

JENNIE WYANT AND OTHERS

JANUARY 29, 1927.—Committed to the Committee of the Whole House and ordered to be printed

Mr. HOOPER, from the Committee on War Claims, submitted the following

REPORT

[To accompany H. R. 15197]

The Committee on War Claims, to whom was referred the bill (H. R. 15197) for the relief of Jennie Wyant, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

Strike out all after the enacting clause and insert the following:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the following parties the sums herein stated, which shall be in full satisfaction of all claims of said parties against the United States as a result of a personal injury received by Jennie Wyant on account of a rocket which was discharged by soldiers in the military service of the United States who were engaged in giving an exhibition at the Lewis County fair in Lewis County, State of West Virginia, September 29, 1920:

- (1) Jennie Wyant of Weston, W. Va., the sum of \$546.
- (2) General Hospital of Weston, Weston, W. Va., the sum of \$569.50.
- (3) Frances V. Dodge of Weston, W. Va., the sum of \$384.50.

Amend the title so as to read:

A bill for the relief of Jennie Wyant and others.

STATEMENT OF FACTS

On September 29, 1920, a platoon of D Battery, Seventh Field Artillery, was giving an exhibition for recruiting purposes on the fairgrounds at Weston, W. Va., and were using a French rocket which had been issued for exhibition purposes. This rocket was defective in its construction and in consequence of this defect, when it was fired, took an erratic course and broke Mrs. Jennie Wyant's leg. There was no fault whatever on the part of either Mrs. Wyant or the officers or enlisted men in charge of the exhibition but was merely an unfortunate occurrence which could not be foreseen. Mrs. Wyant was taken by the officer in charge of the exhibition to the

General Hospital of Weston where she was confined for 61 days under the care of two doctors and a special nurse.

The purpose of this bill is to pay (1) a reasonable fee to the General Hospital of Weston for hospital care and doctors' fees; (2) a reasonable fee to the special nurse, Frances V. Dodge; and (3) a reasonable amount to Mrs. Wyant for her suffering during the 61 days while in hospital and during her convalescence.

Your committee held hearings on the bill and determined that a reasonable sum to allow the General Hospital to be \$569.50, a reasonable sum to allow the special nurse, \$384.50, and a reasonable sum to allow Mrs. Wyant to be \$546. The original bill was therefore amended to provide for the payment of the above items.

A copy of a letter from the Secretary of War addressed to the chairman Committee on War Claims under date of January 8, 1927, is appended hereto and made a part of this report.

WAR DEPARTMENT,
Washington, January 8, 1927.

HON. JAMES G. STRONG,
Chairman Committee on War Claims, House of Representatives.

DEAR MR. STRONG: Further reference is had to your letter of December 15, 1926, transmitting a copy of H. R. 15197, Sixty-ninth Congress, second session, a bill for the relief of Jennie Wyant in the sum of \$2,500, for damages resulting to her because of a personal injury received by her on account of a rocket which was discharged by soldiers in the military service of the United States who were engaged in giving an exhibition at the Lewis County Fair, in Lewis County, State of West Virginia, September 29, 1920, and I am pleased to submit the following.

Legislation, as follows, incident to this accident was introduced during the fourth session of the Sixty-seventh Congress:

S. 4227, being for the relief of the General Hospital of Weston, Weston, W. Va., in the sum of \$569.50 as compensation for medical and hospital services rendered in the case of Jennie Wyant, and

S. 4226, being for the relief of Frances V. Dodge in the sum of \$384.50, as compensation for services rendered as a special nurse in the case of Mrs. Wyant, and was reported upon by the War Department under date of February 5, 1923, copy of report inclosed herewith, which sets forth the circumstances surrounding the accident.

This legislation was not enacted into law and it is presumed that the proposed legislation for the relief of Mrs. Jennie Wyant is for reimbursement of the hospital and nurse expenses incurred in addition to personal suffering.

In this connection attention is invited to the well-established principle that the Government can not be held legally liable for the torts of its agents, and that any compensation to parties for personal injuries except in Air Service accidents must be provided by a special act of Congress. The War Department has heretofore refrained from expressing an opinion as to the merits of proposed legislation in similar cases, and in keeping with that policy withholds a recommendation either for or against the accompanying bill for the relief of Jennie Wyant.

Sincerely yours,

HANFORD MACNIDER,
Acting Secretary of War.

WAR DEPARTMENT,
Washington, February 5, 1923.

HON. ARTHUR CAPPER,
*Chairman Committee on Claims,
United States Senate.*

MY DEAR SENATOR CAPPER: I transmit herewith copies of the papers on file in this department so far as they throw any light upon the accident which resulted in the injury to Mrs. Jennie Wyant, on September 29, 1920, at the fair grounds, Weston, W. Va.

The bill introduced by Mr. Sutherland, S. 4227, provides for payment to the General Hospital of Weston, W. Va., the sum of \$569.50 as compensation for medical and hospital services rendered in Mrs. Wyant's case. This bill apparently provides compensation to the hospital, arising out of the same circumstances as those provided for in S. 4226, also introduced by Mr. Sutherland, for the relief of Frances V. Dodge, who rendered services as special nurse for Mrs. Wyant.

The circumstances under which Mrs. Wyant was hurt on the day above mentioned are as follows: A platoon of D Battery, Seventh Field Artillery, was giving an exhibition for recruiting purposes on the fair grounds at Weston, and were using a French rocket which had been issued for exhibition purposes. This rocket appears to have been defective in its construction and in consequence of this defect, when it was fired, took an erratic course and broke Mrs. Wyant's leg. There was no fault whatever on the part of the officers or enlisted men in charge of the exhibition. In view of the facts above stated I believe that Mrs. Wyant's reasonable expenses should be reimbursed, although this department has no information as to the reasonableness of the charges made by the hospital.

This proposed legislation has been submitted to the Director of the Bureau of the Budget as required by Circular No. 49, of that bureau, and the director advises that the legislation, provided that the hospital charges are limited to a reasonable amount, is not in conflict with the financial program of the President.

Sincerely yours,

JOHN W. WEEKS, *Secretary of War.*

Inclosure 1. Proceedings of a board of officers appointed to meet the call of the president thereof to investigate, report upon, and assess damages sustained against responsible parties in the claim of Mrs. Jennie Wyant, of Weston, W. Va.

The board finds that Mrs. Jennie Wyant's leg was broken by signal rocket fired by a platoon of "D" Battery Seventh Field Artillery, that this rocket was fired in line of duty while said platoon of "D" Battery was operating under proper orders as a recruiting party. That the rocket which caused the injury was a French signal rocket, and was issued to the battery by the United States Government for the purpose for which it was used, namely; for publicity purposes in connection with recruiting. That the said rocket was defective and the accident was caused by the fact that the rocket functioned in an erratic manner.

The board further finds that the command officer of the battery, Lieut. Joseph Akers took all due precautions and was in no way guilty of negligence and in consequence is in no way responsible for the accident, which was solely due to the defective material which was issued to him.

The board has before it the doctors' bills for the treatment of Mrs. Wyant, these bills amount to the sum of \$1,010.75, which appear to the board to be just.

The board therefore is prepared to recommend that the said bills be paid by the United States Government, as soon as a statement of willingness to accept the said sum in full payment of their services, is received from the doctors, or a similar statement covering these items received from Mrs. Wyant, as required by General Order 37.

Upon the extent of the injury caused to Mrs. Wyant testimony is conflicting. On the one hand Mrs. Wyant's affidavit states that she is permanently crippled, on the other the statement of her doctors appears to show a satisfactory recovery. The board has no evidence before it nor is any expert testimony as to the extent of the injury available in the interest of the Government. The board therefore considers that an examination of Mrs. Wyant's physical condition should be made by a medical officer of the United States Army before any conclusion is reached as to the extent of the injuries to Mrs. Wyant or any estimate made of the damages justly due her.

Now, therefore, the board has written to Mrs. Wyant asking for a statement of willingness to accept the sum of \$1,010.75 in full settlement of the medical and hospital charges incident to her injury.

Return the papers to the convening authorities with the recommendation that Mrs. Wyant be examined by a medical officer of the United States Army, and the case thereafter returned to the board with the report of this medical officer upon the extent of the injury of Mrs. Wyant attached thereto.

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