

ALBERTA DUNCAN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS
TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE
CASE OF ALBERTA DUNCAN, WIDOW OF TITUS DUNCAN, DE-
CEASED, AGAINST THE UNITED STATES.

JANUARY 26, 1915.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, January 16, 1915.

HON. THOMAS R. MARSHALL,
President of the Senate.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact and conclusion filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Court of Claims. Congressional, No. 14194-157. Alberta Duncan, widow of Titus Duncan, deceased, v. The United States.]

STATEMENT OF CASE.

This is a claim for three months' extra pay for military service during the late Civil War.

On March 3, 1909, Senate bill No. 9501 was referred to this court by resolution of the United States Senate under the provisions of the Tucker Act. The section of the bill which relates to this case reads as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed, out of any money in the Treasury not otherwise appropriated, to pay to each of the persons hereinafter in this section named, or if deceased, to the party entitled thereto, the sum of \$300, or so much thereof as may be necessary, being for three months' pay proper of the grade held by each of them, when honorably discharged from the volunteer service of the United States after March third, eighteen hundred and sixty-five, namely, * * * Titus Duncan * * *."

The claimant thereafter appeared in this court and filed a petition, in which it is alleged, in substance:

That she is a citizen of the United States, resident in the county of Saginaw, State of Michigan, and that she is widow of Titus Duncan, one of the proposed beneficiaries under said bill (S. 9501) above set forth.

That said Titus Duncan was enrolled in the military service of the United States in the Twenty-ninth Michigan Volunteer Infantry and was honorably discharged as surgeon, March 29, 1865.

That the act of March 3, 1865 (13 Stats., 497), provides:

"SEC. 4. That all officers of Volunteers now in commission, below the rank of brigadier general, who shall continue in the military service to the close of the war, shall be entitled to receive, upon being mustered out of said service, three months' pay proper."

That by the act of July 13, 1866 (14 Stats., 94), it was declared that this act should be "so construed as to entitle to the three months' pay proper, provided for therein, all officers of Volunteers below the rank of brigadier general who were in service on the third day of March, eighteen hundred and sixty-five, and whose resignations were presented and accepted, or who were mustered out at their own request, or otherwise honorably discharged from the service after the ninth day of April, eighteen hundred and sixty-five."

That by act of July 3, 1884 (23 Stats., 66), the law was further extended "to entitle to the three months' pay provided for therein the heirs or legal representatives of all officers of Volunteers specified therein who were killed or who died in the service between the third day of March and the tenth day of April, eighteen hundred and sixty-five."

That a claim for the benefits of this law was duly presented to the accounting officers of the Treasury and was disallowed upon the ground that it was not embraced within the terms of the act of March 3, 1865, as amended.

That feeling that he was equitably entitled to the amount claimed, application was made to Congress for special relief by means of the bill aforesaid.

And that petitioner contends that the bounty of three months' pay proper is equitably due for the reason that while said decedent was not in commission on March 3, 1865, he was then in service as required by the act of July 13, 1866, and the Government received the benefit of his services until discharged.

That there is no set-off against this claim; nor has there been any assignment thereof, and the amount claimed is \$240, being three months' pay proper of the grade held at the date of said discharge.

The case was brought to a hearing on its merits on the 12th day of June, 1914.

C. D. Pennebaker, Esq., appeared for the claimant, and the Attorney General, by B. W. Andrews, Esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant, Alberta Duncan, is a citizen of the United States residing in the county of Saginaw, State of Michigan, and is the widow of Titus Duncan, deceased. The evidence shows that said Titus Duncan left no children surviving him.

II. Said Titus Duncan was enrolled in the military service of the United States and was mustered in as surgeon in the Twenty-ninth Michigan Volunteer Infantry. He was discharged as such March 29, 1865, on tender of resignation based on surgeon's certificate of disability, showing him suffering from chronic diarrhea.

III. A claim for three months' pay proper under the act of March 3, 1865 (13 Stats., 497), as amended by the act of July 13, 1866 (14 Stats., 94), was presented to the accounting officers of the Treasury and disallowed upon the ground that said decedent was not in the service as a commissioned officer on April 9, 1865. Except as above stated the claim was never presented to any officer or department of the Government prior to the presentation to Congress, and reference to this court as hereinbefore set forth.

CONCLUSION.

Upon the foregoing findings of fact the court concludes that the claim herein is neither a legal nor an equitable one against the United States, and any amount that may be appropriated in payment of the demand rests in the bounty of Congress.

BY THE COURT.

Filed November 9, 1914.

A true copy.

Test this 15th day of January, 1915.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

