

Calendar No. 1547

69TH CONGRESS }
2d Session }

SENATE

} REPORT
} No. 1536

THOMAS P. McSHERRY

FEBRUARY 17 (calendar day, FEBRUARY 19), 1927.—Ordered to be printed

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

REPORT

[To accompany H. R. 1690]

The Committee on Military Affairs, to which was referred the bill (H. R. 1690) for the relief of Thomas P. McSherry, having considered the same, report thereon favorably with the recommendation that it pass.

The report of the House Military Committee which sets forth the merits of the case is made a part of this report as follows:

[House Report No. 1315 Sixty-ninth Congress, first session]

The records of the War Department show that Thomas P. McSherry enlisted as a sergeant in Company I, Sixty-ninth New York Volunteer Infantry, May 2, 1898, at New York City, N. Y.

The company muster-roll for October 31, 1898, reports him absent on sick furlough at New York City, September 26, 1898, under General Orders, No. 114. Company muster-out roll, dated January 31, 1899, absent on sick furlough at New York from September 26, 1898, to October 26, 1898, extended 30 days from October 26, 1898; deserter from November 25, 1898.

The medical records show him admitted to regimental hospital with acute diarrhea, in line of duty, on June 18, 1898, and that he was discharged from the hospital on June 23, 1898. On August 5, 1898, he was again admitted to the hospital with malaria, in line of duty, and returned to his company on August 8, 1898.

On September 15, 1898, he was readmitted to the hospital and his case diagnosed as malaria, typhoid fever, contracted in line of duty. On September 17 he was transferred from regimental hospital to the Fourth Army Corps Reserve Hospital in Huntsville, Ala. On September 26, 1898, McSherry was granted 30 days' sick furlough and left for New York City, where he was treated by Dr. R. J. O'Connell, of 354 East Seventy-ninth Street, New York City. His condition did not improve and Doctor O'Connell wrote The Adjutant General for a 30-day extension of furlough, and in his letter Doctor O'Connell inclosed

McSherry's original furlough papers. The Adjutant General granted the extension by telegraph as follows:

Secretary War authorizes extension of furlough for 30 days to Sergt. Thomas P. McSherry.

WARD, *Assistant Adjutant General.*

It is to be noted that the original furlough papers inclosed in Doctor O'Connell's letter asking for an extension of furlough—were not returned to McSherry, but were retained by The Adjutant General although it was the custom to note the extension thereon and to return same to the soldier. This was presumably an oversight and due to the fact that the extension was granted by telegraph and not by letter.

During October and November of 1898 McSherry's condition remained unimproved. He received no pay or allowances and became melancholy, according to Doctor O'Connell's statement, and it was suggested by his physician that he obtain some light work, not only to occupy his mind but in order that he might support himself. That McSherry had no money to support himself is evidenced from the letter of the Secretary of War dated January 7, 1926, which reads, in part, as follows:

"that he (McSherry) had received no pay since August 31, 1898, and could get no ration money, and that having to pay for his board and medicine he stated his case to his old employer (Lord & Taylor), who kindly gave him permission to return to work until such time as he was strong enough to return to his regiment, making special concession on account of his weak condition."

Considerable misconstruction has been placed on this fact that McSherry took up employment with his old employers. It seemed to raise the presumption that McSherry had no intention of returning to his regiment and that he had fully made up his mind to desert, although official records prove the contrary to be true.

On November 19, 1898, six days prior to the expiration of his furlough, McSherry's physician again wrote for a 30-day extension of his furlough, but received no reply. Therefore McSherry reported to Surgeon Major Appell, Army-Navy Building, New York City, N. Y., to explain his case. Major Appell found him sick, but was unable to grant McSherry an extension, for the reason that he did not have the original furlough papers with him. McSherry wrote at once to Washington and asked them to forward his original furlough papers, which were retained inadvertently by The Adjutant General's office when the first extension of furlough had been granted. McSherry's letter read as follows:

I am on sick furlough from the Fourth Army Corps Hospital; my furlough expired on the 25th of October, but as I was suffering from diarrhea my doctor (Doctor O'Connell, 354 East Seventy-ninth Street) had it extended for 30 days through your office, but as I am still very weak Doctor O'Connell wrote to your office on the 19th of November to have my furlough extended for 30 days more, but no answer was received to it up to the present. I reported to Major Appell at the Army and Navy Building, New York City, and he told me to write again for my original furlough papers. In 30 days I believe I will be quite strong enough to do duty, but if the extra 30 days is not granted I will at once return to the regiment.

Please send the original furlough and oblige,

Yours respectfully,

THOMAS P. McSHERRY,
*Sergeant, Company I, Sixty-ninth Regiment
New York Volunteer Infantry.*

McSherry received no reply to this letter, so on December 1, 1898, he again wrote to Surgeon Major Appell for further instructions. The letter reads as follows:

I wrote to The Adjutant General at Washington on Monday as you told me, regarding my furlough, but up to the present time received no answer. I left the corps hospital at Huntsville, Ala., on sick furlough on September 26, but when my time expired I was very ill with chronic diarrhea, and Doctor O'Connell, 354 East Seventy-ninth Street, who attended me, wrote to The Adjutant General inclosing my furlough for an extension of 30 days; the request was granted by telegraph, but the furlough was not returned. The extension expired on November 24 or 25, but as I am still weak from the effects of my illness Doctor O'Connell wrote again to The Adjutant General for another 30 days, but as no answer was received I called at your office on Monday and wrote for the original furlough as you directed, but received no reply yet.

In 30 days I will, I believe, be quite strong enough to do my duty again, but if it is not granted I am ready to go back to my regiment sick or well. Please advise me what to do, as I do not wish to be considered in the light of shirking duty.

Yours respectfully,

THOMAS P. McSHERRY,
Company I, Sixty-ninth Regiment New York Volunteer Infantry.

P. S.—I should have told you that my health in camp was very bad, as the regimental hospital books will show, and that is the reason that I want to get strong before I return.

T. P. Mc. S.

In answer to this letter Surgeon Major Appell replied:

DECEMBER 2, 1898.

Respectfully returned. I would advise you to report in person to the adjutant general, Department of the East, Governors Island, and state the circumstances of your case.

D. M. APPELL,
Major and Surgeon, United States Army.

On December 3, 1898, McSherry, in compliance with Surgeon Major Appell's letter, reported in full traveling outfit to the adjutant general, Department of the East, Governors Island, New York City, and requested transportation back to his regiment. The officer in charge advised him that he had no authority to issue him transportation unless he had the original furlough papers with him. McSherry advised him that the original papers were retained by The Adjutant General. McSherry was then told to write to The Adjutant General, asking that the papers be forwarded to him. McSherry, on December 3, 1898, again wrote to The Adjutant General as ordered and on December 21, 1898, received the following reply:

Respectfully returned to Sergt. Thomas P. McSherry, No. 253 East Fifty-third Street, New York City. Your furlough was mailed to the commanding officer of the Sixty-ninth New York Volunteer Infantry, December 5, 1898. It must be forwarded to this office before this application for extension can be considered.

THOMAS WARD,
Assistant Adjutant General.

Upon receipt of the above letter McSherry, on December 22, 1898, wrote to the commander of his regiment, Colonel Duffy, and asked him to mail the original furlough papers to him, in order that he might either receive a further extension of furlough or transportation back to his regiment. He received the following letter, dated January 3, 1899, from the commander of his regiment:

Respectfully returned to T. P. McSherry with the original furlough.
By order of Colonel Duffy.

GRENVILLE T. EMMETT,
First Lieutenant and Adjutant.

McSherry received this letter on January 6, 1899, and forwarded the same to The Adjutant General in Washington. Under date of January 14, 1899, The Adjutant General replied to McSherry's letter and advised him that his regiment was "designated for muster out" and that he should communicate with his commanding officer. The letter received reads as follows:

I have the honor to acknowledge the receipt of your letter of the 6th instant in which you apply for an extension of a furlough granted you from corps reserve hospital, Camp Wheeler, Huntsville, Ala.; and to inform you that your regiment has been designated for muster out and that you should communicate at once with the commanding officer of the regiment at Huntsville, Ala. Your letter has been referred to the chief mustering officer for the State of Alabama, whose address in Huntsville.

Yours respectfully,

THOMAS WARD,
Assistant Adjutant General.

On January 15, 1899, McSherry wrote to his commanding officer, telling him the circumstances, but received no reply. McSherry's letter is as follows:

I have the honor to report to you that I have been in New York on sick furlough granted me from corps reserve hospital, Huntsville, Ala., and in making

application recently for an extension of time, I was instructed by Assistant Adjutant General Thomas Ward to communicate with you immediately as our regiment has been designated for muster out. These instructions were in a letter dated War Department, Adjutant General's office, Washington, January 14, 1899.

Trusting you will give this immediate and favorable attention in order that I may obtain an honorable discharge with my comrades in arms, I am, sir,

Most respectfully, your obedient servant,

THOMAS P. McSHERRY,

Sergeant, Company I, Sixty-ninth New York Volunteer Infantry.

When the regiment returned to New York City, McSherry reported to Major Harrison, muster-out officer, who informed him that he was dropped from the roll as a deserter.

McSherry immediately took up with the War Department the matter of removing this stigma from his record, and on March 23, 1899, the War Department reconsidered the matter and concluded that the charge of desertion was erroneous and granted McSherry an ordinary discharge, but at the same time maintained that McSherry was absent without authority and was therefore precluded from receiving an honorable discharge.

It is the opinion of the committee that Thomas P. McSherry was a victim of circumstances over which he had no control, and is therefore entitled to an honorable discharge from the Army of the United States.

