85TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 1633

CESAR GARCIA

APRIL 23, 1958.—Committed to the Committee of the Whole House and ordered to be printed

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

REPORT

[To accompany H. R. 4985]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4985) for the relief of Cesar Garcia, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize and direct the Comptroller General of the United States to credit the account of Cesar Garcia, of Wilmington, Calif., with $750 which is the sum allegedly due the United States as overpayment of compensation paid him as a prisoner of war for the period of August 6, 1942, to January 10, 1945.

STATEMENT

When the United States naval forces of Corregidor Island surrendered to the Japanese Army in May of 1942 Cesar Garcia was serving on that island as a chief machinist mate in the United States Navy, and was in charge of the diesel engines for the Navy radio station "Dog Tunnel" located there. Prior to the surrender on May 6, 1942, Cesar Garcia was advised by his immediate superior officer, Earl Godfrey Schweizer, who was the officer in charge of the naval radio station, Fort Mills, to surrender as being a Filipino. Actually, Mr. Garcia was a citizen of the United States. The evidence before this committee establishes that Earl Godfrey Schweizer, now a commander in the United States Navy, advised him to surrender in this manner because his superiors felt that the Japanese would release the Filipinos after capture, and Mr. Garcia would be of more possible benefit to the American forces outside of the prison.

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Mr. Garcia was held as a prisoner of war from May 6, 1942, through August 5, 1942, according to the records of the Foreign Claims Settlement Commission. Mr. Garcia states that the last date may be correct, but when the Japanese released him in 1942 he was too sick to note the actual date. He was actually free of Japanese surveillance for only a short period, for after about a month and a half he was again taken into custody by the Japanese in Manila and taken to Fort Santiago. Apparently the Japanese had found that Mr. Garcia was a United States citizen, and he was beaten for concealing that citizenship. From then on Mr. Garcia was kept under Japanese control.

When Mr. Garcia passed the examination to be licensed as a mechanical plant engineer in Manila he had himself registered as an American citizen. This occurred on June 23, 1941. This was the fact which had come to the attention of the Japanese military authorities. Since Mr. Garcia was an operating diesel engineer he was put to work in a factory, formerly owned by Proctor & Gamble, and kept under Japanese control at that work against his will from approximately October of 1942 to early in January of 1945. An affidavit has been filed with this committee which was executed by one Frank J. Crame, of Long Beach, Calif., who was in Manila during the war. He gives the following account of his meeting with Mr. Garcia in 1943:

> * * * in 1943 I met Cesar Garcia wearing the prisoner-of-war armband as prescribed by the Japanese Army on prisoners on outside assignment, and during our conversation he told me that he was working at the old Proctor & Gamble soap factory and known before the Japanese occupation as the Philippine Manufacturing Co., and taken over by the Japanese Army as an enemy property, he also told me that he was allowed once a week 2 hours' liberty to visit his family.

Mr. Garcia's total period of imprisonment was initially confirmed by the Department of the Navy to have been from May 6, 1942, to March 9, 1945, in connection with Mr. Garcia's claim for $1 per diem compensation under the War Claims Act of 1948. The War Claims Commission fixed the dates for the purpose of the award as extending from May 6, 1942, to January 10, 1945, and totaling 981 days. An award for $981 was paid Mr. Garcia on July 17, 1951. In connection with Mr. Garcia's claim for additional benefits, the Commission determined that only his actual confinement as a prisoner of war from May 6, 1942, to August 5, 1952, was to be taken as a basis for benefits. The result of this was that it was ruled that there had been an overpayment of $751.

The committee has carefully considered the circumstances of this case and has concluded that Mr. Garcia should be relieved of the liability to refund the amount stated in H. R. 4985. Accordingly this committee recommends that the bill be considered favorably.

The report of the Foreign Claims Settlement Commission which makes no comment as to the merits of the bill, and the adverse report of the General Accounting Office are as follows:

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES,
Washington, D. C., February 6, 1958.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This refers further to your request for the views of this Commission on the bill, H. R. 4985, entitled, "A bill for the relief of Cesar Garcia." This bill is related to the bill, H. R. 1506, also for the relief of Cesar Garcia and upon which the views of this Commission have also been requested. Both bills would, if enacted, relieve Mr. Garcia of his liability to the Government of the United States on account of an overpayment of $751 made to him under an award by this Commission's predecessor, the War Claims Commission on his claim for prisoner-of-war compensation under section 6 of the War Claims Act of 1948, as amended.

The Commission has been advised that H. R. 4985 was intended, by the author of both the bills, Hon Cecil R. King, to supersede H. R. 1506. This report, therefore, will be made only on the bill, H. R. 4985.

The overpayment to Mr. Garcia occurred as a result of an incorrect certification from the Department of the Navy as to the actual number of days Mr. Garcia was held as a prisoner of war. He filed his claim for $1 per diem compensation under section 6 of the act giving May 6, 1942, as the date of capture at Corregidor and the date of his release to Philippine authorites as November 10, 1942. He stated that from December 15, 1942, to January 10, 1945, he was employed by the Japanese operators of a powerplant on Corregidor and although not interned was in fact a virtual prisoner and under their constant surveillance until his escape on Janury 10, 1945. He reported back to the Navy on March 9, 1945.

The total period of imprisonment as initially confirmed by the Department of the Navy was from May 6, 1942, to March 9, 1945. The dates of imprisonment for purposes of an award were fixed by the Commission at May 6, 1942, to January 10, 1945, a total of 981 days compensable at $1 per day for a total of $981. An award for this amount was paid to him July 17, 1951.

Subsequently, with the passage of Public Law 303, approved April 9, 1952, additional per diem prisoner-of-war compensation was authorized at the rate of $1.50 a day. Mr. Garcia accordingly filed a second claim November 3, 1952. In the processing of his second claim it developed that his actual confinement as a prisoner of war extended only from May 6, 1942, to August 5, 1942, or a total of 92 days. The Navy Department confirmed this in a second certification and an award was entered in his favor at the rate of $1.50 per day for a total of $138. Obviously, the first award was excessive by $889.00 resulting in payment of the second award by way of a set-off leaving an overpayment to Mr. Garcia of $751.

This overpayment is clearly a legitimate debt to the Government of the United States. The enactment of H. R. 4985 would direct the Comptroller General, whose duty it is to effect payment of such debts,

to credit Mr. Garcia's account to the extent of $751, the amount he owes thereby relieving him of any further responsibility for its payment.

The enactment of H. R. 4985 would in no way involve the operations or functions of this Commission and for that reason the Commission takes no position as to the merits of the bill.

Advice has been received from the Bureau of the Budget that there would be no objection to the presentation of this report to your committee.

Sincerely yours,

WHITNEY GILLILLAND, *Chairman.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D. C., March 7, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Your letter of February 21, 1957, requests a report on H. R. 4985, 85th Congress, which would relieve Cesar Garcia, Wilmington, Calif., of the obligation of refunding to the United States an overpayment of compensation paid to him as a prisoner of war for the period August 6, 1942, to January 10, 1945.

Our records show that under date of March 25, 1955, the Foreign Claims Settlement Commission of the United States reported Mr. Garcia's indebtedness to us as uncollectible with the advice that:

"Compensation under section 6 (d) of the War Claims Act of 1948, as amended, is payable to members of the Armed Forces of the United States, who were captured subsequent to December 7, 1941, held as prisoners of war by a government with which the United States has been at war subsequent to said date, and who were not furnished the quality or quantity of food to which they were entitled as prisoners of war under the terms of the Geneva Convention of July 27, 1929. This compensation is payable at the rate of $1 for each day that a prisoner of war was not furnished with a sufficient quality or quantity of food.

"Compensation under section 6 (d) of the War Claims Act of 1948, as amended, is payable to such former prisoners of war who were subjected to forced labor or other inhumane treatment for each day that they were held as prisoners of war contrary to the provisions of the Geneva Convention of July 27, 1929. This compensation is payable at the rate of $1.50 for each day that a prisoner suffered such treatment.

"Cesar Garcia filed an application for the compensation authorized under section 6 (b) of the act on January 31, 1950, alleging therein that he was a member of the Armed Forces of the United States and was held as a prisoner of war by the Imperial Japanese forces from May 6, 1942, to January 10, 1945. The claim was adjudicated, an award in the amount of $981 was approved and a check in payment thereof was mailed to the claimant on July 17, 1951. Through an administrative error, this award contained on overpayment in the amount of $889, since the official Army records disclose that the claimant was held in the custody of the detaining enemy forces only

from May 6, 1942, to August 5, 1942. Subsequently, the claimant filed a claim for additional benefits under section 6 (d) for inhumane treatment and/or forced labor. A determination was made showing the claimant eligibility to these additional benefits in the amount of $138. However, because of the previous overpayment, a deduction of this amount was made leaving as a balance the sum of $751.

"Accordingly, on July 26, 1954, the Commission informed Mr. Garcia of this error and afforded him an opportunity to arrange for repayment of this overage. A reminder was sent to Mr. Garcia on August 16, 1954. The claimant appealed on September 3, 1954, at which time the previous determination was upheld by the appeals board. Because of the apparent uncertainty regarding payment by the claimant, this case is being referred to you for appropriate action."

In correspondence with us Mr. Garcia has expressed the opinion that he was in a status entitling him to the payments received for the period August 6, 1942, to January 10, 1945, and has stated that he is attempting to substantiate his claim. Section 11 of the War Claims Act of 1948 makes provision for a hearing in disputed cases and provides that the decisions of the Commission are final and conclusive on all questions of law and fact and are not subject to review by any official of the United States or by any court.

We have no information concerning this case other than that indicated above. Generally we do not view with favor legislation which grants preferential treatment to a single individual unless equities are apparent such as would justify the enactment of a private bill for the debtor's relief. On the basis of the record before us, we do not recommend favorable consideration of the bill.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

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