

contractor actually earned a profit of \$34,202.86 on the entire contract. The audit report also discloses that this contractor earned a profit of \$392,329.15 on all other Government business for the years 1944, 1945, and the first 5 months of 1946. Its commercial business during the same period also operated at a substantial profit.

My approval of this bill would establish the undesirable principle of Government underwriting any wartime losses incurred by contractors providing goods and services to the Government, regardless of the fact that such contractors did not sustain a net loss. I am unable to perceive any circumstances which would warrant preferential treatment for the claimant to the detriment of other wartime contractors. I am satisfied that it is my duty to oppose this bill.

Although my examination of the record in this case does not lead me to believe that there is an equitable basis for this claim, it is possible that a court through judicial processes might be led to determine otherwise. In complex situations like this one, it is my opinion that judicial rather than legislative remedy should be sought. I would, therefore, be willing to give my approval to a jurisdictional bill waiving the bar of any statute of limitations against the claim.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, August 31, 1954.

On September 1, 1954:

MRS. MERLE CAPPELLER WEYEL

S. 45. I am withholding my approval of S. 45, a bill for the relief of Mrs. Merle Cappeller Weyel.

This enrolled enactment would pay the sum of \$5,437.21 to Mrs. Merle Cappeller Weyel in full settlement of her claim arising out of the death of her husband after his release from active duty in the Navy in 1948.

The husband of the beneficiary of this bill was recalled to active duty in 1947, after having been retired following the completion of 30 years of service. Prior to his release from this tour of duty, he was given a particularly thorough physical examination because of indications that he might be suffering from high-blood pressure. However, a board of medical survey determined, as a result of this examination, that he was physically qualified for release from active duty, and he was accordingly again returned to his retired status in February 1948.

Subsequently, this officer was treated and X-rayed by a private physician in September 1948. The X-ray disclosed that he was suffering from a malignancy which caused his death in December 1948, after two unsuccessful operations in private hospitals.

This deceased officer's case was twice considered by the Board for the Correction of Naval Records, which was established by statute to correct records where this was necessary to remove an injustice. It was contended by the beneficiary that the malignancy should have been discovered at the time her husband was released from active duty and that, if it had been discovered, he would have been kept on active duty until his death.

On the basis of this, it was further contended she was entitled to be paid the usual death gratuity, the difference between her husband's active and retired pay for the period between his release from active duty and his death and the amount of private medical and hospital expenses incurred on his behalf. The present measure is based on these same contentions.

After twice reviewing the case, the Board concluded that it was to be presumed that the malignancy had existed at the time the decedent was released from active duty and that, had its existence been discovered, he would not have been released at the time he was. However, the Board concluded that the decedent would not have been kept on active duty until his death, but in all probability would have been retired for physical disability not later than July 1948.

I can perceive no justification for the payment which the bill would make on account of the cost of private medical and hospital care incurred on behalf of the decedent. He was, at all times, entitled to such care at facilities operated by the Navy Department. There is no showing that any attempt was made to take advantage of these facilities. But, on the contrary, it appears that, for personal reasons, the decedent elected to be treated privately. If the Government is to establish medical facilities and make provision for the care of servicemen and veterans, as it has done, it cannot, at the same time, be expected to undertake reimbursement of such personnel when they decide, for personal reasons, to obtain care at their own expense from private physicians and hospitals.

Another reason why I am unable to approve this measure is that, as enacted, it is either unfair to the beneficiary or to the Government. This results from the fact that the bill excludes payment of the death gratuity of 6 months' pay which was originally claimed by the beneficiary but recognizes and authorizes the payment of the difference between active duty pay and retired pay for the entire period between the date of the decedent's release from active duty and the date of his death. It is obviously inconsistent to exclude the one and recognize the other. If the decedent is to be considered on active duty for the entire period in question for pay purposes, he certainly should be so considered with respect to the payment of the death gratuity. On the other hand, if his active duty is considered to have ended prior to the date of his death, then it is equally obvious an adjustment should be made in the pay differential award. In all fairness, it would appear that this inconsistency should be resolved one way or the other.

It should be stressed that notwithstanding disapproval of the bill, the beneficiary can now have her claim settled administratively. Since the time when the case was last reviewed by the Board for the Correction of Naval Records, legislation has been enacted which permits administrative settlement of claims based on changes in records made by the Board. Reconsideration of the beneficiary's claim under such legislation would result in an award which, I am

confident, will be equitable from the standpoint of both the beneficiary and the Government. In this connection I should like to express my belief that the Board should take into account, in its reconsideration of the case, the possibility that had it been discovered prior to his release from active duty medical treatment of the decedent's condition might very well have led to his retention on active duty until the date of his death.

DWIGHT D. EISENHOWER.  
THE WHITE HOUSE, September 1, 1954.

E. S. BERNEY

S. 46. I have withheld my approval from S. 46, entitled "For the relief of E. S. Berney."

This bill would pay to E. S. Berney the sum of \$4,750 as compensation for damages allegedly sustained by him as a result of certain representations made by a representative of the Navy during World War II.

It appears that in the summer of 1943 a representative of the Navy discussed with the beneficiary the potential use of his Nevada ranch and certain adjoining ones as a bombing range. Although the evidence on this point is conflicting, it appears that such representative indicated that he expected the Navy to begin operations that fall and that, prior to the beginning of such operations, all livestock would have to be removed from the land. The beneficiary alleges that on the basis of this information he disposed of his cattle and other property and vacated his ranch early in the fall. It developed, however, that the Navy did not need or begin to use his land until the following spring.

In subsequent condemnation proceedings, the court refused to recognize any damages occurring prior to the time when the Navy began using the land in question in the spring of 1944. On this premise the court awarded the beneficiary \$766.67 for damages occurring after use by the Navy began. The present bill was designed to afford compensation for damages which were excluded by the court and which the beneficiary alleges were due to the premature vacation of his land.

Conceding the facts in this case to be as stated by the beneficiary, it still does not follow that he is entitled to the award proposed here. It has not been established that the damages allegedly sustained by the beneficiary were due to a reasonable reliance upon the representations of the Navy representative. There appears to have been no such reliance on the part of other ranch owners whose land was taken under similar circumstances and whose statements appear in the committee reports in support of some aspects of the beneficiary's claim.

In addition, there appears to be confusion as to the basis for measuring the damages which the beneficiary allegedly sustained. He made an unverified claim of damages in the amount of \$12,000. Part of the damages so claimed are covered by the \$766.67 condemnation award. The Congress reduced the claim