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SENATE

{ REPORT
{ No. 1089

PHILIP R. ROBY

JUNE 24, 1930.—Ordered to be printed

Mr. WALSH of Massachusetts, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 1214]

The Committee on Finance, to whom was referred the bill (S. 1214) for the relief of Philip R. Roby, having considered the same, report thereon with the recommendation that it do pass.

STATEMENT OF FACTS

Philip R. Roby, a resident of the city of Lowell, Mass., served in the sanitary detachment, First New Hampshire Infantry, National Guard, and reported for war service on July 26, 1917, under the call of the President, issued July 3, 1917. He was discharged from the service on September 26, 1917, only 17 years of age.

The War Department records show that this man was discharged from the service on September 26, 1917, by reason of disability, at which time his commanding officer furnished him a blue discharge certificate, which is neither an honorable nor a dishonorable discharge.

While Mr. Roby held this discharge, the significance of which he did not know, he was unable to file a claim for compensation in the United States Veterans' Bureau, due to the fact that on one occasion he was told by an Army officer at Boston, Mass., that his discharge did not entitle him to any benefits. On another occasion he was informed by the American Red Cross at Boston, Mass., that his discharge did not entitle him to any of the benefits of the World War veterans' act and accompanying acts. On a subsequent occasion he was informed by a judge that his discharge was of such a character that he could not claim benefits from the United States Government.

All these statements led Mr. Roby to believe that he was not entitled to benefits because he had not had overseas service. At a later date when he took an examination for a position in the civil

service of the Commonwealth of Massachusetts and submitted his discharge certificate to the department of civil service of the Commonwealth, in order that he might obtain the preference accorded to veterans of the military or naval service, he was then told that his discharge was without honor.

He began an investigation into the reasons for being given a blue discharge. He brought the matter to the attention of the War Department and the War Department admitted that an injustice had been done Mr. Roby.

The blue discharge was then returned to the War Department, Adjutant General's office, on July 16, 1928, and due to the fact that it was issued in error it was retained in that office and a certificate of honorable discharge was issued in lieu thereof.

Mr. Roby subsequent to his discharge became a victim of tuberculosis.

He filed claim for disability compensation July 12, 1928, the nature of the disability claimed being tuberculosis and stomach trouble.

Upon examination conducted July 25, 1928, his condition was diagnosed as chronic mild bronchitis and in view of certain circumstances he was awarded the statutory award of \$50 per month for arrested tuberculosis.

The following rating was assigned in his case:

Less than 10 per cent (0 per cent) from discharge to April 2, 1925.

Permanent partial 10 per cent from April 2, 1925, to August 20, 1928.

Permanent partial 20 per cent from August 20, 1928, to May 16, 1929.

Less than 10 per cent (0 per cent) from May 16, 1929.

The evidence reveals that Mr. Roby was unable to file a claim for compensation at a time when his disability was most troublesome because of an error on the part of the commanding officer who issued his discharge on the wrong form. Had he not been impeded by the wrong discharge, he would have received the compensation provided for in the relief bill (S. 1214).

In view of the above the committee recommends that the bill be reported favorably. The bill places Roby in the status he would have been had not the War Department erred in giving him the wrong form of discharge.

There is attached hereto to accompany this report:

1. Letter to the chairman of the Senate Finance Committee from the Director of the United States Veterans' Bureau, dated September 18, 1929.

2. Letter to Senator David I. Walsh from The Adjutant General of the War Department, dated June 21, 1930.

SEPTEMBER 18, 1929.

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

MY DEAR SENATOR SMOOT: Reference is made to your communication transmitting copy of S. 1214, "A bill granting compensation to Philip R. Roby," requesting a report as to the merits thereof.

This bill proposes to authorize the director to pay to Philip R. Roby compensation at the rate provided for temporary total disability from September 26, 1917, to April 2, 1925, inclusive, and at the rate for permanent partial disability

in accordance with his disability rating from April 3, 1925, to July 12, 1927, inclusive. Payment of such amounts are to be in addition to any compensation said Philip R. Roby may be entitled to under the World War veterans' act, 1924, as amended, and is to be without respect to the provisions of section 210 of the statute.

For the information of the committee the following facts are presented:

The records of the bureau show that Philip R. Roby was a private in the sanitary detachment, First Regiment of New Hampshire Infantry, National Guard, and that he reported for World War service on July 26, 1917, under the call of the President issued July 3, 1917. Upon enlistment his heart and lungs were found to be normal and no defects of any description were noted. He was discharged from the service on September 26, 1917, on a surgeon's certificate of disability because of a condition described in a report received from The Adjutant General's office as pulmonary tuberculosis, right apex, active; poor physical condition; existed prior to enlistment; not in line of duty; totally disabled.

He filed claim for disability compensation July 12, 1928, the nature of the disability claimed being tuberculosis and stomach trouble.

Upon examination conducted July 25, 1928, his condition was diagnosed as chronic mild bronchitis, the opinion of the medical examiner being that there was no tuberculosis present and that if there ever had been it was so well healed that it was impossible to make a diagnosis thereof at that time. Notwithstanding the lack of definite evidence in the case the claimant was given service connection for pulmonary tuberculosis, arrested, and awarded the statutory allowance provided by section 202, subdivision 7 of the World War veterans' act, as amended July 2, 1926, at the rate of \$50 per month, effective as of July 13, 1927. It was impossible to make the award effective prior to the date named in view of the provisions of section 210 of the World War veterans' act limiting retroactive payments to one year prior to date of claim.

The claimant has represented to the bureau that his failure to file claim earlier was due to information received from an Army officer at Boston, Mass., the American Red Cross, and a certain judge to the effect that the discharge which he received at the time of his separation from the military service, which it is stated was a blue discharge—known as a discharge without honor—would preclude his eligibility. The records of the bureau contain no evidence on this point, the official information received from The Adjutant General's office being simply to the effect that the claimant was honorably discharged on a surgeon's certificate of disability. He made no application formal or informal to this bureau until the date mentioned. Claimant has also furnished an affidavit to the effect that the reason he did not file claim earlier was that he thought it was necessary for a veteran to have had overseas service in order to be eligible.

The following disability rating has been assigned:

Less than 10 per cent (0 per cent) from discharge to April 2, 1925.

Permanent partial, 10 per cent, from April 2, 1925, to August 20, 1928.

Permanent partial, 20 per cent, from August 20, 1928, to May 16, 1929.

Less than 10 per cent (0 per cent) from May 16, 1929.

No evidence has been submitted showing the physical condition of the claimant from date of discharge to April 2, 1925, but a statement from M. A. Tighe, M. D., to the effect that he examined Mr. Roby on April 2, 1925, and found his tuberculosis to be arrested, has been accepted as a basis for the permanent partial rating of 10 per cent beginning April 2, 1925.

It is believed that the committee will be able to judge for itself the merits of this bill from the facts herein stated.

A copy of this letter is inclosed for your use.

Very truly yours,

FRANK T. HINES, *Director.*

Enclosure: (1).

WAR DEPARTMENT,
THE ADJUTANT GENERAL'S OFFICE,
Washington, June 21, 1930.

Hon. DAVID I. WALSH,
United States Senate.

MY DEAR SENATOR WALSH: I have your letter of June 19, 1930, with regard to the form of discharge certificate that was given to Mr. Philip R. Roby, September 26, 1917, at Westfield, Mass.

The records of this office show that the above-mentioned man enlisted June 5, 1917; that he reported for duty July 25, 1917, in response to the call of the President, and that he was discharged September 26, 1917, at Westfield, Mass., by reason of disability, at which time his commanding officer furnished him a blue discharge certificate, which is neither an honorable nor a dishonorable discharge. The blue discharge certificate was received in this office July 16, 1928, and due to the fact that it was issued in error, it was retained in this office and a certificate of honorable discharge was issued in lieu thereof.

Very respectfully,

C. H. BRIDGES,
Major General, The Adjutant General.

