Calendar No. 1801

86TH CONGRESS, 2d Session | SENATE | REPORT No. 1742

RELIEF OF DALWORTH C. EBNER AND JOHN WESSELS

JUNE 24, 1960.—Ordered to be printed

Mr. YARBOROUGH, from the Committee on Labor and Public Welfare, submitted the following

REPORT

Along With

MINORITY VIEWS

[To accompany S. 299]

The Committee on Labor and Public Welfare, to whom was referred the bill (S. 299) for the relief of Dalworth C. Ebner, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The bill, S. 299, as amended by the committee provides that—

1. Notwithstanding any law or regulation administered by the Veterans' Administration, Dalworth C. Ebner of Austin, Tex., shall be eligible to receive veterans benefits as provided by chapter 31, of the United States Code; and

2. Notwithstanding the provisions of section 1622(a) of chapter 33 of title 38, of the United States Code, John Wessels of St. Johnsbury, Vt., may be permitted to pursue apprentice or on-the-job training in printing under such chapter.

Mr. Ebner is a veteran of World War II, and Mr. Wessels a veteran of the Korean conflict. In each case the training authorized by this bill would be for a period equal to that for which the veteran would be eligible if the Veterans' Administration had not disqualified him for training. In order to receive the restored eligibility provided by the bill, both Mr. Ebner and Mr. Wessels would be required to commence training within 1 year after enactment of the bill.

The facts which justify the committee's recommended bill now follow:

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DALWORTH C. EBNER

Mr. Dalworth C. Ebner of Austin, Tex., was eligible for vocational training under the veterans' rehabilitation program because of a service-connected disability. He is now rated as 50 percent disabled because of psychoneurosis. He enrolled in the University of Texas in midsummer 1953, in the field of engineering. Mr. Ebner's aptitude tests and discussions with university officials revealed excellent promise in mathematics and natural science.

In securing assistance under the rehabilitation program, Mr. Ebner discussed his needs and program requirements with the veterans' representative at the university and with the Veterans' Administration. The Veterans' Administration told him that he must attempt to earn a degree in engineering and that only 3 years remained until the delimiting date of the program, then called the Public Law 16 program.

According to the evidence submitted to the committee, a statement was required of Mr. Ebner to the effect that if, by the delimiting date he had not acquired the degree, he would nevertheless consider himself to be rehabilitated insofar as educational benefits were concerned, and that he would complete his education at his own expense. Under the terms of this agreement, Mr. Ebner enrolled in the University of Texas in midsummer of 1953.

Shortly after commencement of his education, a controversy developed between Mr. Ebner and the Veterans' Administration because, being the sole support for his mother, his wife and four children, he was working parttime in order to bolster his GI subsistence allowance. The VA finally relented in this instance.

During the first 6 months of school, Mr. Ebner was able to get ahead of his schedule. The VA schedule for the next semester called for a workload by Mr. Ebner which could not be matched exactly. He could either register for 1 semester-hour less, or for 2 semester-hours more. In response to a VA directive that "you are cautioned not to enroll for less [than a certain number of hours]," Mr. Ebner took on a heavier load, a minimum of 30 hours a week in the classroom. The load was much more than he could tolerate, so he took his problem to Dean L. L. Click of the school of arts and sciences at the university. After Dean Click had held a conference with the Veterans' Administration, he advised Mr. Ebner that the VA was adamant but that he, the dean, knew that Public Law 16 required only that he meet minimum requirements of the college. It was Dean Click's decision that, since Mr. Ebner was behind in six courses, he should drop two and salvage four, stating that the remaining load was still within minimum requirements of the university.

On March 11, 1954, Mr. Ebner complied with the dean's decision. On March 12, 1954, the VA advised Mr. Ebner that his training was terminated, effective immediately. The VA contended that Public Law 16 required that Mr. Ebner be in a position at all times to show that he would have a degree by the delimiting date of Public Law 16. Mr. Ebner disagreed with this position because it was inconsistent with the statement required of him at the beginning of his training, and because Public Law 16 specified only that the veteran attain an employment objective.

In response to Mr. Ebner's stated disagreement, the VA invited him to meet with two of their representatives on the university cam-

pus on March 21, 1954. In attendance at this conference was a disinterested party, Mr. Delmar W. Sears, personnel officer of the Austin post office (at this time Mr. Ebner was working as a substitute letter carrier in the Austin post office).

Mr. Ebner stated that later that day one of these VA representatives phoned him and stated that a degree was not mandatory. Since this was in direct opposition to what he had previously been told, he contacted the disinterested party, Mr. Delmar W. Sears. Mr. Sears obtained the same information firsthand from the same source and gave Mr. Ebner his affidavit concerning the matter.

In Mr. Sears' statement, which is on file with the committee, Mr. Sears states that he called the veterans' adviser, and having first been informed in Ebner's presence that Ebner would have to obtain a degree by the delimiting date, he was next informed that if Mr. Ebner could outline a proposed schedule of classes which would make him employable upon the completion of such classes, and have it approved by the university professors and by the counseling division of the VA in Waco, he could continue his schooling under Public Law 16, despite the fact that he would not have a sufficient number of hours to receive a degree by July 1956, the delimiting date of the program.

In a desperate effort for rehabilitation, Mr. Ebner requested training in a small accounting school. The VA accepted this application, and in June of 1954, Mr. Ebner enrolled in this school where no degree was possible.

Soon thereafter the post office eliminated part-time jobs, and Mr. Ebner was forced by his responsibilities to return to full-time employment. The physical exertion of carrying mail caused such rapid deterioration of Mr. Ebner's condition that on March 22, 1955, he appealed to the Appeal Board for reinstatement to training at the University of Texas. The appeal was denied.

Although the committee does not feel that the Veterans' Administration has been pointedly unfair in dealing with Mr. Ebner, the history of this matter does show that the veteran did the best he could under the circumstances to remain in school and achieve the rehabilitation goal he had set for himself with the help of the VA. It is questionable whether it was ever made clear to Mr. Ebner that the attainment of a degree, and not employment, was the governing criterion under which he was to maintain his workload.

In addition, the committee feels that Mr. Ebner should not be punished for carrying out the instructions of Dean Click regarding the workload of classes at the University of Texas.

The committee is convinced that Dalworth C. Ebner can and will make a valuable contribution to society if he is given the opportunity for rehabilitation training. In view of the extremely heavy burdens which Mr. Ebner has been carrying in supporting himself and six other people, while being ill physically and psychologically, as a direct result of military service, the committee believes that it is obligated to help this man rehabilitate himself so that he can become sufficiently productive to support his family. The committee, therefore, recommends enactment of this legislation.

JOHN WESSELS

The committee has added to S. 299 as originally introduced an amendment for the relief of John Wessels of St. Johnsbury, Vt. The

committee's amendment would enable Mr. Wessels to apply to the Veterans' Administration within 6 months from enactment of this bill for apprentice or on-the-job training in printing under chapter 33 of title 38, United States Code. If the Administrator of Veterans' Administration determines that Mr. Wessels is otherwise eligible for such training, the amendment will permit him to receive unused portion of his training benefits, notwithstanding the fact that the Veterans' Administration has heretofore determined that he changed his program of education and has thus held him ineligible for apprentice or on-the-job training benefits.

The committee approved this amendment because of special circumstances existing with respect to Mr. Wessel's application. According to the documentary evidence submitted to the committee, Mr. Wessels took training under the GI bill (Public Law 550, 82d Cong.) in a vocational course at the New Hampshire Technical Institute in Manchester, N.H., in machine shop technology. This training was approved by the Veterans' Administration on September 19, 1957. The training was to start on September 4, 1957. On October 23, 1957, the Veterans' Administration approved a change in course to a printing course through the Berlin High School at Berlin, N.H., and Mr. Wessels completed the 2-year printing program and was graduated from it as a journeyman printer in June 1959.

Evidence submitted to the committee indicated that before changing from the machinist course to the printing course, Mr. Wessels discussed his education and training with the Veterans' Administration office in Berlin, N.H., and was encouraged by them to go into the printing trade. He received excellent marks in his course and at its completion was employed by Cowles Press, Inc., at St. Johnsbury, Vt. His application for apprenticeship or on-the-job training in printing in connection with his employment was denied by the Veterans' Administration upon the ground that he had made the one permissive change in course which the present law allows. His employer and Mr. Wessels have supplied information to the committee demonstrating that his on-the-job training, relative to his present employment, would be a more specific and detailed continuation of his education and training in the printing field for which he has acquired the fundamentals under a course of education approved by the Veterans' Administration.

The committee believes that Mr. Wessels was inadvertently led to believe that he would be entitled to on-the-job and apprenticeship benefits under Veterans' Administration programs if he entered the printing trade. The committee notes that this course of training as a machinist extended only from September 4, 1957, until October 1, 1957, but that he pursued a 2-year training course in printing and is now employed in this field.

Rather clearly Mr. Wessels is now in the field of endeavor best suited to his individual aptitudes and skills. The committee therefore believes that a further upgrading of his skills, by restoring the unused portion of his veteran's training rights, would be beneficial not only to Mr. Wessels individually but also of significant benefit to the printing industry generally.

Under the circumstances which exist in this case, the committee believes that it would be inequitable to deny Mr. Wessels the benefits to which he is entitled by reason of his active military service, and has,

therefore, amended the bill so as to grant relief in a situation which would otherwise be inequitable.

The Veterans' Administration recommended against enactment of S. 299 as originally introduced, that is, with respect to Dalworth C. Ebner of Austin, Tex. It has not submitted a position regarding Mr. John Wessels, the veteran granted relief by the Committee's amendment.

The departmental reports follow:

VETERANS' ADMINISTRATION,
Washington, D.C., April 22, 1959.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR SENATOR HILL: Further reference is made to your request for a report on S. 299, 86th Congress.

The purpose of the bill is to render Dalworth C. Ebner eligible for additional vocational training from the Veterans' Administration to which he is not entitled under existing law.

S. 299 is identical with S. 4106, 85th Congress, on which a Veterans' Administration report was made to your committee on July 30, 1958, where the bill was pending at the close of that Congress.

Part VII, Veterans Regulation No. 1(a), referred to in the bill, was repealed, and comparable provisions are now contained in chapter 31, title 38, United States Code, enacted September 2, 1958. This report assumes S. 299 is intended to refer to appropriate provisions of existing law to accomplish the stated purpose.

Dalworth Carol Ebner (C–10107702) served honorably in the Armed Forces of the United States during World War II. While in service, he was hospitalized on one occasion for a condition diagnosed as lymphadenitis, cause unknown, and during another period when the final diagnosis was neurasthenia, cause unknown.

Since his discharge from service in 1945, Mr. Ebner has been examined and hospitalized by us on numerous occasions. The final summary of his most recent period of hospitalization of record, which ended in January 1957, shows no physical disease found but that he had a "paranoid personality, manifested by tendency to projection, by rigid attitudes, and by periods of marked anxiety during situational stresses."

He has drawn service-connected disability compensation benefits, in varying amounts, from the day following his discharge from service. He is currently rated as 50 percent disabled because of psychoneurosis, severe, and is being paid compensation of $131 per month, including $31 on behalf of his wife and four children.

The records show that although Mr. Ebner contemplated taking vocational training for some time, he did not make himself available for that training until the summer of 1953. Following vocational counseling, he entered training at the University of Texas on July 16, 1953, to train for the objective of mechanical engineer.

Under the vocational rehabilitation program, the Administrator of Veterans' Affairs is charged with the responsibility of prescribing and providing such vocational rehabilitation as will restore a service-connected disabled veteran to employability. The veteran is expected to pursue his training on a full-time basis, allowing nothing to inter-

fere with his course. In cases like Mr. Ebner's, training had to be completed by the statutory delimiting date of July 25, 1956. Since the law required the Administrator to restore a veteran's employability, the Veterans' Administration regulations provided that a veteran could not be placed in rehabilitation training unless a reasonable certainty existed that he could complete the prescribed course of training prior to the applicable delimiting date. In view of these provisions, it was necessary that Mr. Ebner carry a full load of courses during all regular sessions and the summer sessions, starting in July 1953.

A veteran undergoing training was admonished to pursue his program without making any changes or allowing changes to be made except with the prior approval of his training officer. At the time Mr. Ebner entered training, he acknowledged receipt of a form containing the statement "No change in your training program is permitted without the prior approval of your training officer."

In December 1953 and January 1954 Mr. Ebner indicated that he was having difficulty with his schooling, that his schedule was too much for him, and requested that the number of courses be reduced. He was counseled to the effect that any such deviation from the agreed schedule could jeopardize his training. Nevertheless, on March 8, 1954, without the knowledge or consent of his training officer, Mr. Ebner dropped two of his courses. On March 11, 1954, his training officer afforded him the opportunity of resuming the dropped courses and devoting his full time to training. Mr. Ebner declined, and the training officer informed him that it would be necessary to discontinue training. This was done effective March 20, 1954, for the reason that he failed to avail himself properly of the training, rendering it impossible for him to complete the program by the delimiting date. The statement in S. 299 (lines 1, 2, and 3, p. 2) to the effect that Mr. Ebner had not been informed in the matter at the time does not appear to be consistent with the facts.

In May 1954 Mr. Ebner requested further training in an objective which could be completed prior to the delimiting date. Revaluation counseling was completed and the objective, junior accountant, was selected as the one most suitable. He reentered training in the Dunaway School of Accounting, Austin, Tex., on June 14, 1954. On August 31, 1954, he requested a change of objective to resume his training at the University of Texas in a course to extend beyond the July 25, 1956, delimiting date. This case was reviewed in the light of the act of August 20, 1954 (68 Stat. 755). That act extended to July 25, 1960, the date for completion of training of any person who the Administrator determines to have been prevented from entering, or completing, training because of one of several enumerated conditions. The review found that none of the conditions was applicable to Mr. Ebner's case. He was notified accordingly. On December 9, 1954, the veteran voluntarily withdrew from vocational training to accept full-time employment with the Post Office Department.

In March 1955, he filed an appeal for further vocational training. In its decision of June 27, 1955, the Board of Veterans Appeals, after reviewing the facts and law, concluded that further vocational training was not warranted. S. 299, if enacted, would render Mr. Ebner eligible to receive additional vocational training from the Veterans'

Administration for a period of not more than approximately 28 months, provided he enters such training within 1 year after enactment. That was the maximum training period available to him in March 1954.

The records show that the Veterans' Administration training officer and other officials made every effort, within the limitation prescribed by law, to assist Mr. Ebner in achieving his occupational goal and becoming rehabilitated. However, because of the late date on which he made himself available for training and his failure to cooperate with the training officer and other employees of this agency, and to devote full time to his college course, he failed to complete his vocational rehabilitation.

The circumstances of this case have been carefully considered and no reason is apparent why it should be singled out for special legislative treatment to the exclusion of other cases which must be denied where similar circumstances exist. To do so would be discriminatory and precedential.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

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

Sincerely yours,

BRADFORD MORSE,
Deputy Administrator
(For and in the absence of
Summer G. Whittier, Administrator).

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington D.C., June 26, 1959.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate,
Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in reply to your request of February 7, 1959, for the Bureau's views on S. 299, a bill for the relief of Dalworth C. Ebner.

The Veterans' Administration is opposed to this bill for reasons set forth in its report to the committee. The Bureau of the Budget concurs in the adverse position of the Veterans' Administration and therefore recommends against enactment of this relief proposal.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

MINORITY VIEWS

We are opposed to this bill affording Dalworth C. Ebner additional time in which to pursue vocational rehabilitation training.

Mr. Ebner was discharged from the service in 1945 but he did not make himself available for vocational training until the summer of 1953. In order to comply with the law, requiring completion of his training by July 25, 1956, it was necessary for him to carry a full load of courses. This proved to be too great a burden for him to carry and he therefore discontinued a portion of the curriculum even though he had been previously advised by the Veterans' Administration that any deviation from his schedule would jeopardize his training.

A veteran undergoing training was admonished to pursue his program without making any changes or allowing changes to be made except with the prior approval of his training officer. At the time Mr. Ebner entered training, he acknowledged receipt of a form containing the statement "No change in your training program is permitted without the prior approval of your training officer." Nonetheless, Mr. Ebner declined to resume the courses which he had dropped, and devote full time to his schooling whereupon his training was discontinued.

Subsequently, Mr. Ebner reentered training for another occupation which training could be completed by July 25, 1956. In December of 1954 he voluntarily withdrew from training to enter full-time employment. Mr. Ebner now seeks, through this legislation, to reenter training for a period of approximately 28 months.

Much has been made of the fact that Mr. Ebner was hospitalized for a service-connected disability for long periods during the interval between his discharge in 1945 and his entry into training in 1953. The testimony presented by representatives of the Veterans' Administration during the hearings held by the subcommittee on this bill pointed up the fact that, while there were several periods of hospitalization, they were principally for examination purposes. Of far more importance, however, was the fact that Mr. Ebner did not make application for vocational rehabilitation training until almost 8 years after his discharge. We are unaware of any reason why Mr. Ebner, if he had so desired, could not have entered training at a time sufficient for him to complete his training without undertaking an overloaded schedule.

It was also contended during the hearings that a grave injustice has been inflicted upon Mr. Ebner since he dropped a portion of his courses upon the advice of the dean of the university, which he was then attending. The following colloquy between Senator Yarborough and Mr. Gundlach of the Veterans' Administration bears directly on this point:

> Senator YARBOROUGH. And he understood that Dean Click was acting for the Veterans' Administration in counseling him on the program?

Mr. GUNDLACH. Well, he may have had that view. However, there is in the record a signed statement indicating that it was his understanding that any adjustments in the training program agreed to would have to be taken up with the training officer, who was a Veterans' Administration representative. He did sign such a statement. Whether he subsequently had a misunderstanding with regard to that obligation, I cannot say.

Whatever misunderstanding Mr. Ebner may have had about the representative capacity of Dean Click was not in any way occasioned by any statement or action on the part of the Veterans' Administration.

The records show that the Veterans' Administration training officer and other officials made every effort, within the limitation prescribed by law, to assist Mr. Ebner in achieving his occupational goal and becoming rehabilitated. However, because of the late date on which he made himself available for training and his failure to cooperate with the training officer and other employees of this agency, and to devote full time to his college course, he failed to complete his vocational rehabilitation. We therefore believe that no valid case has been presented to the committee which would warrant special legislative treatment for Mr. Ebner and urge the Senate to reject this bill.

BARRY GOLDWATER.
NORMAN BRUNSDALE.

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