

12-12-1889

Report : Petition of E. Leib

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Recommended Citation

S. Rep. No. 5, 51st Cong., 1st Sess. (1889)

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 12, 1889.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 117.]

The Committee on Military Affairs, to whom was referred the bill (S. 117) for the relief of Edward H. Leib, have had the same under consideration, and beg leave to submit the following report:

This bill having received favorable consideration by the Committee on Military Affairs at the last Congress, it was ordered that the report then submitted be adopted.

This bill proposes to restore to his proper rank and promotion in the Army Edward H. Leib, late captain Fifth United States Cavalry, and brevet lieutenant-colonel United States Army, and place him, with such accrued rank, on the retired list by reason of disabilities incurred in the line of duty, without pay for the time he has been out of the service.

This is a peculiar case, and one which required careful examination by the committee, so that injustice would not be done to either the claimant or the Government, and they therefore deem it advisable to go into a somewhat detailed statement of the facts presented.

Colonel Leib was one of the most gallant soldiers in the late war for the suppression of the rebellion. On account of his distinguished services, and heroic and meritorious conduct on more than fifty fields of battle, he rose rapidly from the rank of a private to the position of lieutenant-colonel by brevet.

Colonel Leib entered the Army when he was barely twenty-one years of age. He left Pottsville, Pa., April 17, 1861, as a private in the Washington Artillery of that town, the first company of troops to reach the seat of Government after President Lincoln's call for seventy-five thousand men. On the 26th of April, of the same year, he was commissioned a second lieutenant in the Second United States Cavalry. On the 10th of June, 1861, he was promoted to a first lieutenant; on the 13th of June, 1862, to captain by brevet; on the 26th of April, 1863, to captain, and on the 13th of March, 1865, to major by brevet. On March 30, 1865, he was brevetted a lieutenant-colonel.

The engagements in which Colonel Leib participated during the war were as follows:
1.—Capture of Alexandria, Va., May 23; Blackourn's Ford, July 18; first battle of Bull Run, July 21.

2.—Catlett's Station, Va., March 12; Williamsburgh, Va., May 5 and 6; Mechanicsville, May 24; Hanover Court-House, May 27; Old Church, June 13. For gallantry at this place he received a warm recommendation from Major-General Emory, his superior commander.

Gaines's Mills, June 27; Savage Station, June 28; Malvern Hill, July 1; Harrison's Landing, July 3; White Oak Swamp, July 29. Colonel Leib's command did picket duty at St. Mary's Church and in front of Malvern Hill while on the Peninsula, and brought up the rear guard, under General Averill, when the army left the Peninsula.

South Mountain, Md., September 14; Antietam, September 17; Sharpsburgh, September 19. Colonel Leib and his command then moved to Oldtown, Cumberland, Md., and Romney, Va. While at the latter place the Confederate General Stuart made a raid into Maryland and Pennsylvania. Our cavalry forces, commanded by General Averill, pursued him for over 300 miles.

Halltown, Va., September 26 and 29; Union, November 2; Upperville, November 3; Manassas Gap, November 4; Little Washington, November 7; Amosville, November 10; second battle of Fredericksburgh, December 13.

1863.—Kelly's Ford, Virginia, March 17. At this place Colonel Leib commanded the regiment. This was the first signal cavalry victory of the war for the Union troops. Raccoon Ford, April 30; Fleming's Cross-Roads, May 4; Beverly Ford, Middlebury, Aldie; Gettysburgh, Pa., July 3; Williamsport, Md., July 6; Boonesborough, July 8 and 9; Funkstown, Falling Waters, Hazel River, Virginia; Brandy Station, August 21; Mine Run, Charlottesville, and Stannardsville.

In 1864 Colonel Leib was stationed at Baltimore at the time of the invasion by the Confederate General Early. He offered his services to Major-General Wallace, and they were accepted. He was in the battle of July 7, at Frederick, Md., and brought up the rear guard on the 8th to Monocacy Junction. On the 9th he was ordered to take command of the one hundred days' regiments of infantry and to hold the Baltimore pike bridge crossing the Monocacy. He fought his command all day and lost a great number of men, but succeeded in holding the only road that General Wallace had to fall back on. The general states this fact in his report of operations.

Finally, Colonel Leib brought up to Baltimore the rear guard of our routed Army. On the 13th of July he was appointed inspector and chief of cavalry of the Eighth Army Corps, and went to Washington with General Ord, where he assisted in driving the enemy from the gates. In the fall the colonel went on a raid in command of his regiment under General Torbert to Gordonsville, Va. They were gone twelve days and had two fights, one at Madison Court-House, the other near Gordonsville.

In 1865 Colonel Leib participated in the last grand raid under General Sheridan. After the battle of Waynesborough he captured with his regiment the town of Scottsville, a large amount of ammunition and provisions, and destroyed canal locks and boats. He captured the main railroad bridge over the South Anna river, 3 pieces of artillery, and 500 rounds of ammunition. He finally with his regiment reached White House, crossed at Deep Bottom, joined the Army of the Potomac, and took part in the battles before Richmond.

Colonel Leib commanded the Fifth Regiment United States Cavalry during the last brilliant campaign, and was severely wounded in the battle of Five Forks, Virginia, a few days before the surrender of General Lee. He received a gunshot wound which entered the upper right arm and passed through the body, injuring the lungs.

This sums up as eventful a military career as could be compressed within a period of four years for a single individual. It is a record of which any soldier can be proud.

Maj. Gen. George H. Thomas, in recommending Colonel Leib for promotion, says:

"He was severely wounded at the battle of Five Forks, and received the brevet of major for 'heroic courage' in that action, and subsequently, upon the recommendation of General Sheridan, who complimented him on the field, he was brevetted lieutenant-colonel for gallant and meritorious services in that battle. Captain Leib is a young officer of great energy and ability, a strict disciplinarian, brave and gallant on the field of battle, and constant and untiring in the performance of his duty. He has been constantly in the field, and has participated in a very large number of important campaigns and battles during the war."

Accompanying the papers filed with this case will be found highly commendatory personal letters from Maj. Gen. George H. Thomas, Lieut. Gen. P. H. Sheridan, Maj. Gen. George Stoneman, Maj. Gen. Lew Wallace, Brig. Gen. James Nagle, Brig. Gen. William D. Whipple, Brig. Gen. W. H. Emory, General Gregg, and other officers under and with whom he served, and a strong recommendation, during the late war, from the leading citizens of the county (Schuylkill, in Pennsylvania) in which he resided before entering the service, for his appointment to the position of colonel of a Pennsylvania cavalry regiment.

On the 19th of May, 1865, Hon. E. M. Stanton, Secretary of War, by direction of the President of the United States, commended Colonel Leib on the occasion of transmitting notice of promotion for his distinguished services and heroic courage of action.

During the years 1866 and 1867 Colonel Leib was almost continuously on active duty. During the work of reconstruction he was stationed in various States under the order of the President.

At the breaking out of Indian hostilities on the plains Colonel Leib's regiment was ordered to the frontier, and during the severe struggles on the border, in Kansas and Nebraska, he took a conspicuous part in the great Indian war of 1868 and 1869, most of the time acting independently, and with conspicuous success.

Of Colonel Leib's Indian service it might be stated more particularly that he served from 1868 to 1877 on the plains, being stationed in Arizona and engaged against the hostiles in that Territory. Previous to that he served in Kansas, Nebraska, and Wyoming, taking part in the campaign against the Indians. His last campaign was against Sitting Bull, which lasted several months.

Colonel Leib was in service from April, 1861, over sixteen years. The best years of his life were spent in the active service of the country, which, from wounds, etc., has left him broken in health and unfitted for any manual occupation.

We have traced Colonel Leib's history from the time he entered the military service of the United States in 1861 to 1877, when, we are sorry to say, this brilliant history is marred by unfortunate circumstances that followed, and which finally led to his dismissal from a branch of the Government service in which he had so highly and honorably distinguished himself and which he adorned by his heroic courage.

The record furnished by the War Department shows that Colonel Leib was, by sentence of a court-martial, dismissed the service on May 9, 1887.

The charges upon which he was tried were mainly those of intoxication, with the usual specifications of conduct unbecoming an officer and gentleman, neglect of duty, etc.

As to his use of liquor to excess, your committee will endeavor to show in this report that there were mitigating circumstances which must not be overlooked in arriving at a just conclusion, and which may in part account for his strange behavior and for the departure from his previous good conduct, but which, for some unexplained reason, the court-martial took no notice of.

Upon these charges he was found guilty, although the record shows clearly that as regards certain specifications the offense was technical.

The evidence, as shown by the record, is very conflicting, and it does not appear that the accused was in any wise guilty of neglect of duty upon the charge of absence from his command.

The main charge was that of drunkenness on several occasions while on duty, on or about October 12 and 13, 1876; also, that while on trial before a general court-martial, on or about January 25, 1877, this officer appeared before the court in an intoxicated condition at Cheyenne, Wyo.

A careful review of the testimony against the accused develops the fact that, while this officer was pronounced to be under the influence of intoxicating liquor on various occasions, no overt acts are shown to have been committed, such as usually follow drunkenness.

It is also shown that opiates were prescribed by the surgeon to alleviate disease under which he was suffering.

Your committee has carefully read the voluminous proceedings of the two courts-martial, and find that the evidence is very contradictory. One witness, for instance, swears that he saw Colonel Leib under the influence of liquor at a certain hour of the day, and another witness flatly contradicts that, by stating that he was with Colonel Leib at that very hour, and that he saw nothing unusual in his actions. The burden of the evidence is undoubtedly in Colonel Leib's favor. It is unnecessary to quote what the different witnesses testify to pro and con. It is sufficient to say that from a careful perusal of the testimony no fair-minded man could come to any other conclusion but that Colonel Leib was unjustly and unfairly treated by the court-martial which peremptorily sentenced him to be dismissed.

The committee do not deny the fact that he had been indulging to some extent, perhaps to a greater degree than it was prudent.

The plain truth is, however, that the testimony was not of such a character as to warrant his dismissal. There were, as he claims, certain parties in his regiment inimical to him who were eager for his dismissal, and who appeared as the principal witnesses against him. He solemnly alleges that his dismissal resulted from the personal hostility of one of his commanding officers, in consequence of his resenting an affront of that commanding officer upon his tender domestic relations.

It has been brought to the notice of your committee that this officer for several years previously, and at the time when the offenses charged were committed, labored under severe and depressing domestic affliction. This does not appear in the record of the court-martial for obvious reasons, and this officer can not, out of respect for others, bring out these matters in a public way. Enough is known of these afflictions to warrant the belief that his mind had been unsettled, and that the current of his life had been sadly changed thereby.

It is well known in the Army that Colonel Leib had an affair of honor some years previously with the principal prosecuting witness, the officer before referred to, which grew out of animadversions said to have been made by the said prosecuting witness upon the honor of this officer's wife. Whatever were the merits or demerits of this controversy, enough is known of it to warrant the assumption that the principal prosecutor entertained hostile feelings against the accused. It is also a matter of record that one of the main witnesses for the prosecution was shortly afterwards forced to resign from the service to avoid dismissal upon grave charges.

That these domestic afflictions had a depressing effect upon this officer, as hereinbefore suggested, and were mainly the cause of his short-comings, is attested by a review of his previous record as a gallant and faithful soldier; and it is an undisputed fact that up to the time of the trouble before mentioned he had never been addicted to drink, and he has been a strictly temperate man ever since he left the service. This clearly shows that he was not an habitual drunkard.

Colonel Leib had in contemplation, prior to his dismissal, his retirement from the Army, and would no doubt, but for the unfortunate occurrence, have been finally retired with retired pay.

Colonel Leib, a few years ago, had a bill before Congress asking for an increase of pension. The Committee on Pensions of the House, in reporting his bill favorably, say as follows:

"In the opinion of the committee, the act of dismissal from the military service of the Government should not work a hardship to the claimant, nor prove a barrier to his relief by Congress, for the reason that his wounds were received while in the line of duty, and when in good standing as an officer, and likewise for the reason that the principle was settled by the action of the Government in granting the claimant a pension at the rate of \$20 per month, subsequent to the order of the President dismissing him from the service.

"The nature of his present disability and incapability of providing for his own subsistence and that of his family by manual labor is established by the report of the board of examining surgeons transmitted to the Commissioner of Pensions at the time the claimant first made application for a pension, and which is now on file with the committee, as follows, to wit:

"Gunshot wound of right shoulder. Ball entered anterior surface of arm 1 inch above the insertion of the deltoid muscle, and passing obliquely backwards and inwards emerged just below the spine of the scapula at its inner border, and in its course injuring the lungs and producing hemorrhage. Has cough and purulent expectoration. Motion of shoulder-joint considerably impaired."

"Further evidence of the disability of the claimant is shown in the medical certificate of George C. Miller, assistant surgeon of U. S. Army, given at Camp Grant, Ariz., previous to his dismissal from the service, recommending his retirement from the service.

"The certificate is as follows, to wit:

"I hereby certify that I have carefully examined this officer and find that he is laboring under "chronic malarial toxæmia," acquired in 1872 at Old Camp Grant, Ariz., and for which he has been under my professional care for several months past. He labors under attacks of fever, indigestion, loss of appetite, diarrhea, nervous pains, etc. He is a man of sober habits, so far as I can judge, so that chronic alcoholism is not blended with his case. He suffers, also, from an old gunshot wound, for which I have already recommended that he be enabled to present himself before a retiring board. He also labors under some degree of mental irregularity. I am of the opinion that he is unfit for the service, and most probably permanently so."

"It is the opinion of the committee that the foregoing testimony of medical character is sufficient to establish the character of his disability as permanent and total, so far as manual labor is concerned. It was sufficient to enable the post surgeon to recommend his retirement from the Army."

It may be proper here to mention the fact that some six or eight officers only were brevetted during the late war for being "conspicuous for heroic courage in action and untiring energy in the performance of arduous duty."

Among these few, second on the list as approved and recommended by Generals Devin, Merritt, and Sheridan, appears the name of Capt. E. H. Leib, Fifth United States Cavalry.

In view of all the facts in the case, the extraordinary military services of this officer, your committee are of the opinion that he is entitled to the relief prayed for. He is suffering under greivous wounds which incapacitate him for active service, and for which he would have been entitled to be placed upon the retired list of the Army, but for the misfortune which culminated in his dismissal.

In all the years of his service it does not appear that his accounts have been irregular, or that he was indebted to the Government to the value of a penny.

The legislature of his State (Pennsylvania), without respect of party, together with the governor of the State and leading citizens thereof, feeling a pride in the heroic military services of Colonel Leib, whose family have been intimately connected since the days of the Revolution with the history of Pennsylvania, and whose near relatives have served with distinction in the Senate and House of Representatives of the United States, petition Congress for the passage of a bill for his relief.

Your committee are of the opinion that such extraordinary interest on behalf of this officer should not go unheeded, especially since his fault has occasioned no injury, and was precipitated by a domestic affliction, calculated to unsettle the mind of most men.

Your committee further state that said Edward H. Leib, at the time of his dismissal, was first in the line of promotion to the rank of major, as about that time a colonel of a cavalry regiment was retired, which would have made said Leib a major.

Your committee, therefore, report back the bill and recommend its passage.