FRÉD R. NUGENT

MAY 3, 1926.—Committed to the Committee of the Whole House and ordered to be printed

Mr. Vinson of Kentucky, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 6017]

The Committee on Military Affairs, to which was referred the bill (H. R. 6017) for the relief of Fred R. Nugent, having considered the same, report thereon with the recommendation that it do pass with the following amendment:

Page 1, line 9, change the period to a colon and add the following:

Provided, That no back pay, pension, or allowance shall be held to have accrued prior to the passage of this act.

Fred R. Nugent enlisted as a private in the Hospital Corps, United States Army, June 30, 1898, at San Francisco, Calif., for a term of three years. He was sent to the Philippine Islands for service. In October, 1898, he was on duty at the First Reserve Hospital, Manila, as ward master. One night while on duty he was requested by a police nurse to assist in giving a typhoid patient a cold tub bath. As there was no medical officer present, he (Nugent) refused to obey orders, and after an altercation with the police nurse the patient was placed in the bath. Being in an extremely critical and exhausted condition, he died.

Nugent was arraigned before a general court-martial on charges of conduct to the prejudice of good order and military discipline in violation of the sixty-second article of war. He was found guilty of the charge and was sentenced to be dishonorably discharged from the service of the United States, forfeiting all pay and allowances, and to be confined at hard labor for one year.

He was accordingly dishonorably discharged April 7, 1899, and sent to Billibid Prison, Manila, Philippine Islands, for confinement. In Special Orders, No. 102, headquarters Department of the Pacific, Eighth Army Corps, Manila, Philippine Islands, dated April 15, 1899, the department commander remitted so much of the sentence
as imposed confinement exceeding six months, and directed that the sentence as mitigated be duly executed.

In Special Orders, No. 174, dated June 28, 1899, so much of the sentence relating to confinement in the case of this soldier as remained unexecuted was remitted, and he was released from confinement July 11, 1899.

On November 21, 1919, the President granted Fred R. Nugent a full pardon restoring his civil rights, but without this legislation he can not receive any of the benefits provided by the Government because of his service in the Army.

The report of the War Department is as follows:

CASE OF FRED R. NUGENT, LATE PRIVATE, HOSPITAL CORPS, UNITED STATES ARMY

WAR DEPARTMENT, January 27, 1926.

A report in this case was furnished the chairman Committee on Military Affairs of the House on March 24, 1922, in connection with H. R. 6261, Sixty-seventh Congress, first session. Following is a copy of that report:

The records show that Fred R. Nugent, private, Hospital Corps, United States Army, was enlisted June 30, 1898, at San Francisco, Calif., to serve three years. He was arraigned before a general court-martial on charges and specifications as follows:

Charge: Conduct to the prejudice of good order and military discipline, in violation of the Sixty-second article of war.

Specification: In that he, Pvt. Fred R. Nugent, Hospital Corps, United States Army, on duty as nurse in ward 6, Second Division Hospital, and charged as such nurse, with the duty of administering treatment prescribed for patients in said ward, having been requested by Police Nurse August E. Boquet, Hospital Corps, United States Army, in the line of his duty, to assist him in removing a patient from the bathtub, he, the said Nugent, well knowing the said patient to be in an extremely critical and exhausted condition, did fail and neglect to promptly comply with said request and his duty in the premises, and did engage in an altercation with said Private Boquet in regard to said duty, leaving said patient in his bath unattended for a period of about 15 minutes.

This at Manila, Philippine Islands, on October 29, 1898.

He was found guilty of the charge and specification and was sentenced to be dishonorably discharged the service of the United States, forfeiting all pay and allowances, and to be confined at hard labor for one year. The sentence was approved by the reviewing authority and was promulgated in Special Orders, No. 42, headquarters, First Division, Eighth Army Corps, dated April 6, 1899, and the soldier was accordingly dishonorably discharged the service April 7, 1899, and sent to Bilibid Prison, Manila, Philippine Islands, for confinement.

In Special Orders, No. 102, headquarters Department of the Pacific, Eighth Army Corps, Manila, Philippine Islands, dated April 15, 1899, the department commander remitted so much of the sentence as imposed confinement exceeding six months, and directed that the sentence as mitigated be duly executed. In Special Orders, No. 174, headquarters Department of the Pacific, Eighth Army Corps, Manila, P. I., dated June 28, 1899, so much of the sentence relating to confinement in the case of this soldier as remained unexecuted was remitted, and he was released from confinement July 11, and sailed for the United States on transport Centennial.

On July 10, 1919, Mr. Nugent applied to this office for a pardon or a statement that he was pardoned, because under section 18, organic act of Hawaii, he was not a competent voter unless pardoned, and he had no evidence of that fact. This application having been submitted to the Judge Advocate General of the Army for his opinion, was returned by that officer under date of September 8, 1919, with the following statement:

"He was sentenced, as heretofore indicated, but in the order remitting the confinement in excess of six months (S. O. 102, Headquarters Department of the Pacific and Eighth Army Corps) the following language is used:"

"In the cases of Pvt. Fred R. Nugent and August E. Bouquet, Hospital Corps, United States Army, tried by general court-martial, convened in First Division, Eighth Army Corps, and sentenced, the former to dishonorable discharge, for-
feiture of all pay and allowances and confinement at hard labor for one year, and the latter to dishonorable discharge, forfeiture of all pay and allowances and confinement at hard labor for two years the sentences were approved by the division commander and Bilbld Prison designated as the place for the execution of so much of these sentences as related to confinement.

"The circumstances attending the commission of the offenses of which these accused were convicted were fully investigated by an inspector duly appointed for that purpose and afterwards by a board of medical officers, convened from these headquarters per paragraph 3, S. O. 112, series of 1898.

"The board expressed the opinion that, while these accused were negligent of their duty, there were many extenuating circumstances; that neither had had extensive experience in nursing, and the only instructions received by them were limited to direction from time to time in each case committed to their care; that their duties were exacting and onerous; that the necessities of war service had compelled their enlistment, notwithstanding their lack of training, and that the same necessities had prevented their receiving proper instructions in the details of their duties and in the necessary discipline of a military hospital. They further find that their circumstances account largely for the neglect and unseemly conduct of these accused.

"In view of the finding of the board, the department commander remits so much as the sentence of confinement imposed in these cases as exceeds six months. As mitigated, the sentences will be duly executed.

"The accused at least partially served his sentence, as mitigated, and was dishonorably discharged the service.

"It is assumed, by reason of this reference, that a pardon has not already been granted the applicant and this is confirmed informally by The Adjutant General. It is therefore recommended that Mr. Nugent's application be treated as an application for a pardon.

"Section 18 of the organic act, Territory of Hawaii, provides as follows:

"No idiot or insane person, and no person who shall be expelled from the legislature for giving or receiving bribes or being accessory thereto, and no person who, in due course of law, shall have been convicted of any criminal offense punishable by imprisonment, whether with or without hard labor, for a term exceeding one year, whether with or without fine, shall register to vote or shall vote or hold any office in, or under, or by authority of, the government, unless the person so convicted shall have been pardoned and restored to his civil rights. (Rev. Laws. of Hawaii, 1915, p. 30.)

"The foregoing provision, to say the least, renders doubtful the right of Mr. Nugent to vote and hold office, and therefore the pardon has still matter upon which to operate and it may properly be recommended. (Dig. Ops. J. A. G. 1917, p. 230.)

"In view of the findings of the board of officers, heretofore referred to, and in view of the fact that ever since the commission of the offense of which Mr. Nugent was convicted, a period of more than 20 years, he had had an excellent character, as shown by the certificates of a number of credible persons, among the papers furnished to this office by Mr. Nugent, it is recommended that the pardon be granted."

On October 16, 1919, the Secretary of War recommended that a pardon be issued to said Fred R. Nugent for the purpose of restoring his civil rights, and on November 21, 1919, the desired pardon was granted by the President.

As the sentence of the court in this case was duly carried into effect no relief can now be granted him by this department, as it is beyond the power of any executive officer to revoke, modify, or set aside a duly executed sentence of a general court-martial or to grant to a soldier dishonorably discharged thereby an honorable discharge.

Since the date of that report the status of the case has not been changed either by the presentation of new evidence or by legislation.

Respectfully submitted.

ROBERT C. DAVIS,
Major General, The Adjutant General.