

MRS. CATHERINE DRIGGERS AND HER MINOR CHILDREN

SEPTEMBER 24, 1945.—Committed to the Committee of the Whole House and ordered to be printed

Mr. GRANAHAN, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 801]

The Committee on Claims, to whom was referred the bill (H. R. 801) for the relief of Mrs. Catherine Driggers and her minor children, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, strike out "17" and insert "15".

Page 1, line 10, strike out "who died on February 7, 1943, as a result of injuries sustained by him while in the performance of his duties as second assistant engineer in the employ of the United States of America", and insert in lieu thereof "alleged to have occurred on February 7, 1943, in the performance of his duties while he was serving as second assistant engineer on board a vessel under charter to the War Shipping Administration".

The purpose of the proposed legislation is to merely waive the statutes of time limitations authorizing the Employees' Compensation Commission to receive and consider the claim of Mrs. Catherine Driggers and her minor children for the death of her husband, Haven L. Driggers, who died on February 7, 1943, as a result of injuries sustained by him while in the performance of his duties as second assistant engineer on the steamship *Henry R. Mallory*, a vessel under bareboat charter to the War Shipping Administration.

Your committee recommends favorable consideration of the bill.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
New York 17, N. Y., March 19, 1945.

CHAIRMAN, COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Reference is made to your request for the Commission's report upon the bill (H. R. 801) for the relief of Mrs. Catherine Driggers and her minor children. The bill provides as follows:

"That sections 17 to 20, inclusive, of the Act entitled, 'An Act to provide compensation for employees of the United States of America suffering injuries while in the performance of their duties, and for other purposes', approved September 7, 1916, as amended, are hereby waived in favor of Mrs. Catherine Driggers and her minor children, and claim for compensation for the death of her husband, Haven L. Driggers, who died on February 7, 1943, as a result of injuries sustained by him while in the performance of his duties as second assistant engineer in the employ of the United States of America, is authorized to be considered and acted upon under the remaining provisions of such Act, as amended, if claim is filed with the United States Employees' Compensation Commission not later than sixty days after the date of enactment of this Act."

On October 21, 1943, the Commission received from the office of the War Shipping Administration, 99 John Street, New York, N. Y., a letter listing the names of a number of persons whose lives were lost on board the steamship *Henry R. Mallory* (a vessel under bare-boat charter to the War Shipping Administration) on February 7, 1943, "as a result of enemy action"; among the names listed was that of Haven L. Driggers (second assistant engineer). It was also stated in the letter that the proceeds of a \$5,000 war risk insurance policy carried by the War Shipping Administration was paid to Mrs. Catherine Driggers, 9116 Thirty-fourth Avenue, Jackson Heights, Long Island, N. Y. On November 2, 1943, the Commission sent a form letter (CA-5) to Mrs. Driggers explaining to her the manner and method of submitting claim to the Commission for compensation benefits under the provisions of the Federal Employees' Compensation Act of September 7, 1916, on account of the death of her husband, and enclosed appropriate forms to accomplish that purpose. The letter contained the following statement: "Claim must be filed within 1 year from the date of death." On February 15, 1944, the Commission received from Mrs. Driggers a letter dated February 11, 1944, which is in full as follows:

"Referring to your form letter CA-5, I intend to make claim under the United States Employees' Compensation Act on account of the death of my husband. His death occurred during February of 1943 and, as I will not be able to send you the form which you enclosed for another week or 10 days, I shall appreciate your accepting this letter as my notice of making formal claim."

Since it did not appear that Mrs. Driggers had filed claim for compensation on her own behalf or on behalf of her minor children within the time prescribed by law, the Commission was without authority to award compensation to her or to her minor children and her claim, filed more than 1 year from the date of the death, was accordingly disallowed by the Commission.

The bill (H. R. 801) is apparently designed merely to waive in favor of Mrs. Catherine Driggers and her minor children the bar of the time limitations in sections 17 to 20, inclusive, of the Federal Employees' Compensation Act, requiring claim for compensation to be filed within 1 year, and to leave the Commission free to determine the merits of her claim (if filed not later than 60 days after the enactment of the bill), and to afford her such measure of relief as the facts, when established, may show her to be entitled to under the provisions of the Compensation Act. It should be pointed out that the notice, claim, and limitation provisions in the compensation law are contained in sections 15 to 20, inclusive. If the bill is to be favorably considered, it is suggested that the reference to "sections 17 to 20, inclusive" in the bill be changed to read "sections 15 to 20, inclusive."

It is noted that there is no provision in the bill indicating when the benefits of the Compensation Act, if the claimant and her minor children should be found entitled thereto, should begin to accrue. If it be intended that the bill shall not have retroactive effect, this intention should be signified therein, as the absence of such provision would require the opposite conclusion. In this respect it may be pertinent to say that the Commission considers seamen employed by or under the War Shipping Administration as employees of the United States, for compensation purposes, if so employed during the period from October 1, 1941, to March 24, 1943, inclusive, in view of the provisions of Public Law 17, Seventy-eighth Congress, approved March 24, 1943. In death cases arising from war-risk causes, the Commission in such cases credits against any compensation payable under the Federal Employees' Compensation Act the amount a particular beneficiary may have received as proceeds of such war-risk insurance, such credit or off-set applying only to the extent a particular claiming individual has benefited by such war-risk insurance.

It is noted that the words "injuries," "death," or "died" as provided in the bill are unqualified and further that the employing agency with respect to which relief relates is not mentioned. The Commission interprets the expression "for the

death of her husband, Haven L. Driggers, who died on February 7, 1943, as a result of injuries sustained by him while in the performance of his duties as second assistant engineer in the employ of the United States of America" as descriptive only and serving merely to identify the case. To avoid any possible misunderstanding or any contention that the quoted language constitutes a legislative determination of any fact recited in the bill, so as to preclude the Commission from determining the facts (and also to identify the agency for whose account the employee was employed), it is suggested that the portion of the bill last above quoted be deleted and there be inserted in lieu thereof the following: "for the death of Haven L. Driggers, alleged to have occurred on February 7, 1943, in the performance of his duties while he was serving as second assistant engineer on board a vessel under charter to the War Shipping Administration."

In view of the foregoing, the Commission makes no recommendation as to the advisability of the enactment of the bill H. R. 801.

This report has been submitted to the Bureau of the Budget pursuant to Budget Circular No. A-19 Revised, dated August 1, 1944, and has been returned with the advice that there would be no objection to the submission of the proposed report to the committee.

Very truly yours,

JEWELL W. SWOFFORD
Mrs. Jewell W. Swofford,
Chairman.

AFFIDAVIT

STATE OF NEW YORK,

County of New York, ss:

Catherine Driggers, being duly sworn, deposes and says that she is the widow of Haven L. Driggers, who was killed while in the performance of duty for the United States on or about February 7, 1943, and resides at 115-53 Dunkirk Street, St. Albans, County of Queens, State of New York; that the decedent also left surviving him two minor children, Beryl Bernadette, born July 3, 1942, and Ann Dorothy, born June 15, 1940.

Your deponent states further that the first official knowledge of her husband being "missing in service" was received in a telegram dated February 22, 1943, and it was sent by Vice Admiral R. R. Waesche, Commandant of the United States Coast Guard. The said telegram is affixed hereto and made part of this affidavit.

Your deponent further states that the first official notification from the United States Government giving the date of death was a letter from the Maritime War Emergency Board dated March 17, 1944, in which communication was enclosed a presumptive death certificate which gave the date of death as occurring on or about February 7, 1943. The said certificate of presumptive death is attached hereto and made part of this affidavit.

Your deponent states further that she notified the United States Employees' Compensation Commission in a letter dated February 11, 1944, of her intentions of making claim for compensation, stating that official papers would be filed later. This followed a letter which was sent to your deponent by the said United States Employees' Compensation Commission under date of November 2, 1943. The letter dated February 11, 1944, is also affixed hereto and made part of this affidavit. The letter referred to from the United States Employees' Compensation Commission dated November 2, 1943, was the first intimation that your deponent had of there being any question of compensation for the death of the said Haven L. Driggers. During this period your deponent received a sum of \$5,000 of war-risk insurance, which was another factor that eliminated any consideration of this being a matter under the provisions of the Compensation Act.

Your deponent states further that under date of March 17, 1944, the forms which had been previously sent to her were duly filed with the United States Employees' Compensation Commission, together with a letter dated the same day, which is affixed hereto and made part of this affidavit. It will be noted from this letter that there was considerable doubt in your deponent's mind as to the exact date of the death as fixed by the United States Government.

Your deponent further states that all during this period, and more specifically from May 1943 to March 1944, she was being treated by Dr. Wentworth Y. Driscoll of St. Albans, N. Y., for cholecystitis and neurasthenia, all of which was contributed to in a great measure to the fact that there was this uncertainty

of death and then the late notification of same from an official standpoint. Under these circumstances, your deponent states that her mind was not functioning properly and she could not under these trying conditions make the proper decisions in accordance with what seems to be the technical provision of the Compensation Act, and that it was not until she wrote the letter dated February 11, 1944, was there enough improvement to warrant her taking some action for her protection and that of the two minor children. Your deponent further seeks to point out that even as late as March 17, 1944, there was still that uncertainty in her mind as to what seemed to be the proper date of death to be filled in. Your deponent affixes hereto a certificate from the said Dr. Wentworth V. Driscoll, dated February 4, 1944, certifying to the treatments for the recurrent attacks for the conditions above referred to.

Your deponent therefore prays for some consideration for the purpose of affording her relief to the point of permitting the filing of her claim for the protection of herself and her two minor children.

CATHERINE DRIGGERS.

Sworn to before me this 14th day of December 1944.

JOHN N. BUCHANAN, *Notary Public.*

[SEAL]

Commission expires March 30, 1945.

[Telegram]

WASHINGTON, D. C., *February 22, 1943.*

Mrs. CATHERINE DRIGGERS,
St. Albans, N. Y.:

The Navy Department deeply regrets to inform you that your husband, Haven Larue Driggers, is missing and presumed lost following action in the performance of his duty and in the service of his country. The Coast Guard appreciates your great anxiety and will furnish you further information promptly when received. To prevent possible aid to our enemies please do not divulge the name of his ship.

Vice Admiral R. R. WAESCHE,
Commandant, United States Coast Guard.

ST. ALBANS 12, N. Y., *February 11, 1944.*

Re Haven L. Driggers, your file No. 1066335.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
New York, N. Y.

GENTLEMEN: Referring to your form letter CA-5, I intend to make claim under the United States Employees' Compensation Act on account of the death of my husband. His death occurred during February of 1943 and, as I will not be able to send you the form which you enclosed for another week or 10 days, I shall appreciate your accepting this letter as my notice of making formal claim.

Yours very truly,

(Mrs.) CATHERINE DRIGGERS.

ST. ALBANS, Y. Y., *March 17, 1944.*

Re File No. 1066335.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
New York, N. Y.

GENTLEMEN: I am enclosing herewith the form which you sent me in which I make claim for compensation on account of the death of my husband, Haven L. Driggers. Attached to this form are photostatic copies of my marriage certificate and the certificates of baptism of my two children, Beryl Bernadette and Ann Dorothy Driggers. I had already written to your Commission under date of February 11, advising you of my intention to make claim and stating that the enclosed papers would be filed at a later date.

As regards questions 7 and 10, in which you ask the date of the death, I have never received from the Government any notification as to the exact date of my husband's death. The first knowledge that I had that he was missing was

