

4-13-1886

Report : Petition of the Heirs of Lieut. Stewart

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Recommended Citation

S. Rep. No. 504, 49th Cong., 1st Sess. (1886)

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IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1886.—Ordered to be printed.

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

REPORT:

[To accompany bill H. R. 1732.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1732) for the relief of the heirs of Lieut. John F. Stewart, having had the same under consideration, beg leave to submit the following report:

This bill, which has passed the House of Representatives, and has been referred to your committee, is as follows:

Whereas Lieut. John F. Stewart, late of Company A, Fourth Regiment United States Infantry, in active line of service was regularly promoted and appointed, and did serve faithfully as a second lieutenant of said company from July 29, 1865, until June 19, 1866; and

Whereas the company having been so far from headquarters during its entire period of service in the Northwestern Territories that he failed to receive his commission as second lieutenant, to which he was justly entitled, and failed also to receive the pay due him for his services as second lieutenant; therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$992 to the heirs of Lieut. John F. Stewart, for his services in the United States Army, prior to his death, in the late war.

Your committee, after mature deliberation, are compelled to recommend adverse action on this bill, for the reasons that the records at the War Department show that no vacancy existed in the grade of second lieutenant of Company A, Fourth Regiment United States Infantry Volunteers, during the entire period of service of that company; that one William H. Vose held that position from November 3, 1864, to the date of muster-out and discharge of that company, June 9, 1866.

The committee have repeatedly at this session unanimously reported against cases of a similar character, on the ground that it would establish an unwise precedent, and the War Department has uniformly recommended against favorable action in these cases.

Your committee, with the present evidence before it, cannot perceive that the case of John F. Stewart is any more meritorious than those which have been referred to the committee at this and previous sessions, and do not feel warranted in making this an exception.

A complete history of this case from the War Department is appended to and made a part of this report.

The committee, in view of the foregoing facts, beg leave to report the bill back adversely, and recommend its indefinite postponement.

WAR DEPARTMENT,
Washington City, April 9, 1886.

SIR: In returning herewith House bill 1732, "An act for the relief of the heirs of Lieut. John F. Stewart" (passed the House of Representatives March 5, 1886), referred in your letter of the 27th ultimo for information, I have the honor to invite attention to the inclosed copy of a report made January 29, 1886, by the Adjutant-General's Office on the same subject, which fully affords, it is believed, the information desired.

Very respectfully, your obedient servant,

WM. C. ENDICOTT,
Secretary of War.

Hon. J. D. CAMERON,
Of Committee on Military Affairs, United States Senate.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, January 29, 1886.

The SECRETARY OF WAR:

SIR: I have the honor to return herewith the communication of Hon. J. W. Reid (per H.), of Committee on War Claims, House of Representatives, inclosing H. R. bill No. 7826, Forty-eighth Congress, second session, for the relief of the heirs of John F. Stewart, and requesting, on behalf of said committee, to be furnished with the military history of said Stewart as of the Fourth United States Infantry Volunteers, and to report as follows:

The records of this office show that John F. Stewart was mustered into service as a private, Company A, Fourth United States Infantry Volunteers, October 12, 1864; promoted first sergeant November 1, 1864.

He is reported on muster-rolls of his company as a first sergeant, present for duty to June 30, 1865; for July and August, 1865, first sergeant, present, with remark, "Provisionally appointed second lieutenant by virtue of Special Order No. 43, Headquarters Northwest Indian Expedition, July 22, 1865." On all subsequent rolls he is borne as a sergeant, acting second lieutenant, to date of his discharge from the service, June 19, 1866.

The records further show that Company A, Fourth United States Infantry Volunteers, had two commissioned officers, Capt. Samuel G. Sewell and Second Lieut. William H. Vose.

Captain Sewell is reported on the rolls of his company as present for duty from date of his muster into service, November 1, 1864, to date of his discharge, June 19, 1866.

Second Lieutenant Vose is reported present with the company from November 3, 1864, date of his muster into service, to June 30, 1865. Rolls for July and August, September and October, 1865, show him on detached service commanding Company F. On all subsequent rolls he is reported second lieutenant on detached service commanding Company F, acting first lieutenant, Special Orders No. 43, Headquarters Northwest Indian Expedition, July 22, 1865. He was mustered out of service as a second lieutenant with Company A, June 19, 1866.

On July 5, 1866 (sixteen days after his discharge from the service), Stewart made application to this office for the issue of a commission as second lieutenant Fourth United States Volunteers, and claimed recognition as of that grade from July 22, 1865, to June 19, 1866. This application received the adverse decision of the Department, on the grounds that the regulations of the Department prohibited the muster into service or assignment to duty of any person as a commissioned officer, in white organizations recruited in rebel States, prior to authority being issued therefor from this office; that no orders had been issued from this office authorizing his muster into service as a commissioned officer in the Fourth United States Volunteers, and that authority could not now be given for the same.

The above decision was based upon the fact that the commanding general having authority to recruit organizations of white troops in rebel States had not complied with the requirements of circular No. 62, War Department, Adjutant-General's Office, August 3, 1864, relative to the appointment of officers to such organizations, and that no recommendations had been received at this office for the appointment of Stewart in the grade claimed.

Stewart submitted in support of his claim for muster as a second lieutenant a copy of Special Order No. 43, Headquarters Northwest Indian Expedition, Camp No. 22, Fort Rice, Dak., dated July 22, 1865, assigning him to duty as a commissioned officer (subject to the approval of the Secretary of War) by command of Brevet Major-General Sully.

The attention of General Sully was called to the above order, by letter from this office dated July 9, 1866, and an explanation was requested in reference to the irregular assignment of Stewart.

The following letter was received in response thereto:

PHILADELPHIA, Pa., July 12, 1866.

The ADJUTANT-GENERAL,
United States Army:

GENERAL: The communication in regard to the appointment of First Sergt. J. F. Stewart as a lieutenant in the Fourth United States Volunteers has just been received, and calls for some explanation on my part.

When the Fourth United States Volunteers joined me they were very short of officers, so much so that it affected the discipline of the regiment. I reported this to my immediate commander, Maj. Gen. J. Pope, and by his direction made certain acting appointments, subject to the approval of the Secretary of War.

The approval of the Secretary was never received by me, but as the services of a lieutenant were necessary I thought it best for the service to allow First Sergt. J. F. Stewart to continue acting second lieutenant.

Stewart knew very well he was not entitled to any pay without his appointment should be approved, nor do I think he would have applied had not a private of the same regiment, a clerk at department headquarters, been appointed afterwards as first lieutenant in the regiment.

I would beg leave to add that at the time I was relieved from duty in the Department of Missouri there had been several communications sent in with regard to Sergeant Stewart's appointment, and I have no definite answer if Acting Second Lieutenant Stewart would be appointed or not, and pending the result I was relieved from duty.

If I had with me the books of the District of Upper Missouri, I could show more conclusively that I was in no way to be censured for the action I took in the matter.

With much respect, your obedient servant,

ALF. SULLY,
Brevet Brigadier-General.

From the foregoing it will be seen that no vacancy existed in Company A, Fourth United States Volunteers, for a second lieutenant during its entire period of service, Second Lieutenant Vose having held that office from November 3, 1864, to date of muster out and discharge of the company, June 19, 1866, and that the assignment to duty of Stewart as a commissioned officer July 22, 1865, was irregular and in violation of the regulations of the Department.

There is nothing of record in the Department which would sustain the action proposed by this bill.

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

J. C. KELTOM,
Acting Adjutant-General.