

5-23-1882

Report : Petition of J. Stranch

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IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

MR. COCKRELL, from the Committee on Military Affairs, submitted the following

REPORT:

The Committee on Military Affairs, to whom was referred the petition of John B. Stranch, have duly considered the same, and submit the following report:

The petitioner claims \$65 for the loss of a horse by him as a private in Company C, Third Regiment Missouri Mounted Volunteers, under Colonel Ralls, in Mexican War, alleged to have been captured by Indians August 1, 1847, and also compensation to the amount of \$223 for services as first lieutenant, Company D, Fifth Regiment United States Reserve Corps, Missouri Volunteers, up to December 1, 1861.

The petition is verified by affidavit, and with the petition was filed what purports to be a copy of the commission as first lieutenant, issued by Willard P. Hall, acting governor of Missouri, under date February 17, 1862, to rank from 17th September, 1861. No other evidence or papers were presented.

Your committee, on application to the Second Auditor and the Secretary of War for information, &c., as to the claim for loss of horse and for compensation as first lieutenant, received the following communications:

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
Washington, D. C., April 11, 1882.

SIR: I have the honor to acknowledge receipt of your letter of the 6th instant, inclosing petition of J. B. Stranch for compensation for the loss of a horse in the war with Mexico, and to inform you that no claim for compensation for the loss thereof has been filed in this office. You are also informed that consideration of claims for horses lost is barred by act June 22, 1874, unless presented prior to January 1, 1876, and that there are no records in this office from which a military history of the claimant can be obtained. Such records are filed in the War Department.

Your letter and the petition of said Stranch are herewith returned.

Very respectfully,

E. W. KEIGHTLEY,
Auditor.

Hon. F. M. COCKRELL,
United States Senate, Washington, D. C.

WAR DEPARTMENT,
Washington City, May 16, 1882.

SIR: Acknowledging the receipt of your letter dated April 8, 1882, inclosing a copy of the commission of Lieut. John R. Stranch, United States Reserve Corps, Missouri Volunteers, and requesting the military record of that officer, I have the honor to

transmit herewith a report, dated the 13th instant, from the Adjutant-General of the Army, which contains the desired information.

The copy of Lieutenant Stranch's commission is herewith returned as requested.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. F. M. COCKRELL,
United States Senate.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., May 13, 1862.

SIR: I have the honor to return herewith the communication of honorable F. M. Cockrell, of Committee on Military Affairs, United States Senate, inclosing copy of the commission of John B. Stranch, as first lieutenant Fifth United States Reserve Corps, Missouri Volunteers, with request to be furnished with the military history of that officer and such additional data as may be deemed important, and to report as follows:

The records of this office show that the Fifth Regiment United States Reserve Corps, Missouri Volunteers, was, under authority of Major-General Frémont, organized at Saint Louis, Mo., from September to December, 1861; was consolidated with some independent companies March 18, 1862; became the Fifth Regiment Missouri Volunteers, and was mustered out by detachments (their services being no longer required) during the months of September and October, 1862, under instructions from this office dated August 28, 1862.

John B. Stranch was mustered into service as first lieutenant, Company D, Fifth Regiment United States Reserve Corps, Missouri Volunteers, October 10, 1861, and was honorably discharged as such for disability, on tender of resignation to date July 31, 1862, by Special Orders No. 315, paragraph 2, series of 1862, from headquarters Department of the Mississippi.

There is no record evidence of his muster-in as an enlisted man of this organization; but the muster-roll of Company D, dated December 31, 1861, reports him a first lieutenant, enrolled September 17, 1861, with remark "Pay due as sergeant until October 10, when elected first lieutenant."

He is reported by the Paymaster-General, United States Army, to have been paid by the United States as a sergeant from September 17 to November 30, 1861, and as first lieutenant from December 1, 1861, to include September 12, 1862, to which latter date he remained on duty.

Under the provisions of War Department General Orders No. 61, of 1861, a first lieutenant is only entitled to muster into the service on the completion by muster-in of half the company for which commissioned.

The records show that a first lieutenant's command was not completed by muster-in until October 10, 1861, on which date the company was mustered in with Stranch as its first lieutenant.

He may have been enrolled for the purpose of aiding to recruit the company to secure himself a legal place at an earlier date; but the services thus rendered have not been and cannot be viewed as warranting pay in advance of the date of muster-in of his command.

No application has ever been presented to this office by Mr. Stranch for recognition as an officer, prior to his muster-in as such.

The reason why Mr. Stranch was not paid as first lieutenant from October 10, 1861, the date of his muster into service, is not apparent. For any pay which may, however, be due him, application should be made to the Second Auditor, Treasury Department, this city.

I am, sir, very respectfully, your obedient servant,

R. C. DRUM,
Adjutant-General.

HON. SECRETARY OF WAR.

From the letter of the Second Auditor it appears that the petitioner has never presented any claim for the loss of horse, although he could have done so at any time from the date of the loss of the horse in August, 1847, up to January 1, 1876. It would be wholly inexpedient for Congress to undertake to consider and pass upon claims of this character after having provided ample remedies in the proper department, and your committee cannot therefore recommend relief by special legislation in individual cases. The petitioner must await some general legislation for such class of claims as his.

From the letter of the Secretary of War, and the report of the Adjutant-General, it appears that petitioner was mustered into the service as first lieutenant Company D, Fifth Regiment United States Reserve Corps, Missouri Volunteers, October 10, 1861, and was honorably discharged on tender of resignation for disability to date July 31, 1862, and that he was paid as sergeant from September 17, 1861, to November 30, 1861, and as first lieutenant from December 1, 1861, to September 12, 1862, and that under the law the company was not entitled to a first lieutenant until October 10, 1861, and that he was duly mustered into the service on that day. The copy of his commission seems to show that he was never in possession of his commission, and his commission was not even issued until February 17, 1862. If he be entitled to the compensation of first lieutenant from October 10, 1861, to November 30, 1861, the law authorizes the Second Auditor of the Treasury Department to receive and audit his claim therefor, and no legislation by special bill or otherwise is necessary.

Congress ought not to hear or consider claims of this character when the proper accounting officers provided by law have jurisdiction and authority to receive and decide them.

There is no merit in this application to Congress for special relief, and no relief by Congress is expedient or necessary.

Therefore your committee report the petition back, with the recommendation that the prayer of the petitioner be not granted, and that for his claim for compensation as first lieutenant, the petitioner be remitted to his remedy before the proper accounting officers of the Treasury Department.