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Dr. John Work.

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DR. JOHN WORK.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, submitted the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Dr. John Work, of Woodville, Tyler county, State of Texas, respectfully report:

The memorialist served eight months in the war with Mexico as an assistant surgeon, by contract made with Lieutenant Colonel P. H. Bell, commanding the frontier troops of Texas. His present application is for three months' extra pay.

The act of Congress approved July 19, 1848, granted "three months' extra pay to all officers, non-commissioned officers, musicians, and privates," who served in the war with Mexico; but, on the 23d of March, 1849, the Secretary of War decided that surgeons who attend the volunteer regiments as part of the staff, but who were not appointed as provided by law, could not be considered officers of the army, and were not, therefore, entitled to this extra pay.

The act of the 18th of June, 1846, provides that the President, by and with the advice and consent of the Senate, may appoint for each regiment of volunteers one surgeon and one assistant surgeon. The persons thus appointed, and they only, can be considered officers. The authority for the employment of subsidiary aid may be found in the Army Regulations, paragraph 1,220: "When medical or surgical aid is required, if no surgeon or assistant surgeon of the army be at or near the place, the senior officer will employ a private physician by special agreement in writing, a duplicate of which will be immediately transmitted to the surgeon general for approval. All such agreements will be made for a specified sum per month, *without any allowance or emoluments.*"

The manner of service, and the utmost limit of compensation, are here distinctly stated—allowances and emoluments, such as the extra pay in question, are refused by the very regulation which provides for extraordinary medical duty; and your committee do not see fit to go behind the line of proper precedent in the matter. They beg, therefore, to offer an adverse report.

*To the honorable Senate and House of Representatives of the United States
in Congress assembled :*

Your memorialist, Doctor John Work, of Woodville, Tyler county, State of Texas, would respectfully represent to your honorable bodies that he served eight months in the war with Mexico as an assistant surgeon, by contract made with Lieutenant Colonel P. Hansbrough Bell, commanding the frontier troops of Texas, hereunto annexed and making part hereof, marked A.

He would further set forth that the Congress of the United States passed a law, approved July 19, 1848, granting "three months' extra pay to all officers, non-commissioned officers, musicians, and privates," who served in said war.

That he made application for said extra pay, (as did others similiarly situated;) it was denied to him and other "assistant surgeons" in the volunteer service, on the ground that they do not hold commissions from the President of the United States.

Your memorialist would respectfully call your attention to the letter of the Second Comptroller, E. J. Phelps, on this subject, made part hereof and marked B.

Believing that by the spirit and equity of the law aforesaid, that himself and brother assistant surgeons are entitled to said extra pay, your petitioner most respectfully asks for the passage of a law declaring them entitled to receive the same according to the face of their several contracts.

All of which is most respectfully submitted by your memorialist for himself and others similiarly situated.

JOHN WORK.

N. B. Your memorialist would beg to further state that the law aforesaid was passed one year and a half, or more, after the date of the contract aforesaid, and that the clause in said contract debarring him from all "allowances and emoluments whatsoever" referred to existing laws and not to a law afterwards to be passed.

May he not ask, was not the extra pay act passed as some indemnity to those who gave up their *homes* and business and engaged in a distant and dangerous service? and may he not further ask, is not the surgeon as necessary and his services as patriotic as others who served in that war? All of which is most respectfully submitted by your petitioner.

JOHN WORK.

WASHINGTON, D. C., *December 23, 1857.*

A.

Contract with Doctor Work.

This contract, entered into this first day of December, 1847, at San Antonio, State of Texas, between P. Hansbrough Bell, lieutenant colonel first regiment Texas mounted volunteers, commanding the

frontier troops of Texas, and Dr. John Work, of Galveston, Texas, witnesseth: That, for the consideration hereafter mentioned, the said Dr. John Work promises and agrees to perform the duties of an assistant surgeon, agreeably to Army Regulations, at the military station at the Presido of the Rio Grande, or wherever required; and the said Lieutenant Colonel P. Hansbrough Bell promises and agrees, on behalf of the United States, to pay or cause to be paid to the said Dr. Work the sum of eighty-five dollars for each and every month he shall perform the duties above stated, which shall be his full compensation, and in lieu of all allowances and emoluments whatsoever, except for medicines that he may furnish, which shall be at the rate prescribed by 1,222d paragraph of the Army Regulations. This contract to continue in full force during the pleasure of the parties.

P. HANSBROUGH BELL, [L. S.]
JOHN WORK, [L. L.]

Signed, sealed, and delivered, in presence of—

J. F. SWIFT,
JOHN A. VEATCH.

I certify that the number of persons entitled to medical attendance at the military station of the Presido of the Rio Grande is 84, belonging to the company of Captain John A. Veatch, and that no competent physician can be obtained at a lower rate.

P. HANSBROUGH BELL,
Lieutenant Col. Commanding Texas Frontier.

In two or three weeks after the within contract was made, Captain Veatch increased his command to ninety-five (95) men.

Approved:

H. L. HEISKELL,
Acting Surgeon General.

SURGEON GENERAL'S OFFICE,
June 18, 1857.

The above is a true copy of the recorded copy in the office of the surgeon general.

R. C. WOOD,
Surgeon U. S. A., in charge of office.

Paid under this contract, from December 1, 1847, to July 31, 1848, six hundred and eighty dollars.

TREASURY DEPARTMENT,
Second Auditor's Office, June 29, 1857.

I certify that the foregoing is a correct copy of an instrument filed this day in this office by Dr. John Work, late of the Texas volunteers.

T. J. D. FULLER, *Auditor.*

A true copy:

JOHN WORK.

B.

SECOND COMPTROLLER'S OFFICE,
February 12, 1852.

SIR: I herewith return certificate settlement No. 16,334, in favor of Ware S. May, late surgeon in the 2d regiment mounted volunteers without approval.

The act of June 18, 1846, provides that the President, by and with the advice and consent of the Senate, may appoint for each regiment of volunteers one surgeon and one assistant surgeon. No other authority exists for the appointment of officers of this description, beyond those belonging to the regular medical department of the army.

Dr. May was not so appointed, as appears from the communication from the adjutant general's office, herewith enclosed.

On the 23d of March, 1849, the Secretary of War decided, on application by the paymaster general, that surgeons who attended the volunteer regiments as part of the staff, but not appointed as provided by law, were not officers of the army, and were not entitled to the three months' extra pay. I believe his decision has since been acted on, and I regard it as correct. It of course excludes the present claim.

I add, in *justice* to the claimant, that he is, no doubt, *equitably* entitled to this allowance, inasmuch as he served through the whole period of enlistment of his regiment in the same manner as though regularly appointed, and no other surgeons were appointed to that regiment by the President.

His *remedy*, however, must be by application to *Congress*.

Very respectfully, sir, your obedient servant,

E. J. PHELPS, *Comptroller*.

Hon. P. CLAYTON, *Second Auditor*.

TREASURY DEPARTMENT,
Second Auditor's Office, December 18, 1857.

I certify that the above is a copy of the Second Comptroller's decision in the case referred to.

T. J. D. FULLER, *Auditor*.

C.

STATE OF TEXAS, *County of Jasper*.

On this 8th day of September, 1856, personally appeared before me, a justice of the peace in and for the county and State aforesaid,

Joseph Marion Childers and William A. Dean, both citizens of Jasper county, Texas, who, being duly sworn according to law, make oath that they both were privates in Captain John A. Veatch's company (D) of Texas twelve months mounted men, and that John Work was a private in said company; that they were all duly mustered into said company on the 20th day of October, 1847, at Wolf creek, in Tyler county, State of Texas; that they all marched with said company to the headquarters, at San Antonio, Texas, a distance of about three hundred and fifty miles; that the said John Work did all the duties of a private on said march, and answered to his name at roll-call as a private; that shortly after reaching headquarters, to wit, some time about the 1st December, 1847, the said Work was employed by Lieutenant Colonel Bell as surgeon to said company; that he marched with said company to the Rio Grande in that capacity, and continued to serve for several months; that he marched about the 1st of April, 1848, with a scott of about forty men of said company, under the command of William B. Gray, of said company, who was placed in command by the commanding officer, they both being members of said scout; that after being out some three or four days they came up with a company of Comanche Indians, and that the said Gray placed the said Work in command of ten men, of whom the affiants were two, and that the said Work did charge upon said Indians, and assisted in the battle with them, by charging between them and their horses and mules, and cutting them off from the same; that said Childers and Dean were both in said battle, and under the immediate command of the said Work; that the said Indians at the time were hostile to the United States.

JOSEPH MARION CHILDERS,
WILLIAM A. DEAN.

Subscribed and sworn to before me the day and date above written.

B. F. MOTT, *J. P.*,

Jasper county, Texas.

WASHINGTON CITY, D. C.,

September 15, 1857.

This is to certify that the above is a true copy of the original affidavit of Joseph Marion Childers and William A. Dean, now on file in the office of the Commissioner of Pensions.

GEORGE C. WHITING,

Commissioner.