REWARD TO CERTAIN RETIRED OFFICERS FOR CIVIL WAR SERVICES.

LETTER FROM THE SECRETARY OF WAR, TRANSMITTING CERTAIN INCLOSURES AND A LETTER BY CAPT. GEORGE K. SPENCER TO THE SENATE COMMITTEE ON MILITARY AFFAIRS REGARDING A PROPOSED REWARD FOR CIVIL WAR SERVICES TO OFFICERS RETIRED UNDER THE ACT OF OCTOBER 1, 1890.

February 4, 1905.—Referred to the Committee on Military Affairs and ordered to be printed.


Sir: I have the honor to transmit herewith a letter addressed to the Committee on Military Affairs, United States Senate, by Capt. George K. Spencer, U. S. Army, retired, urging, for reasons stated, that such action be taken as will afford the same reward for civil war services to officers retired under the act of October 1, 1890, as has been given to other officers under the act of April 23, 1904.

Attention is invited to the accompanying report and recommendations of the First Division General Staff, dated January 21; also to copy of report of the First Division General Staff, recently made in the similar case of Capt. Edward I. Grumley, the closing paragraph of which is as follows:

It is recommended that the bill submitted by Captain Grumley be transmitted to Congress, as requested by him, with the information that his case has been carefully considered, but that the War Department could find nothing therein which requires its separation from that of about 28 other officers who were also retired under section 3 of the act of October 1, 1890, and who, notwithstanding their civil-war service, were held by the Attorney-General not to be entitled to promotion under the act of April 23, 1904.
REWARD TO CERTAIN RETIRED OFFICERS.

The Chief of Staff, United States Army, concurs in the views expressed by the First Division General Staff—unfavorable to the proposed legislation.

Very respectfully,

Wm. H. Taft,
Secretary of War.

Hon. Wm. P. Frye,
President of the Senate pro tempore.

KANSAS CITY, KANS., January 14, 1905.

Sir. Inclosed herewith I forward a communication addressed to the Military Committee of the United States Senate, which explains itself, and respectfully request that The Military Secretary and Chief of Staff will place such indorsements thereon as to them seem proper before submitting the communication with accompanying papers to the Secretary of War for his action. Prompt action in this matter is respectfully requested.

Very respectfully,

George K. Spencer,
Captain, United States Army.

THE MILITARY SECRETARY,
Washington, D. C.

WAR DEPARTMENT,
THE MILITARY SECRETARY'S OFFICE,
January 19, 1905.

To the Chief of Staff, with previous letters, from Captain Spencer of December 5 and 24, 1904, on the subject of the advancement one grade of himself and other officers of civil war service who were promoted and retired under the act of October 1, 1890.

The Members of the Military Committee,
United States Senate.

(Through the War Department.)

Gentlemen: Your petitioner respectfully represents that he is one of the 28 officers who served during the civil war and was retired under the act of October 1, 1890. His service during the civil war, together with his service on the active list of the Army, will be found stated in years, months, and days, with a like report in the cases of all other officers of his class, inclosed herewith and marked "A."

Attention is invited to the fact that 1 of these officers served four years during the civil war prior to April 9, 1865; 7 served more than three years and nine months; 4 served more than three years and six months; 2 served more than three years and three months; 1 served three years; 1 served more than two years; 1 served more than one year and ten months; 1 served more than one year and three months; 3 served more than one year, and only 1 served less than one year during the civil war. All of these 28 officers have been denied the benefits of the advancement of one grade provided for by the act of April 23, 1904.
Your attention is respectfully invited to a list of names of officers inclosed herewith and marked "B," 96 of whom have received increases in pay since their retirement, as shown in the recapitulation, which is made a part of that paper. Attention is also invited to a list containing 10 names of officers advanced one grade under the act of April 23, 1904, and a list of 10 names of officers denied promotion under the same act; this to enable the committee to see the great discrepancy in civil-war service between those advanced in grade and those denied advancement, in favor of the latter. This list is inclosed herewith and marked "C."

In making the statements contained in the inclosed lists no reflection is intended to be cast on any officer who has received an advance in grade under the act of 1904; but it is intended to show that in justice and equity the officers who earned their promotion by long service, both during and since the civil war, are at least entitled equally to consideration with those who have served shorter periods both during and since the civil war.

Your petitioner enrolled April 15, 1861, was mustered into the United States service as a private May 27, 1861, and was mustered out as a captain August 10, 1865, after having served in that grade for more than two years. August 17, 1867, he was appointed a second lieutenant and assigned to the Nineteenth United States Infantry, and, after taking his examination, joined his regiment at Fort Smith, Ark.

In 1868 he was assigned to duty as post commissary by his regimental commander at Fort Smith, Ark., and later and while still performing the duties of commissary, was ordered by his regimental commander to relieve a captain of his regiment from the command of his company in order to enable the captain to avail himself of a leave of absence for several months which had been granted him.

At the time your petitioner was assigned to these duties he was the junior officer in rank of his station, and there were several first and second lieutenants on duty at the post who were his seniors in rank in the regiment available for the duties to which he was assigned, as stated.

During his entire period of active service your petitioner was frequently selected for more or less important duties, having been in command of an important post, Fort Hays, Kans., for some time in 1876, while still a second lieutenant. He was at the same time commanding his company and performing the duties of quartermaster commissary, adjutant, and in fact all of the duties required of officers at a military post, excepting that of post surgeon.

On July 18, 1879, your petitioner was transferred, upon the recommendation of his regimental commander, to a company (the captain of the company being permanently absent on staff duty) for the purpose of commanding it, and did command the company to which he was transferred for several years, and until he contracted the disability for which he was retired.

If the same law had applied which authorized the retirement of officers with the rank of the command held at the time the disability was contracted in your petitioner's case as was applied to a number of officers at the time of their retirement, and who have received the benefits authorized by the act of April 23, 1904, he would also have received an advancement of one grade under that act.
Your petitioner respectfully invites attention to copies of letters, etc., herewith, from a former Secretary of War, Quartermaster-General, and commander of the Nineteenth United States Infantry; also from the late Bishop Thomas and the president and board of trustees of the University of Arkansas, all of which explain themselves. They are inclosed herewith marked "D."

Your petitioner would further represent that the long period of service and low rank in the cases of all officers who served during the civil war and were retired under the act of October 30, 1904, is largely due to the unjust system of promotion employed prior to that act, and also to a more unjust system of making appointments and assignments at the time of the reorganization of the Army under the act of 1866. Civilians were appointed and assigned over officers who served during the entire civil war. Officers who had served as lieutenants during the war were made captains in the permanent establishment, while officers who served as captains and in higher grades were made second lieutenants, your petitioner being one of that class. Your petitioner performed years of duty pertaining to the grade of captain in the regular service, for which he received the pay of a lieutenant. It is to be presumed that many, if not all, of the officers of his class who have been denied advancement under the act of April 23, 1904, have an equally good if not better record than he has made in the Army.

He therefore respectfully requests that you will take such action as will give the same reward for civil-war service to officers retired under the act of October 1, 1890, as has been given to other officers, to the end that the injustice done these officers in the past may not be perpetuated.

Very respectfully,

GEORGE K. SPENCER,  
Captain, United States Army.

KANSAS CITY, KANS., January 14, 1905.

[Memorandum report, M. S. O. 965795.]

FIRST DIVISION GENERAL STAFF,  
Washington, January 21, 1905.

Capt. George K. Spencer, U. S. Army, retired, incloses a petition to the Senate Military Committee and requests that it be submitted to the Secretary of War with such remarks as The Military Secretary and Chief of Staff think proper.

Captain Spencer requests the action necessary to extend to the officers retired under section 3 of the act of October 1, 1890, who had the requisite civil-war service, the benefits of the act of April 23, 1904. Such action would authorize the promotion, by one grade, of the following-named officers now on the retired list:


REWARD TO CERTAIN RETIRED OFFICERS.

The act of April 23, 1904, was passed after the fullest consideration and discussion of this entire subject, and the officers on the above list think that it was the intention of Congress to include them within the benefits conferred by that act.

The question of the right of officers promoted and retired under the act of October 1, 1890, to advancement under the act of April 23, 1904, has been reported upon by the Judge-Advocate-General and the Attorney-General. The Judge-Advocate-General was in doubt about the right of this class of officers to advancement, and suggested that their names be sent to the Senate for its action. The Attorney-General—opinion May 26, 1904—held "that officers retired under the provisions of the act of 1890 have already been placed upon the retired list of the Army, with the rank and retired pay of one grade above that actually held by them at the time of retirement," and that these officers having received such advance in rank—the act of April 23, 1904—"can have no reference to them." In consequence of this opinion the names of the officers advanced in rank under the act of October 1, 1890, were not nominated to the Senate for advancement.

It is recommended that the papers be forwarded without delay, as requested, as it is understood that the merits of this class of cases have been fully considered by Congress, and that the question is whether further legislation is necessary to carry out the intent of the act of April 23, 1904, or whether the interpretation of the act, now the guide of the Department, is in accord with its intent.

Respectfully submitted.

J. T. Kerr,
Lieutenant-Colonel, General Staff,
Acting Chief First Division.

Recommended for approval.

G. L. Gillespie,
Major-General U. S. Army, Assistant Chief of Staff.

JANUARY 21.

Respectfully submitted to the Secretary of War approved.

A report of the First Division General Staff in the case of Capt. E. I. Grumley, U. S. Army, retired, one of the officers named in this list, was presented to the Secretary of War on January 17, 1905, for transmission to Congress. The action asked for in the two petitions is identical.

JANUARY 23, 1905.

Capt. Edward I. Grumley, U. S. Army, retired, submits a draft of a bill and requests that it be submitted to Congress, and expresses the desire that it shall be approved by the War Department and the President.

The bill provides as follows:

That the President may, in his discretion, by and with the advice and consent of the Senate, advance Captain Edward I. Grumley, United States Army, retired, one grade above that now held by him; and that this advancement shall date from the twenty-third day of April, nineteen hundred and four, Captain Grumley having served during the civil war prior to April ninth, eighteen hundred and sixty-five, in
the volunteer forces of the United States, and having served as an officer in the United States Army during the war with Spain, and having been retired by reason of disability in lines of duty while in his thirtieth year of service in the Army.

Captain Grumley states that he thought that he was included in the number of officers to be benefited by the act of April 23, 1904, but finding that he is not to be so benefited, requests that the bill quoted above be enacted.

The facts in the case are as follows:

Captain Grumley became entitled, by seniority, to promotion to one of the vacancies of captain created or caused by the act of April 26, 1898, contingent upon his passing an examination. He was ordered before a board for examination June 2, and was found unfit for active service by reason of disability incurred in the line of duty, and by orders of June 29 was promoted to captain, and placed on the retired list to date from the date of the vacancy, April 26, 1898. He had service in the civil war.

He asks for special legislation advancing him to the rank of major for the following reasons:

That the act of April 23, 1904, provided for, or contemplated, the advancement of an officer who had civil-war service "one grade above that actually held by him at the time of retirement," etc.; that the act applies to an officer promoted several times previous to his retirement, and he thinks it should apply to a man promoted by reason of seniority under the act of October 1, 1890, at the time of retirement, for the reason that such promotion is not given on account of the officer's retirement, but because of seniority; that Captain Von Schirach and six other captains, whom he names, were each advanced one grade on retirement in 1870, and have been advanced still another grade under the act of 1904, and that these cases are substantially the same as his own case, and that "of all the officers of the Army who had service both in the civil war and in the war with Spain, and who were retired for disability after nearly or quite, thirty years' service, I am the only one holding the rank of captain; all the others have at least the rank of major, and the great majority have higher rank." He incloses draft of bill, and asks approval of the War Department.

The question of the right of officers promoted and retired under the act of October 1, 1890, to advancement under the act of April 23, 1904, has been reported upon by the Judge-Advocate-General and the Attorney-General. The Judge-Advocate-General was in doubt about the right of this class of officers to advancement, and suggested that their names be sent to the Senate for its action. The Attorney-General—opinion May 26, 1904—held "that officers retired under the provisions of the act of 1890 have already been placed upon the retired list of the Army with the rank and retired pay of one grade above that actually held by them at the time of retirement, and that, these officers having received such advance in rank, the act of April 23, 1904, can have no reference to them." In consequence of this opinion the names of the officers advanced in rank under the act of October 1, 1890, were not nominated to the Senate for advancement.

As to the six captains named by Captain Grumley who were advanced one or more grades at the time of retirement, five of them were first lieutenants and one a second lieutenant at the time of their retirement in December, 1870, and they were all retired with the rank of captain under section 32 of the act of July 28, 1866, authorizing the retirement of officers disabled by wounds received in battle as of the rank of the command held by them when wounded. Each one of these six captains was in command of a company at the time he received his disabling wound.

It would seem that the act of April 23, 1904, would debar this class of officers from advancement as much as those promoted and retired under the act of October 1, 1890, for they were advanced one or more grades at the time of retirement, and not because they were entitled to such advancement or promotion by reason of seniority. But the Judge-Advocate-General, in his opinion in May last, while expressing a doubt as to the right to advancement of officers promoted and retired under the 1890 act, held that in the case of officers retired on an advanced grade under the act of 1866, it has been seen that the language so authorizing their advancement upon the full rank of the command held by them * * * at the time such wounds were received, when read in connection with subsequent legislation in pari materia was susceptible of the interpretation that the operation of the statute was to vest such rank in the officer prior to, or at the instant of, his retirement, and that, therefore, they are entitled to the benefits of the act of April 23, 1904.

The question of the application of the 1904 act to the officers placed on the retired list in a higher grade under the 1866 act was not referred to the Attorney-General.
The opinion of the Judge-Advocate-General as to this class of officers appears to have been accepted, for they were nominated for advancement and confirmed.

Captain Grumley seems to think that his service in the Spanish war should differentiate his case from that of a number of officers who were retired on promotion under the act of October 1, 1890, and who had the requisite civil war service, but who were retired prior to April 22, 1898.

From the record of his service it appears that Captain Grumley's service in the Spanish war was purely technical; he was found physically disqualified and retired prior to any of the operations of that war in which he would have taken part had he remained with his regiment.

In short, the disability in Captain Grumley's case apparently existed at the beginning of the Spanish war, and he was retired as soon thereafter as a vacancy to which he was entitled existed and the necessary preliminaries to retirement could be carried out. Meantime, he was called on to perform none of the duties incident to the war.

It seems, therefore, that while Captain Grumley might be a beneficiary under a bill providing that officers on the retired list who had served in the civil and Spanish American wars be advanced one grade, yet it would be manifestly improper for the War Department to recommend special legislation for Captain Grumley, based on his purely technical service in the Spanish-American war.

Captain Grumley is one of 29 officers (list attached) now on the retired list who were retired under section 3, act of October 1, 1890, and who, under the decision of the Attorney-General, have not received a grade on the retired list under the act of April 23, 1904.

All of these officers had service in the civil war, and eight of them were, as was Captain Grumley, on the active list during the whole, or part, of the war with Spain.

It is recommended that the bill submitted by Captain Grumley be transmitted to Congress, as requested by him, with the information that his case has been carefully considered, but that the War Department could find nothing therein which requires its separation from that of about 28 other officers who were also retired under section 3 of the act of October 1, 1890, and who, notwithstanding their civil-war service, were held by the Attorney-General not to be entitled to promotion under the act of April 23, 1904.

Respectfully submitted.

J. T. Kerr,
Lieutenant-Colonel, General Staff,
Acting Chief First Division.

Recommended for approval.

G. L. Gillespie,
Major-General, U. S. Army, Assistant Chief of Staff.

January 16, 1905.

Approved.

J. T. Kerr,
Lieutenant-Colonel, General Staff,
Acting Chief First Division.

G. L. Gillespie,
Major-General, U. S. Army, Assistant Chief of Staff.

January 17, 1905.

S D—58-3—Vol 3—54
REWARD TO CERTAIN RETIRED OFFICERS.

**Majors.**

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