

Calendar No. 733

69TH CONGRESS }
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SENATE

{ REPORT
No. 738

BENJAMIN S. McHENRY

APRIL 29 (calendar day, MAY 1), 1926.—Ordered to be printed

Mr. McMASTER, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 534]

The Committee on Military Affairs, to which was referred the bill (H. R. 534) to remove the charge of desertion from the record of Benjamin S. McHenry, having considered the same, report thereon favorably with the recommendation that it pass.

The pertinent facts in this case are contained in the report of the House Military Committee during the Sixty-eighth Congress, and that report is appended hereto and made a part of this report, as follows:

[House Report No. 1333, Sixty-eighth Congress, second session]

The Committee on Military Affairs, to whom was referred the bill (H. R. 10537) for the relief of Benjamin S. McHenry (otherwise Henry Benjamin), having considered the same, report thereon with a recommendation that it do pass with the following amendment: "*Provided*, That no back pay, bounty, or pension shall be held to have accrued prior to the passage of this act."

This is a bill to give the status of an honorably discharged soldier to Benjamin S. McHenry, who enlisted in the service November 3, 1863, in Troop K, Third Regiment United States Cavalry, and by mistake was enrolled as Henry Benjamin.

The soldier was an orphan, 15 years of age, at the time he voluntarily entered the Army. He enlisted under the five-year term, as the three-year term had not then been put in operation, but he was told by the recruiting officers that it would apply to his term when time of discharge came. After having served three years and seven months his commanding officer, Maj. Frank Stanwood, told him he was due a discharge and that he would secure it for him. Before the discharge arrived Major Stanwood was transferred to another command, and his successor, Major Tilford, refused to release the soldier. The soldier then returned home on his own account on May 17, 1867, feeling that this action was fully justified. The soldier is an old man now, 76 years of age, a cripple, and without money or home.

The affidavit of the soldier, and the report of the Secretary of War on the case are made a part of this report, as follows:

STATE OF ILLINOIS,
County of Wabash, ss:

Benjamin S. McHenry, being first duly sworn, on oath, according to law, deposes and says that he was born at Williamsport, in the county of Lycoming, in the State of Pennsylvania, on November 1, 1848. That he enlisted at Har-

risburg, Pa., on November 3, 1863, in the United States General Mounted Service, under the \$402 county act, under the name of Henry Benjamin.

This affiant further states that, "I was mustered into the service at the barracks, in Carlisle, in the State of Pennsylvania, and was sent from there to Nashville, Tenn., in charge of Lieut. Frank Stanwood. From there I was sent to Huntsville, in the State of Alabama, under Lieutenant Thomas, and assigned to Company K, Third United States Cavalry. I served with this company until the close of the Civil War and the surrender at Little Rock, Ark. After the surrender we were sent to Fort Smith, Ark., to join Col. M. S. Howes's expedition, crossing the plains to Fort Union, N. Mex. In 1866 we were sent to Fort Selden, N. Mex., with Maj. Frank Stanwood as company commander, and on May 17, 1867, I felt I was justified in leaving, having served three years and six months, being then a little more than 18 years of age."

This affiant further states that "when I enlisted at Harrisburg all the men were complaining about enlisting for five years and the recruiting officers told us that there had been a new act passed for a three-year enlistment but he had not yet received any orders to enlist under that term, but when he did receive them we five-year men could be discharged under the new ruling. Maj. Frank Stanwood (then Lieutenant Stanwood) told me that if he was with the company then he would see that I was discharged at the end of three years, but before my time expired he was sent to the Fourth United States Cavalry. Before he left he came to me and told me he had left a communication for the new officer to discharge me, and I would get it all right. The new officer, Post Commander Major Tilford, and company commander, Lieutenant McGuire, when I appeared to them for my discharge, refused to grant it. They claimed their new men were deserting them too fast. They were drinking and carousing about a good deal and were keeping a close watch on me and subjected me to much unnecessary confinement and punishment. Often they kept me tied, hands above my head and legs spraddled apart to a wagon wheel, until an underofficer reported them, and so I decided that I had served my country and my time well and faithfully and as my officers were unnecessarily cruel to me, I would just take my leave."

BENJAMIN S. McHENRY. [SEAL.]

STATE OF ILLINOIS,
County of Wabash, ss:

I, Benjamin S. McHenry, having first been duly sworn, state that I have read the foregoing affidavit and know the contents thereof, and that the facts set forth in the affidavit are true.

BENJAMIN S. McHENRY. [SEAL.]

Subscribed and sworn to before me, this the 15th day of December A. D. 1924, and I do hereby certify that I am authorized to administer oaths under the laws of the State of Illinois.

W. S. WILLHITE, *Notary Public.*

WAR DEPARTMENT,
THE ADJUTANT GENERAL'S OFFICE,
February 23, 1910.

CASE OF HENRY BENJAMIN, LATE OF COMPANY K, THIRD UNITED STATES CAVALRY

It is shown by the records that Henry Benjamin enlisted November 3, 1863, at Harrisburg, Pa., to serve five years; that he was assigned to Troop K, Third Cavalry, and that he joined that troop January 17, 1864. It appears that he served faithfully until May 17, 1867, when he deserted at Fort Selden, N. Mex. He did not rejoin his command nor report his whereabouts or the cause of his absence to the military authorities, although he owed service to November 2, 1868.

Nothing has been found of record to show that this soldier was suffering from any disability at the time he is reported to have deserted.

It does not appear from the records of this office that an application has been presented to the War Department for the removal of the charge of desertion and for an honorable discharge in this case, and in the absence of testimony setting forth the circumstances in detail, under which the soldier left his command or station, his whereabouts during his absence, the cause of his failure to

return, and whether he rendered any service (either in the Army or the Navy) other than that mentioned above, his status can not be determined under the provision of the act of Congress approved March 2, 1889, which is the only law in force governing the subject of removal of charges of desertion.

Respectfully submitted.

F. C. AINSWORTH,
The Adjutant General.

The SECRETARY OF WAR.

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WILLIAM F. M. HENRY

and a number of other persons in the State of New York
who have been convicted of crimes and who are now
in the State of New York, and who are now in the
State of New York, and who are now in the State of New York.

W. F. M. HENRY

THE SECRETARY OF THE STATE