing for benefits to veterans suffering from diseases incurred through wilful misconduct. We stated that we believed this provision to be highly dangerous and that the danger appeared to lie in the second proviso of the section, which provided that "no World War veteran suffering from paralysis, paresis, or blindness, nor the dependents of such veteran shall be denied compensation by reason of wilful misconduct."

This would appear, it seems to us, to contemplate the payment of compensation both to veterans in the secondary and tertiary stages of congenital syphilis, and, in fact, even to those who acquired this disease since their military service. We pointed out to the Committee on World War Veterans' Legislation that it might prove illuminating if the Veterans' Administration were asked to present to the committee a table showing the number of veterans hospitalized on account of neuropsychiatric disabilities, those drawing compensation for the same type of disability, and further with respect to each group—a numerical division showing the proportion in which syphilis, congenital and otherwise, is a primary cause of the present neuropsychiatric disability. The committee did not have such tables at the time H. R. 5331 was reported out but the tables will appear in the printed proceedings of the hearings. We, therefore, renew to the Senate Finance Committee the recommendation made to the Committee on World War Veterans' Legislation.

We think that the Congress would do well to consider the Canadian system which awards what is termed a "compassionate pension" in cases like the foregoing, where, through some technicality or strict interpretation of the law, a veteran is not entitled to receive benefits. Such veterans may, nevertheless,

through the sound discretion of the Pension Commission, be awarded a compassionate pension.

Second, as to H. R. 5478, an act to amend existing law regarding 5-year level-premium term policies, the association wishes to record with the Senate Finance Committee its complete approval of this measure.

Sincerely yours,

DONALD A. HOBART,
National Commander, American Veterans Association.
ANDREW TEN EYCK,
General Counsel, American Veterans Association.

Mr. TEN EYCK. On this miscounduct, the American Veterans Association feels it is very dangerous to legislate in this manner.

We are in sympathy with the fact that these people should be taken care of. We believe that the Canadian compassionate pension principle would perhaps be the safer principle to follow.

Mr. RICE. Mr. Chairman, may I state on behalf of the Veterans of Foreign Wars that we endorse this particular bill, as our testimony before the House committee will show. A very detailed presentation was made there, and nothing more is necessary at this time.

Senator GEORGE. The hearing on H. R. 5331 will be closed, but the report from the Administration will be inserted in the record as soon as it has been provided.

There are several members of the subcommittee who, on account of illness or other good reasons, could not be present this morning. I believe that those absent members have other matters that they might have brought before the committee for consideration this morning.

So the subcommittee will stand adjourned, and we will have an executive session meeting as soon as possible.

(Whereupon, at the hour of 11:55 a. m. the hearing was closed.)

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