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In the Senate of the United States. Letter from the Secretary of the Interior, in answer to the resolution of the Senate of January 29, 1894, calling for advice relative to pensions issued on account of services in David West's Company B, in the battalion regiment of Arkansas Volunteers, commanded by Lieut. Col. William Gray, called into the service of the United States under act of Congress approved May 13, 1846, and transmitting a copy of a letter, and inclosures, from the Commissioner of Pensions.

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IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN ANSWER TO

*The resolution of the Senate of January 29, 1894, calling for advice relative to pensions issued on account of services in David West's Company B, in the battalion regiment of Arkansas Volunteers, commanded by Lieut. Col. William Gray, called into the service of the United States under act of Congress approved May 13, 1846, and transmitting a copy of a letter, and inclosures, from the Commissioner of Pensions.*

FEBRUARY 12, 1894.—Ordered to lie on the table and be printed.

DEPARTMENT OF THE INTERIOR,  
Washington, February 10, 1894.

SIR: I am in receipt of Senate resolution of the 29th ultimo, as follows, to wit:

*Resolved,* That the Secretary of the Interior be, and he is hereby, directed to advise the Senate as to whether any pension or pensions have ever heretofore been issued to any person or persons, and if so, the date and to whom and the amount on account of services rendered in David West's Company B, in the battalion regiment of Arkansas Volunteers, commanded by Lieut. Col. William Gray, called into the service of the United States by the President, under the act of Congress approved May 13, 1846; and if so, whether the Department has at any time, and if so when, determined that pensions granted for service in said Gray's battalion hereinbefore described were allowed, under a misapprehension as to the nature of the service of such battalion, and whether it is the present policy of the Department to allow, no pension whatever to anyone for service in said battalion, and if any such change has been made in the policy of the Department the reasons therefor.

In response thereto I have the honor to transmit herewith a copy of a letter and accompanying inclosures from the Commissioner of Pensions, to whom the matter was referred for report, containing the information desired.

Very respectfully,

HOKE SMITH,  
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,  
BUREAU OF PENSIONS,  
Washington, D. C., February 7, 1894.

SIR: In compliance with Senate resolution of the 29th ultimo, herewith attached, referred by Hon. John M. Reynolds, assistant secretary, to this Bureau on the 31st ultimo, requesting names of members of Capt. David West's Company B, of Col. William Gray's Battalion of Arkansas Volunteers, Mexican War, for whose services pensions have been granted under act of January 29, 1887, and amount of said pensions, and also for information with regard to decisions and rulings relative to the status of the service of Col. Gray's Battalion, in connection with the provisions of the act of January 29, 1887, I have the honor to inform you that the attached list, Exhibit No. 1, contains the names of all the persons to whom pensions were granted for service in Capt. West's Company of said battalion. The first three pensions noted on the list were allowed prior to the rendering of any decision or ruling relative to the status of this service, and the others were allowed under a ruling, No. 223, dated October 20, 1887, by the then Commissioner Black. (See Exhibit No. 3, attached.)

On June 10, 1891, a decision was rendered by Assistant Secretary Cyrus Bussey in a claim where similar service to that rendered by members of Col. Gray's battalion was performed, revoking the former ruling of Commissioner Black. (See Exhibit No. 4, attached.) And on July 20, 1893, Assistant Secretary John M. Reynolds rendered a decision in a similar claim to those mentioned, affirming the decision of Hon. Cyrus Bussey. (See exhibit No. 5, attached.)

Exhibit No. 2, attached, is a copy of the report of the Adjutant-General U. S. Army, giving the stations of the several companies comprising Col. Gray's battalion.

There have been no pensions granted for service in Capt. West's company since the date of Assistant Secretary Bussey's decision, June 10, 1891; neither are claims now allowed to survivors of said company or battalion for the service in question.

Very respectfully,

WM. LOCHREN,  
Commissioner.

Hon. JOHN M. REYNOLDS,  
Assistant Secretary of the Interior.

## No. 1.

*Pensions granted under act of January 29, 1887, for service in Capt. David West's B Company, Col. William Gray's Battalion, Arkansas Volunteers, Mexican War.*

Name of pensioner.	No. of certificate.	Date of issue.	Rate per month	Period of pensions.		Remarks.
				From—	To—	
Wheeler, Alexander	1711	May 27, 1887	\$8.00	Jan. 29, 1887	Present....	Name now on pension roll.
Davis, Caleb.....	6525	June 27, 1887	8.00	....do.....	Oct. 20, 1893	Increased to \$12 per month.*
Duval, Jno. E.....	6531	....do.....	8.00	....do.....	Present....	Name now on pension roll.
Park, George.....	14262	Mar. 24, 1888	8.00	....do.....	....do.....	Do.
Tombleston, Wm. H.	14273	....do.....	8.00	....do.....	Jan. 29, 1889	Date of death.
Widow of above....	6408	July 2, 1889	8.00	Jan. 29, 1889	Present....	Name now on pension roll.
Hillis, Wiley G....	14710	Apr. 10, 1888	8.00	Jan. 29, 1887	Jan. 7, 1890	Date of death.
Widow of above....	7381	Mar. 30, 1891	8.00	Jan. 7, 1890	Present....	Name now on pension roll.
White, Geo. W.....	14740	Apr. 10, 1888	8.00	Jan. 29, 1887	July 1, 1892	Increased to \$20 per month.†
Kendrick, Jas. W...	14872	Apr. 13, 1888	8.00	....do.....	Present....	Name now on pension roll.
Anthony, Isaac R..	16156	June 1, 1888	8.00	Mar. 1, 1887	Aug. 13, 1890	When pensioned for late war service.
Crouch, Solomon....	16193	June 2, 1888	8.00	Mar. 16, 1887	Present....	Name now on pension roll.
Tatom, Alfred C....	17193	Oct. 30, 1890	8.00	Jan. 29, 1887	....do.....	Do.
Marshall, Samuel H.	19176	Nov. 11, 1890	8.00	....do.....	Oct. 23, 1893	Increased to \$12 per month.*
Widow of Fowler, Jas. P.	3033	Mar. 6, 1888	8.00	....do.....	Present....	Name now on pension roll.
Widow of Duval, Wm.	3557	Mar. 29, 1888	8.00	....do.....	....do.....	Do.
Widow of Brown, Newton W.	4071	Apr. 16, 1888	8.00	....do.....	....do.....	Do.
Widow of Dixon, Jno. C.	4971	June 6, 1888	8.00	Aug. 18, 1887	....do.....	Do.
Widow of Dixon, Allen A.	5712	Oct. 16, 1888	8.00	Jan. 29, 1887	....do.....	Do.
Widow of Harkey, Jno. K.	6796	Feb. 13, 1890	8.00	....do.....	....do.....	Do.

\* Increased to \$12 per month under Jan. 5, 1893.

† Increased to \$20 per month under special act of Congress approved July 1, 1892.

## No. 2.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
Washington, May 24, 1887.

SIR: In reply to your communication of the 5th instant, requesting this office to state where Lieut.-Col. Gray's Battalion of Arkansas Volunteers, Mexican war, or any portion thereof was stationed during its term of service, upon what duty engaged, and whether it can be considered as having served 60 days in Mexico, or on the coasts or frontiers thereof, or en route thereto, I have the honor to state that "Gray's Battalion Arkansas Volunteers, Col. William Gray commanding," was composed of five companies, A, B, C, D, and E, mustered in and out and stationed as follows, viz:

Company A mustered in July 1, 1846, at Fort Smith, Ark., for twelve months, William Gray, subsequently P. B. Collins, captain commanding.

Company left Fort Smith, Ark., August 3, and arrived at Fort Gibson, Cherokee Nation, August 7, 1846, where it was mustered out April 20, 1847.

Company B, Capt. David West commanding, mustered in and out at same time and place, and stationed as Company A.

Company C, Capt. John S. Ficklin, subsequently A. H. Imboden, commanding, mustered in July 6, 1846, at Fort Smith, for twelve months, and mustered out February 28, 1847, at Fort Gibson, Cherokee Nation, where it was stationed from August 31, 1846, to date of muster out.

Company D, Capt. John H. Felch, subsequently C. M. Hudspeth, commanding, mustered in July 18, 1846, at Fork Smith, Ark., for twelve months, and stationed there until April 15, 1847, when mustered out.

Company E, Capt. Charles H. Pelham commanding, was mustered in July 21, 1846, at Fort Smith, Ark., for twelve months, mustered out at Fort Wayne, Cherokee Nation, February 28, 1847, where it was stationed from August 31, 1846, to date of muster out.

From the foregoing it will be seen that this battalion did not serve in Mexico, on the coasts or frontier thereof, or en route thereto.

Very respectfully, your obedient servant,

THOMAS WARD,  
*Assistant Adjutant-General.*

The COMMISSIONER OF PENSIONS,  
*Washington, D. C.*

No. 3.

[Ruling No. 223.]

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,  
*Washington, D. C., October 20, 1887.*

In the case of Joshua J. Rutherford, an applicant for pension under the act of January 29, 1887, a review of the facts discloses that the soldier, being resident at Madison, in the State of Florida, was there enlisted, and subsequently mustered into the service at Fort Brooke, Tampa Bay, Fla., two hundred and fifty miles distant in a southeasterly direction, on the 8th of January, 1846, for a period of twelve months, under a call made by the President of the United States upon the State of Florida for volunteers for the Mexican war, in pursuance of the act of Congress approved May 13, 1846, and was subsequently mustered out at Fort Brooke, Tampa Bay, on the 8th day of January, 1847; his services were rendered during this period, and under the enlistment aforesaid, at Tampa Bay, Florida.

All the questions necessary to determine right to pension under the act of January 29, 1887, are established in the case if the soldier was "en route to Mexico."

The enlistment of the soldier was for the Mexican war, under the act of May 13, 1846, authorizing enlistment for that war. He left his home and traveled a distance of 250 miles under the authority of the Government in pursuance of such enlistment; that the Government arrested his farther progress at Tampa, and required him to render services there, does not interfere with his rights; there is a complete establishment of his right to such claim for pension—in so far as such right depends upon having been en route to Mexico—unless it be held that the Government, by a mere change of geographical direction in the line of march, could alter the contract of service. This can be hardly assented to, however circuitous the direction, the fact being established that he enlisted for the war; that he left his home for the war under authority of the Government; that he rendered this service to the Government, whether his direction was north, south, east, or west, whether he went by a direct or crooked line is immaterial; if he went under order of the Government, he then was "en route for Mexico." If, instead of being stopped at Tampa, he had been sent to New Orleans, his right would have been perfect. If he had been sent to Mobile, his right would have been perfect. The fact that he was sent along the coast, and in a southeasterly direction, during the war, does not alter the right of his cause.

Case allowed.

JOHN C. BLACK,  
*Commissioner.*

(Recorded in vol. 2, p. 139, Commissioner's Rulings.)

No. 4.

DEPARTMENT OF THE INTERIOR,  
*Washington, June 10, 1891.*

[Mexican war claim No. 11,174, Leonhardt Rott, Capt. Dively's company, Ohio. Docket No. 1490, 1888. Appeal. Rejection affirmed.]

SIR: \* \* \* Confining the argument to the question raised by the appeal, viz, the meaning of the words "or en route thereto," the question is, not whether the soldier was en route or not, but whether he was en route for a period of sixty days. If

he was (1) actually engaged in a battle in said war or (2) personally named in a resolution of Congress for specific service in said war, either of these would satisfy the requirements of the act, so far as the question of service is concerned, without regard to the length of his services.

But in the absence of these conditions he must have served with the Army or Navy of the United States for sixty days in the war with Mexico, and this sixty days' service must have been rendered either (1) in Mexico, (2) on the coast or frontier thereof, or (3) en route thereto. Part of the time might, however, have been consumed in one of the conditions and part in another, or a part in each. That is, if he had been, for example, en route thereto for twenty days, and on the coast or frontier for twenty days more, and then in Mexico twenty days, the conditions of the act would have been complied with. But even if going from Price Hill to Camp Washington was en route to Mexico this would not be a compliance with the conditions of the act unless it took him sixty days to go that distance.

Under the act it is not a question of *distance* but of *time*. The rejection of the claim is affirmed.

Very respectfully,

CYRUS BÜSSEY,  
*Assistant Secretary.*

The COMMISSIONER OF PENSIONS.

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No. 5.

[Claim No. 23481. Mex. War, H, 1st U. S. Drag. Geo. Ackenback.]

DEPARTMENT OF THE INTERIOR,  
*Washington, July 20, 1893.*

SIR: This claim was rejected March 14, 1890, on the ground that "the claimant was not in Mexico, on the coast or frontier thereof, or en route thereto at any time during the Mexican War."

From the rejection claimant appeals, contending that he was, as shown by the evidence, both en route to Mexico, and on the frontier thereof, for the required period, and that he has otherwise complied with the law.

The appeal is lengthy, containing as assignments of error twenty-three postulates of law and fact. Many of them do not seem to the Department to be pertinent to the issue presented. They will not, therefore, be discussed in detail, but have received due consideration in connection with questions arising thereunder.

The War Department reports that soldier was "enlisted January 5, 1847, at Philadelphia, Pa., and was assigned to Company H, First Regiment of Dragoons. Joined troop at Fort Gibson, Cherokee Nation, February 6, 1847. Muster rolls February 28, 1847, to April 30, 1848, report him "present" at Fort Gibson, Cherokee Nation. \* \* \* Muster roll February 29, 1852, reports him "discharged at Fort Fillmore, N. Mex., January 5, 1852, by expiration of service as private."

This is a claim under the act of January 29, 1887, entitled "An act granting pensions to the soldiers and sailors of the Mexican war, and for other purposes."

By the terms of this law alone, as applied to the facts, the claim must be upheld, or, failing to comply therewith, it must fall. The act, after indicating some of the beneficiaries and specifying one of the conditions precedent to the right to pension thereunder, proceeds thus: "Actually served sixty days with the Army or Navy of the United States in Mexico, or on the coasts or frontier thereof, or en route thereto, in the war with that nation." The language quoted contains all the law necessary to be considered under the issue presented. It is admitted that claimant served in the Army more than sixty days of the period embraced by the war with Mexico. That war commenced April 24, 1846, and ended with the signing of the treaty of Gaudalupe Hidalgo, February 2, 1848 (2 P. D. 220, and 1 P. D. 453). It is not claimed that he served "in Mexico," nor "on the coasts thereof," proper, but only that he served "en route thereto," and on the frontier thereof."

The record is accepted to show that claimant traveled to Mexico, from Philadelphia to Fort Gibson, Cherokee Nation, Ind. T. But neither the record, nor the parol evidence, shows that at the time of leaving Philadelphia, nor at any time prior to arrival at Fort Gibson, claimant's company, nor any part thereof, was under orders for any other point than the last-named place, nor is it shown that there was ever any authoritative purpose to send any part of the command to participate in anyway in said war.

During the said war the soldier was never nearer the Mexican frontier than Fort Gibson. He served there more than sixty days during that war. It is to be observed that the service was to be "in the war with that nation," and not simply *during* the

war. It is believed that Congress intended that the service, whether en route or on the coast or frontier, must have some direct connection with, and form part of, the military or naval operations in that war. And this not by way of garrison duty at some post far remote from the borders of Mexico, but by actually proceeding en route to the seat of war, or serving on the coast or frontier of Mexico in belligerent attitude.

Fort Gibson was not less than 600 miles from the nearest point on the Mexican frontier. The proposition that the northern boundary of the State of Texas (which, at its nearest point, was about 150 miles from Fort Gibson) was the Mexican frontier for purposes of said act, can not be successfully maintained. That State became one of the States of the Union December 29, 1845, at which date the act for its admission was approved. (U. S. Stats., vol. 9.) Its territory was thenceforth and forever severed from Mexico, and as much part of the Federal Union as the State of Pennsylvania, or any other of the sisterhood of States.

Fort Gibson had long prior to the Mexican war been a military post. Its garrison was not participating, in any sense, in the war with Mexico. They were not there to hold it against threatened attack, nor as a base for hostile incursions into Mexican territory. Had the force there, or any part of them, been needed in the prosecution of the war they might, of course, have been summoned to the front, but they were not. Hence they were no more serving "on the frontier \* \* \* in the war with that nation" than were the troops at Fort Snelling, Iowa, or Fort Smith, Ark. (2 P. D., 248 and 256.) The claimant is not shown to be within any class of persons for whom pension is provided by the said act. The rejection of the claim must therefore stand, and the same is hereby affirmed.

Very respectfully,

JNO. M. REYNOLDS,  
*Assistant Secretary.*

The COMMISSIONER OF PENSIONS.

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