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AGAPITO JOROLAN

MARCH 11, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MONTOYA, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 280]

The Committee on the Judiciary, to whom was referred the bill (S. 280), for the relief of Agapito Jorolan, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation, as amended, is to relieve Mr. Agapito Jorolan, of Orlando, Fla., of any liability to repay to the United States the remaining unpaid balance of the sum originally

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totaling $6,644.73, which was erroneously paid to him during the period from April 1952 to August 1955, due to the failure of his employer, the Military Sea Transportation Service, Department of the Navy, to deduct from his salary an amount equal to civil service retirement annuity payments received by him during that period.

STATEMENT

Mr. Agapito Jorolan was given an excepted appointment indefinite on April 14, 1952, as a watchman, at a salary of $3,155 per annum, in the Military Sea Transportation Service, Atlantic area. At the time he applied for the position Mr. Jorolan stated in his application form that he was receiving a retirement annuity under the Civil Service Retirement Act. The employing agency, however, overlooked this statement and failed to deduct from Mr. Jorolan's salary sums equal to his annuity payments as required by section 2 (b) of the Civil Service Retirement Act of 1930, as amended (5 U. S. C. 715 (b)).

This error was finally revealed by an audit in August 1955, and the total amount of the overpayment was determined to be $6,644.73. Mr. Jorolan was formally advised by the commander, Military Sea Transportation Service, Atlantic area, to continue working and to liquidate his indebtedness by partial payments in each pay period. Mr. Jorolan is still employed but at his request was on leave without pay from October 5, 1955, to June 25, 1956. Upon his return to duty status, a partial collection of $50 each semimonthly pay period was commenced. Before he went on leave the sum of $482.96 had been collected from him.

Mr. Jorolan is now 63 years of age and has recently been operated on for varicose veins in one of his legs. He is married and presently eligible, when not employed, to receive an annuity of $177 per month.

It appears from the letter of the Acting General Counsel of the Civil Service Commission, addressed to the sponsor of this legislation under date of March 6, 1956, that when the claimant discontinues his present employment it is reasonable to expect that the payments now being deducted from his salary will then be deducted from his annuity payments.

The committee has received a report on the predecessor to this bill, S. 4043, 84th Congress, in which the Department of the Navy takes the position that while it is ordinarily opposed to private legislation, it would not object to legislation for the relief of this claimant, provided the Civil Service Commission interposes no objection.

The letter referred to earlier from the Acting General Counsel of the Civil Service Commission does not comment upon the Commission's attitude with respect to this bill but points out that legislation is necessary in order for the claimant to secure a waiver of the overpayment charged against him.

It is apparent from the information before the committee that this claimant is indebted to the Government by reason of an administrative error which remained undiscovered for such an extended period that the indebtedness is now beyond the claimant's immediate, and perhaps his future, ability to repay. It is also apparent that continued withholding of sums from his pay works an undue hard-

ship upon the claimant and upon relinquishment of his job, the withholding of amounts from the annuity due him would work an even more severe hardship. In the event this latter contingency should occur, and deductions made from the claimant's civil-service annuity, the provisions of section 729 (a) of title 5, United States Code, would not be available to the claimant, although the procedures embodied in that section are described in the letter of the Acting General Counsel of the Civil Service Commission as being "enacted for the purpose of granting relief in this type of situation."

In addition to the foregoing reasons for granting the proposed relief, it is pertinent to point out that this claimant is in receipt of moneys only because of work which he performed from which the Government benefited.

In the light of all these considerations, the committee believes that the claimant should be relieved of further liability to repay the remainder of the indebtedness and the committee, therefore, recommends favorable consideration of this legislation.

Attached to this report is the report of the Department of the Navy referred to earlier, the letter of the Acting General Counsel, Civil Service Commission, under date of March 6, 1956, a letter under date of April 23, 1956, addressed to the sponsor of this legislation signed by the Comptroller General of the United States, an affidavit signed by the claimant and his wife setting forth a full statement of their financial condition, and a report of the United States Civil Service Commission.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
OFFICE OF LEGISLATIVE LIAISON,
Washington, D. C., December 19, 1956.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of June 19, 1956, to the Secretary of the Navy requesting comment on S. 4043, a bill for the relief of Agapito Jorolan.

The bill would relieve Mr. Jorolan of liability to repay to the United States the sum of $6,200 which is stated to have been erroneously paid to him during the period from April 1952 to November 1955 due to the failure of his employer, the Military Sea Transportation Service, Department of the Navy, to deduct from his salary an amount equal to the civil service retirement annuity payments received by him during that period.

Mr. Jorolan was given an excepted appointment indefinite (Executive Order 10180) on April 14, 1952, as watchman, $3,155 per annum, in the Military Sea Transportation Service, Atlantic area. At the time he applied for the position, Mr. Jorolan stated in his application form that he was receiving a retirement annuity under the Civil Service Retirement Act. This fact was overlooked, however. As a result, the employing agency failed to deduct from his salary sums equal to his annuity payments as required by section 2 (b) of the Civil Service Retirement Act of 1930, as amended (5 U. S. C. 715 (b)). The amount of the annuity is $156 per month.

The error was revealed by an audit in August 1955 and the total amount of the overpayments was determined to be $6,644.73. Mr. Jorolan was formally advised by the commander, Military Sea Transportation Service, Atlantic area, to continue working and to liquidate his indebtedness by partial payments in each pay period.

Mr. Jorolan is still employed but at his request was on leave without pay from October 5, 1955, to June 25, 1956. Before he went on leave, the sum of $482.96 was collected from him, reducing his indebtedness to $6,161.77. Upon his return to duty status, a partial collection of $50 each semimonthly pay period was commenced.

The overpayments to Mr. Jorolan were the result of an administrative error on the part of the employing agency. Mr. Jorolan did not conceal his retired status and presumably he was unaware that the law required an amount equal to his annuity to be deducted from his salary. In any event, the Department of the Navy has no evidence of bad faith on his part.

Your attention is invited to the fact that the erroneous payments to Mr. Jorolan were not continued until November 1955 as stated in S. 4043 but were terminated in August 1955. Also the amount of Mr. Jorolan's indebtedness, as of the date on which S. 4043 was introduced, was less than the $6,200 stated in the bill and is being still further reduced by deductions from his pay of $50 each pay period.

While the Department of the Navy, as a matter of general principle, is opposed to legislation which would single out one Government employee for relief when there are probably a number of others in the same circumstances, it would not object to legislation for the relief of Mr. Jorolan, provided that the Civil Service Commission interposes no objection. The Commission, as the agency charged with the administration of the Civil Service Retirement Act, has primary interest in compliance with the provisions of that act. Accordingly, the Department of the Navy defers to the views of the Civil Service Commission with respect to S. 4043.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on S. 4043 to the Congress.

Sincerely yours,

E. C. STEPHAN,
Rear Admiral, United States Navy,
Chief of Legislative Liaison
(For the Secretary of the Navy).

CIVIL SERVICE COMMISSION,
Washington, D. C., March 6, 1956.

Hon. GEORGE SMATHERS,
United States Senate.

DEAR SENATOR SMATHERS: Further reference is made to your letter of February 11, 1956, enclosing a letter from the firm of Giles, Hendrick & Robinson, attorneys and counselors at law, Orlando, in the interest of Mr. Agapito Jorolan.

Mr. Jorolan retired from the New York Naval Shipyard on March 31, 1952. He has been receiving civil-service retirement annuity since that date. He was reemployed by the Military Sea Transportation

Service on April 14, 1952. Under the law permitting the reemployment of a person receiving an annuity under the Civil Service Retirement Act, the employing agency is required to deduct from his salary an amount equal to the annuity allocable to the period of employment. Due to error on the part of the employing agency no deductions were made from Mr. Jorolan's salary. When the error was discovered in 1955 it developed that he had been overpaid approximately $6,200. The agency advised him that it would be necessary to deduct monthly repayments from his salary as well as the amount of his annuity. The law firm representing Mr. Jorolan believes that a waiver should be made of repayment because of hardship, citing title 5, United States Code, section 729a.

Section 729a of title 5 of the United States Code reads in pertinent part:

"Notwithstanding any other provision of this chapter [Civil Service Retirement Act], there shall be no recovery of annuity payments from any annuitant under this chapter who, in the judgment of the Civil Service Commission, is without fault and when, in the judgment of the Civil Service Commission, such recovery would be contrary to equity and good conscience; * * *."

Prior to enactment of section 729a (act of June 26, 1944, amending sec. 17 of the Civil Service Retirement Act), section 2 (b) of the Retirement Act read as follows:

"(b) No person separated from the service who is receiving an annuity under the provisions of section 1 of this act shall be eligible again to appointment to any appointive office, position, or employment under the United States or of the Government of the District of Columbia unless the appointing authority determines that he is possessed of special qualifications, in which event payment of his annuity shall be terminated during the period of his appointment. Any such person whose annuity is terminated shall, upon the termination of his appointment, have his subsequent annuity rights determined under the provisions of law in effect at the time of such termination." (January 24, 1942, amendment of sec. 2 of the Civil Service Retirement Act of May 29, 1930, as amended, 56 Stat. 14.)

Under section 2 (b) it occasionally happened that an annuitant was reemployed in the Federal service without knowledge that the annuity could not be paid concurrently with salary of the position in which reemployed. Some of the cases involved reemployment for a number of years with resultant illegal dual payments. The belated discovery of these illegal dual payments resulted in the termination of annuity payments with no right to future annuity payments until the overpayment had been refunded to the Government. The purpose of the June 26, 1944 amendment of section 17 of the Retirement Act was to authorize the waiver of recovery of annuity payments illegally received by annuitants under the Retirement Act where, in the judgment of the Civil Service Commission, the annuitant is without fault, and such recovery would be contrary to equity and good conscience. (S. Rept. 804 on S. 461, 78th Cong.).

However, section 2 (b) of the Retirement Act was amended by the act of February 28, 1948, to read as follows (5 U. S. C. 715 (b)):

"No person who is receiving an annuity under the provisions of this Act and who has reached the age of sixty years shall be eligible again

to appointment to any appointive office, position, or employment under the Government of the United States or of the District of Columbia, unless the appointing authority determines that he is possessed of special qualifications: *Provided*, That no deductions for the retirement fund shall be withheld from the salary, pay, or compensation of such person, but there shall be deducted from his salary, pay, or compensation otherwise payable a sum equal to the retirement annuity allocable to the period of actual employment: *Provided further*, That the annuity in such case shall not be redetermined upon such person's subsequent separation from the service."

This amendment was explained in House Report 88 on H. R. 4127, 80th Congress, as follows:

"* * * and this section also provides an entirely new feature to the retirement law with respect to reemployed annuitants. Under the present law * * * the annuity previously awarded is terminated upon any such reemployment, and the employee again becomes subject to the Retirement Act with a new annuity right arising under the law in effect at the time of subsequent separation from the service.

"It is proposed that the same privileges of reemployment be continued except that if the person is age 60 or over, the annuity will continue to be paid during his reemployment and his salary as an employee reduced by the amount of annuity being received. The employee would acquire no additional retirement rights during such period of reemployment.

"This will result in a saving in administrative costs because of the elimination of dropping annuitants from the roll, recomputing annuities, and reentering annuitants on the roll. It will prevent inequities arising as a result of annuitants being reemployed primarily for the purpose of acquiring new or additional retirement rights."

As a result of the 1948 amendment of section 2 (b) of the act, Mr. Jorolan continued to receive his annuity payments but was improperly paid the full amount of his salary. Thus the overpayment which is charged against him is for salary rather than overpayment of annuity. Section 17 of the act (5 U. S. C. 729a) authorizes the Commission to waive recovery of annuity payments only. It does not authorize the Commission to waive overpayments of salary. Neither this section of the Retirement Act nor any other law authorizes the Civil Service Commission to waive overpayments of salary on the basis of imposing an undue burden and hardship on the employee. There is nothing in the legislative history of the 1948 amendment of section 2 (b) to indicate that any consideration was given to amending section 17 of the act with respect to granting relief in hardship cases under the new reemployment provisions.

The Comptroller General of the United States has final jurisdiction with respect to questions of pay of Federal employees and the recovery of overpayment of salaries. Under the act of July 15, 1954 (5 U. S. C. 46d), when an agency determines that an employe is indebted to the United States as the result of erroneous payments made by the agency, the amount of the indebtedness may be collected in monthly installments by deductions in reasonable amounts from the current pay of the employee. The Comptroller General has consistently held that retirement annuity installments may be applied in liquida-

tion of an indebtedness to the United States (21 Comp. Gen. 1000, citing previous decisions and court cases).

If the agency is unable to recover the indebtedness through monthly deductions from Mr. Jorolan's salary, it may file a claim with the Commission to offset the indebtedness from his annuity payments. In view of the purpose of title 5 United States Code, section 729a (i. e., to provide relief to persons who received both annuity and salary), we informally discussed Mr. Jorolan's case with representatives of the General Counsel's Office of the General Accounting Office. We were advised that the language of this section did not authorize the Commission to review his case on the basis of hardship if and when the agency requests it to offset his indebtedness from future annuity payments. In other words, that section authorizes the Commission to waive the recovery of "annuity payments." It does not authorize the Commission to refuse to offset an indebtedness for overpayment of salary from annuity payments which would otherwise be due in the future. In spite of the fact that it was enacted for the purpose of granting relief in this type of situation, the language of 729a is not broad enough to cover the change made in the 1948 amendment of section 2 (b) of the Retirement Act under which annuity continues to be paid but a deduction is required from the salary of the reemployed annuitant.

Since the General Accounting Office has final jurisdiction with respect to pay matters, the law firm representing Mr. Jorolan could request that office to review his case. However, we were advised that that office has no authority to waive recovery of an indebtedness of this kind. It thus appears that legislation would be required in order for him to get a waiver of the overpayment charged against him.

Sincerely,

L. V. Meloy,
Acting General Counsel.

Comptroller General of the United States,
Washington, April 23, 1956.

Hon. George Smathers,
United States Senate,

Dear Senator Smathers: Further reference is made to your letter of April 4, 1956, and the enclosures therewith, acknowledged April 5, concerning a question presented in letter dated February 7, 1954, from Mr. Frederick J. Ward of the firm of Giles, Hedrick & Robinson, attorneys for Mr. Agapito Jorolan, of Orlando, Fla. You request an opinion whether there is any authority vested in me by law or regulation for the relief of Mr. Jorolan in the circumstances related below.

Mr. Jorolan retired in 1952 as an employee of the Brooklyn Navy Yard and he has been paid his civil service retirement annuity since April 1, 1952. He was reemployed thereafter by the Military Sea Transportation Service which failed to observe certain provisions of section 2 (b) of the Retirement Act (5 U. S. C. 715 (b)). While that section authorizes the reemployment in certain circumstances of any annuitant under the act who has reached the age of 60 years, the section provides, in pertinent part, "there shall be deducted from his salary, pay, or compensation otherwise payable a sum equal to the

retirement annuity allocable to the period of actual employment * * *." The quoted language is mandatory in nature and the act contains no provision whereby our Office may waive its requirements. We know of no other law or regulation which would serve to relieve Mr. Jorolan from refund of the salary overpayment here in question.

We understand the Acting General Counsel of the Civil Service Commission has advised you that the purpose of the amendment of section 17 of the Retirement Act (5 U. S. C. 729a) was to authorize the Commission in certain circumstances; to waive the recovery of erroneous or illegal payments of annuities under the act. We concur in that view and that the waiver benefit of that section does not apply to the erroneous and illegal payments of salary here involved.

There are other statutes relating to the accountability of disbursing officers and certifying officers and which authorize me to relieve such officers from liability under certain circumstances. (For examples, see 31 U. S. C. 82c and 82d, and Public Law 365, 84th Cong., 69 Stat. 687.) However, those laws do not authorize the relief of recipients of erroneous salary payments such as here involved. Section 1 (b) of Public Law 365 expressly provides:

"Nothing contained in this section shall (1) affect the liability, or authorize the relief, of any payee, beneficiary, or recipient of any illegal, improper, or incorrect payment, or (2) relieve any such disbusing officer, the head of any department, agency, or establishment, or the Comptroller General of responsibility to pursue collection action against any such payee, beneficiary, or recipient. * * * "

Also, the matter here involved does not represent "a claim or demand against the United States" such as those which we occasionally may report to the Congress pursuant to the act of April 10, 1928 (31 U. S. C. 236). On the other hand, the matter apparently contains some elements of equity as may be deserving of consideration by the Congress in a private relief bill. However, the correspondence you forwarded to us does not contain sufficiently detailed facts or evidence whereon we might recommend such favorable action by the Congress.

The letter of Mr. Ward and the affidavit of Mr. and Mrs. Jorolan, regarding their financial condition are returned.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

AFFIDAVIT

STATE OF FLORIDA,
County of Orange:

Before me, the undersigned officer, personally appeared Agapito Jorolan and Anna A. Jorolan, his wife, who being by me first duly sworn depose and say that the following financial statement is a full and complete statement of their financial condition and is in all respects true and correct to the best of their knowledge and belief:

1. The affiants state that they own their own home at 2107 Mount Vernon Avenue, Orlando, Fla., having purchased the said home in December of 1954 for $10,600. There is presently a first mortgage upon the said property held by First Federal Savings & Loan Associa-

tion of Orlando, Fla., in the principal amount of $8,300 and monthly payments are made on the said mortgage in the sum of $63 per month.

2. Anna A. Jorolan has a savings account at the First Federal Savings & Loan Association of Orlando and there is on deposit in the said account the sum of $450.

3. The affiants maintain a checking account at the First National Bank at Orlando, Fla., and this checking account contains only money deposited there each month from their pension check.

4. Agapito Jorolan is presently on leave from service in the civil service of the United States Government and his only source of income is a pension in the amount of $177 per month. The affiants state that they do not have any other employment and the money from the pension is their only source of income.

5. Agapito Jorolan has a $1,000 Government life-insurance policy issued in 1932 and a $600 life-insurance policy with the Metropolitan Insurance Co., and Anna A. Jorolan has a $500 life-insurance policy with the Metropolitan Insurance Co.

The affiants have no other real, personal, or mixed property of any kind or description other than their personnal property and furniture in their home located in Orlando, Fla. The affiants do not own an automobile.

Further affiants sayeth not.

AGAPITO JOROLAN.
ANNA JOROLAN.

STATE OF FLORIDA,
County of Orange:

Before me, the undersigned authority, personally appeared Agapito Jorolan and Anna A. Jorolan, his wife, who being by me first duly sworn depose and say that they have read the above statement as to their financial condition and that said statement is true and correct.

AGAPITO JOROLAN.
ANNA JOROLAN.

Sworn to and subscribed before me this 27th day of March 1956.

[SEAL] MARGARET B. HARRIS,
Notary Public, State of Florida at Large.

My commission expires April 16, 1956.

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D. C., June 26, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR SENATOR EASTLAND: I am referring further to your letter of February 7, 1957, relative to S. 280, a bill for the relief of Agapito Jorolan.

Mr. Jorolan voluntarily retired from the New York Naval Shipyard on March 31, 1952, at which time he had attained age 60 and completed 35 years and 9 months of service. These factors entitled him to annuity of $156 a month beginning April 1, 1952. Subsequent enactments by Congress raised this rate to $159 on September 1, 1952,

and to $177 effective October 1, 1955, which latter rate he is still receiving.

On April 14, 1952, only 2 weeks after his voluntary retirement, Mr. Jorolan was appointed to a position in the Military Sea Transportation Service. Due to error on the part of the employing agency, his salary was not reduced by the amount of his annuity until late in 1955, resulting in a salary overpayment of more than $6,200.

During the entire operation of the Civil Service Retirement Act since its enactment in 1920, it was not legally possible for the Government to pay annuity and civilian salary to an individual covering the same period of time. Originally, the annuity was suspended or terminated upon reemployment. Under this procedure, a limited number of cases arose where the Commission was not timely notified of the individual's return to service with resultant overpayment of annuity. Feeling that recovery of the overpayment in some instances would work an undue hardship, the Commission recommended that it be given authority to waive recovery where, in the Commission's judgment, the annuitant was without fault and recovery would be contrary to equity and good conscience. Congress enacted such authorizing legislation on June 26, 1944.

This procedure for stopping annuity payments is still in effect in cases of reemployment under certain conditions. For other cases, Congress has seen fit to direct that the reemployed annuitant should continue to receive his annuity but the salary otherwise payable to him would be reduced by the amount of such annuity, this procedure producing the same end result. In the latter situation, however, no authority exists whereby waiver of salary overpayment may be effected if the employing agency fails to reduce the annuitant's salary as required.

A thorough review of Mr. Jorolan's official personnel folder reveals several factors leading up to the existing situation. It appears clear that he had arranged for the new employment, or had at least taken steps to that end, before he left the shipyard. On April 1, 1952, the day after his separation from the shipyard, he executed and signed papers for the Transportation Service employment. It is not understood why he effected a retirement action, rather than just moving from the one position to the other. Had he followed the latter course, he would have continued subject to the Retirement Act with no possibility of the overpayment existing. In executing the cited papers on April 1, 1952, Mr. Jorolan stated that he was receiving an annuity by reason of his shipyard service, so that the Navy Department should not have allowed overpayment to occur.

S. 280 proposes to relieve Mr. Jorolan of all liability to repay the amount which he illegally received. Since the item here involved is an overpayment of salary rather than any improper annuity payment, the Commission is not as directly involved in the transaction as is the Navy Department. However, the bill seeks to place this annuitant in a preferred position in relation to the numerous other retired employees who return to Federal service. It would allow him to retain his full Federal salary in addition to his annuity in violation of a statutory directive applicable to all other similar reemployed annuitants. The Commission sees no reason why this particular in-

dividual should be singled out for preferential treatment when other reemployed annuitants are not allowed to retain the overpayment or, as is generally the case, had proper salary reduction effected in the first instance.

The Commission accordingly recommends that the bill S. 280 be not enacted into law.

While the Commission is opposed to special legislation in this regard, it believes that Congress should give consideration to the overall question. The mere fact that an agency erroneously makes a salary overpayment certainly does not vest in the recipient any title to the illegal payment. It is possible that facts may exist to support a conclusion that recovery in this case would create an inequity. Should factors of equity, hardship, etc., be present, it is probable that relief should be considered. We are convinced, however, that this is a matter which should not be periodically imposed on the Congress by requiring the legislative body's determination of the merits of each case in which a private relief bill is presented. The Commission therefore proposes that the Comptroller General of the United States be authorized to grant relief in meritorious cases and to this end recommends the enactment of legislation along the following lines:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Comptroller General of the United States is hereby authorized to waive recovery of any salary overpayment occasioned by the failure of the employing agency to withhold from an employee's salary the amount of his annuity as required by the Civil Service Retirement Act if, in the judgment of the Comptroller General, such employee is without fault and such recovery would be contrary to equity and good conscience."

The Bureau of the Budget advises that there would be no objection to the submission of this report to your committee.

By direction of the Commission:

Sincerely yours,

HARRIS ELLSWORTH, *Chairman.*

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