

ELBERT KELLY AND OTHERS

MAY 21, 1926.—Committed to the Committee of the Whole House and ordered to be printed

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

REPORT

[To accompany S. 2168]

The Committee on Military Affairs, to which was referred the bill (S. 2168) for the relief of Elbert Kelly, Orestes Cleveland, and James Harrison Dickie, second lieutenants in the Army of the United States, having considered the same, report thereon with the recommendation that it do pass.

These officers, second lieutenants, qualified for appointment in the Army before the act of 1922 regulating the pay and allowances of officers in the Army, etc. but through some unfortunate circumstance were not confirmed by the Senate until several months afterwards. As a result they have suffered rather serious losses of pay due to the loss of longevity allowances. For this reason your committee feels they should be given credit for an appointment under the law in effect at the time they qualified by examination, rather than a later enactment.

The report of the Senate, giving the attitude of that body, and the report of the War Department are made a part of this report for the information of the House.

[Senate Report No. 433, Sixty-ninth Congress, first session]

The Committee on Military Affairs, to which was referred the bill (S. 2168) for the relief of Elbert Kelly, a second lieutenant of Infantry in the Regular Army of the United States, having considered the same, report thereon favorably with the recommendation that it do pass with the following amendments:

In line 8, after the word "Infantry," insert a comma and the following:

"Orestes Cleveland, a second lieutenant of Infantry, and James Harrison Dickie, a second lieutenant of Field Artillery."

In line 10, strike out the word "him" and insert "them."

Amend the title so as to read:

"A bill for the relief of Elbert Kelly, Orestes Cleveland, and James Harrison Dickie, second lieutenants in the Army of the United States."

Your committee has amended this bill so as to include two additional officers whose situation is similar to that of Second Lieut. Elbert Kelly, for whose relief

this bill originally was introduced. Since the circumstances of all three were identical, it was believed just to include them all in this measure.

To use the case of Lieutenant Kelly as an example, the following facts have been developed by your committee:

"CASE OF SECOND LIEUT. ELBERT KELLY, INFANTRY

- "Purpose of bill: To give him credit for service as enlisted man and seaman.
- "Examined for commission: March, 1922.
- "Found qualified: June 26, 1922.
- "Nomination received by Senate: July 6, 1922.
- "To receive credit for enlisted service nomination should have been received and confirmed by June 30, 1922.
- "Date actually confirmed by Senate: January 9, 1923.
- "Note: West Point class, which did not qualify until June, received commissions prior to July 1, 1922.
- "There are only three men in this group—Kelly, Cleveland, and Dickie.
- "Loss in pay because of inability to be credited with enlisted service, \$10.42 per month."

It will be noticed from the statement above that Lieutenants Kelly, Cleveland, and Dickie were examined in March, 1922, and that the West Point class of that same year was not finally examined until at least two months thereafter. Nevertheless, the West Point class was commissioned in June and received credit for service rendered under the basis of computation in effect on June 30, 1922. Your committee believes it was most unfortunate that these three men were not found eligible and their names sent to the Senate in time for confirmation prior to July 1, 1922, and recommends that relief be given in the form provided in the bill S. 2168.

The report from the War Department on this measure is as follows:

JANUARY 26, 1926.

Hon. JAMES W. WADSWORTH, Jr.,

*Chairman Committee on Military Affairs,  
United States Senate.*

MY DEAR SENATOR WADSWORTH: In reply to your letter of the 13th instant, requesting the views of the War Department on S. 2168, Sixty-ninth Congress, first session, a bill "For the relief of Elbert Kelly, a second lieutenant of Infantry in the Regular Army of the United States," the following report is made:

Second Lieut. Elbert Kelly, Infantry, Regular Army, was discharged as an enlisted man on January 11, 1923, to accept a commission as a second lieutenant of Infantry, Regular Army. He accepted his commission on January 12, 1923, with rank from June 26, 1922.

Lieutenant Kelly, while holding the grade of field clerk, qualified on June 26, 1922, for his commission. On June 29, 1922, his nomination was prepared in the office of The Adjutant General of the Army, but was not placed before the Senate until July 6, 1922. In the meantime the act of June 30, 1922, reducing the commissioned strength of the Army to 12,000, prohibited all appointments between June 30, 1922, and January 1, 1923. On January 4, 1923, he was again nominated and on January 9, 1923, his nomination was confirmed.

The prior active service of Lieutenant Kelly was as follows:

Seaman, second class, United States Navy, from July 3, 1918, to December 16, 1918.

Army field clerk, from June 9, 1919, to June 27, 1922.

Enlisted man, United States Army, from June 28, 1922, to January 11, 1923.

Under the act of June 10, 1922 (pay readjustment act), active commissioned service only counts for purposes of pay of officers appointed on and after July 1, 1922. Had Lieutenant Kelly been appointed prior to July 1, 1922, he would have been credited with the service shown above.

While it is evident Lieutenant Kelly is unfortunate, under the circumstances, in not having been appointed before July 1, 1922, nevertheless it is believed to be inadvisable to favor any legislation which would place any officer on a status, as regards service credited for computing pay, different from that of other officers, where all concerned have been appointed since June 30, 1922. The present law is believed to be correct in principle and should not be changed to give preferential treatment to any officer or group of officers. I recommend that this proposed legislation be not favorably considered.

Sincerely yours,

DWIGHT F. DAVIS, *Secretary of War.*